

# **Exploring alternatives to the hate crimes model. Perceptions of civil society organizations regarding the application of restorative justice for bias-motivated crimes.**

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## **Abstract**

Most European countries have adopted the hate crimes paradigm in their criminal systems for combating bias-motivated violence. This model contributes to increasing public awareness about the unacceptability of violence committed against vulnerable groups, and the need to provide them with formal protection. However, the hate crime model has been challenged, under the auspices that the widespread failure of criminal punishment to act as a deterrent to crime calls into question the extent to which hate crimes legislation actually reduces violence towards a particular group. An alternative or complement to the punitive and individualistic approach of hate crimes that could ensure adequate reparation for criminal behavior is the implementation of restorative justice programs.

In this article we present and discuss the results of the survey (n=288) carried out in six European countries (Belgium, Bulgaria, Italy, the Netherlands, Poland and Spain) with the aim of gathering the knowledge, perceptions and practices regarding restorative justice of representatives of the main LGBT associations and other civil society organizations that fight against discrimination. The results obtained show that restorative justice is still an incipient jurisdictional paradigm that requires further consolidation if it is to constitute an alternative to the punitive model of hate crimes.

**Keywords:** hate crimes, LGBT, restorative justice, civil society organizations, quantitative research

## **Introduction**

In this article we present and discuss the results of the survey carried out through the project *LetsGoByTalking. Innovative paths through restorative justice for victims of anti-LGBT hate crimes* (2020-2022), funded by the European Commission. The project was implemented in six European countries (Belgium, Bulgaria, Italy, the Netherlands, Poland and Spain) and its main objective was to explore the viability and pertinence of the application of restorative justice in cases of anti-LGBT (lesbian, gay, bisexual and transgender people) hate crimes.

The research phase of the project was organized following a mixed methodology. To this effect, further to in-depth interviews with victims of anti-LGBT hate crimes and professionals who work with them, a survey was conducted of representatives of the main LGBT associations and other civil society organizations that fight against discrimination to gather their knowledge, perceptions and practices regarding restorative justice.

More specifically, we were interested in (i) measuring how confident the professionals feel about their understanding of restorative justice; (ii) detecting the training needs and priorities of the organizations in relation to issues linked to LGBT experiences, hate crimes and restorative justice; (iii) exploring the extent to which restorative justice is a topic of discussion and interest for the organisations, and (iv) discovering the organizations' assessment of the main benefits and barriers regarding the application of restorative justice in hate crimes.

### **In context: hate crimes and restorative justice**

Civil society organizations (CSOs) play a key role in assistance, reporting and counselling for hate crime victims. CSOs are groups that can work at national, regional, and local levels to promote the rights of various groups within a society. They can also be dedicated to addressing the needs of the LGBT community and specific subsets of the community,

in matters such as advocacy, providing safe houses, and facilitating healthcare services and access to justice. Whether they are officially registered or not, CSOs play a vital role in helping the LGBT community recover from the effects of bias-motivated violence. They can also provide advice and resources to help members of the community decide what steps to take in addressing their concerns. For this reason, many LGBT CSOs and LGBT collectives have become the only providers of LGBT-specific support services in their area, including legal counselling, psychological counselling, and crisis interventions (Godzisz & Viggiani 2018).

The beginning of the twenty-first century in Europe brought with it a progressive recognition of LGBT civil rights, even though this progress has not occurred equally in all countries. Amongst the participant countries in this research, Belgium (2000) and the Netherlands (2001) were the first European countries to approve the so-called 'love rights', that is, same-sex marriage and adoption. This recognition was also granted in Spain, which modified its Civil Code in 2005. In Bulgaria and Poland, the law establishes marriage as a union between man and woman, and this constitutional principle prevents same-sex marriages. In Italy, the legislator is not obliged by the Constitution to recognise the right to same-sex marriage (same-sex unions are however regulated). The case of Poland is particularly relevant: it was a relatively tolerant country in the early 20th century (homosexuality was decriminalised in 1932), yet today it has become one of the European countries most reluctant to provide legal and political recognition of sexual and gender diversity. Regarding transgender rights, Poland and Bulgaria do not have a legal gender recognition law and, consequently, legal change depends on a court decision (in Bulgaria, judges tend to request the sterilisation of the transgender person). In Belgium, Italy, the Netherlands and Spain, experienced gender is recognized thanks to the approval of specific 'gender laws', albeit with some difference in the transgender rights between the

countries. **Table 1** contains basic information on the existence of anti-LGBT hate crime legislation and key LGBT rights in the participating countries, such as same-sex marriage and legal gender recognition for transgender and intersex people.

Although equal rights are a significant social advantage for LGBT people, authors such as Jasbir Puar (2007) have questioned how, in Western societies, the civil rights of LGBT communities have been used to reinforce the Nation state's interests. Others go as far as to suggest that colonialism and heteropatriarcalism have linked roots (Arvin et al., 2013). From these perspectives, the state plays a key role in the heteropatriarcal matrix, and LGBT rights provide what Weeks (1998) has called sexual citizenship, thus contributing to the neo-liberal individualization (Richardson, 2017), and to the hierarchy and division between good and bad sex (Rubin, 1984). Following this logic, Wendy Brown's (1995) critique holds true, in that freedom depends on a much more complex political formulation than public authorities can offer.

When the first steps towards to achieving civil rights for LGBT people began in some European countries, legal protections started to be demanded, and criminal law took on a particularly important role at the European level. In most cases, criminal law can be used to seek that justice is done to those who commit hate crimes based on sexual orientation or gender identity. However, in environments where anti-LGBT legislation is not limited, lawmakers can also create laws that explicitly criminalize these types of crimes.

The concept of hate crime was developed in the USA during the 1980s and 1990s (Lawrence, 2002) and extended to EU through the Organization for Security and Co-operation in Europe (OSCE), particularly after the Eleventh meeting of the Ministerial Council in 2003 at which the OSCE:

*Encourages all participating States to collect and keep records on reliable information and statistics on hate crimes, including on forms of violent manifestations of racism, xenophobia, discrimination, and anti-Semitism, as discussed and recommended in the above-mentioned conferences. Recognizing the importance of legislation to combat hate crimes, participating States will inform the ODIHR (OSCE Office for Democratic Institutions and Human Rights) about existing legislation regarding crimes fuelled by intolerance and discrimination, and, where appropriate, seek the ODIHR's assistance in the drafting and review of such legislation (Organization for Security and Co-operation in Europe, 2003, p. 79).*

Such hate crime statutes establish specific elements of the offense related to the underlying motivation of hate that must be proven in order to successfully bring perpetrators to justice. These types of hate crime laws typically are designed to obtain the information needed to develop effective strategies to identify and punish those who commit these types of violence. They also encourage authorities to seek harsher sentences for those who commit these types of violence. While most of the time the decisions made by lawmakers are influenced by the public and civil society, the legal drafting of these laws is additionally influenced by data.

Various factors can also influence the development and implementation of hate crime legislation. For instance, the existence of laws that explicitly ban violence based on other grounds (e.g., religion or belief) can be a key factor that contributes to the development of these laws. Other factors such as the inclusion of sexual orientation in the list of protected vulnerable groups can additionally contribute to the development of these laws.

There are various ways to address the issue of hate crime, such as adopting new laws or expanding existing ones:

1. Ordinary criminal law punishes offenders who perpetrate violence against other individuals, and police and prosecutors have the authority and responsibility to hold those offenders accountable. Although bias may not be an element of a crime in itself, the perpetrator is still guilty of a crime if he or she uses violence against another person because of their sexual orientation and/or gender identity. The prosecution of violent acts under criminal law sends a strong message that violence is not tolerated.
2. A hate crime law can also create a separate offense that is focused on the specific bias that motivated the crime. This type of legislation can be used to address the issue of bias-motivated violence against people who are transgender or gay. When it comes to implementing the hate crime legislation, substantive offenses are often used to make it easier for prosecutors to bring charges and impose harsher penalties on those who commit crimes based on someone's sexual orientation and/or gender identity. However, this type of legislation can also prevent prosecutors from filing charges if they believe that it will be difficult to prove the specific elements of the crime.
3. Another type of legislation that is commonly used to make it easier for prosecutors to bring charges and impose harsher penalties on those who commit violent bias-motivated acts is a sentence enhancement law. Although some hate crime legislation may be beneficial, the use of sentence enhancement laws does not make it easier for prosecutors to prove their case against those who commit those acts. Instead, it merely shows that authorities do not tolerate hate or bias in society. Also, since these types of legislation have less prominence in criminal law, their

implementation can go unnoticed, further reducing their effectiveness in publicly condemning hate.

Criminal legislation addressing anti-LGBT phobia is still a novelty in Europe. In 1987, Denmark became the first country in the EU to introduce legislation against homophobic hate speech. In 1997, harsher penalties were also introduced for violence motivated by sexual orientation. Currently, out of the 27 member states of the European Union, eighteen consider the offender's animus towards the victim's sexual orientation (real or perceived) in crimes. Half of the states that recognize sexual orientation in hate crime laws have also legislated against anti-transgender hate crime.

Regarding the six European countries surveyed, the Belgian Penal Code does not define what a hate crime is but provides several penalty enhancements in the case of specific offenses if the motive for crime is hatred, contempt, or hostility towards a person because of one or more protected characteristics, such as sexual orientation. In Bulgaria, the law recognizes some hate crimes, although the list of motivations constituting aggravating circumstances does not include sexual orientation and gender identity. In Italy, anti-hate crime legislation is in force, but it does not cover sexual orientation or gender identity. As for the Netherlands, the Criminal Code includes hate crime (race / religion or belief / straight or homosexual orientation / physical, mental or mental disability / gender identity). Polish criminal law does not define hate crime or hate speech in legal terms, and there is no general penalty enhancement for hate crimes in the Penal Code. The Spanish Criminal Code does not specifically refer to 'hate crimes'; nonetheless, several articles take bias-motivated offenses, including sexual orientation and gender identity, into consideration.

A key tool for the provision of victims' rights is the European Directive 2012/29/EU (so called Victims' Rights Directive). It provides victims with some rights which, in overarching terms, enable victims to access the case file during the investigation of an incident and obtain a copy of it. Unfortunately, some of the countries have still not made the necessary changes and some provisions are yet to be fully implemented.

As has been shown, the approaches to sexual and gender diversity and hate crimes differ greatly between the countries participating in this study. Moreover, there is no common agreement among academics and practitioners on the implementation of hate crimes legislation (Chakraborti, 2014), nor is there a consensus on the definition of hate crimes. Several authors also question the capacity of the concept to combat violence against LGBT people, insofar as hate crime laws do not have a deterrent effect due to their focus on punishment, and cannot be considered to prevent bias-motivated violence (Spade, 2015). Others have even noted that anti-discrimination laws do not demonstrate an understanding of how racism or homophobia work (Freeman 1996), or only address certain particular forms of violence experienced by LGBT people (Sadurní Balcells & Langarita Adiego, 2020) but not others, such as symbolic violence, which are specifically relevant when dealing with gender and sexuality (Bourdieu, 1998).

Moreover, despite efforts by public authorities to incorporate hate crimes into the legal system, hate crime laws have not had the expected effects. For instance, according to the EU LGBT survey (Agency for Fundamental Rights, European Union, 2020), 42% of LGBT respondents in the EU have felt personally discriminated against, rising to 60% in the case of transgender persons. Moreover, 11% of respondents have experienced physical attacks in the past 5 years due to their being LGBT, a percentage that rises to 17% among transgender people. Though all participant countries have deployed anti-discrimination laws, not all of them include sexual orientation, gender identity and gender



expression as protected criteria in their legal frameworks for protecting LGBT people and prosecuting LGBTphobia. The FRA (European Union Agency for Fundamental Rights) Survey data shows that the inclusion of sexual orientation, gender identity and gender expression as a protected characteristic in the criminal code does not seem to be a sufficient strategy to combat violence against LGBT people, with only 10% of interviewees having reported the latest incident to affect them to the police. This shows that the discussion on hate crime still needs further analysis, given its complexity and the relationship between social structures, criminal prosecution and the protection of the rights of vulnerable social groups. When the analysis does not consider social structures, violent behavior is considered as a specific incident, and this could reproduce the idea that there are only criminal individuals who disrupt the harmony of a society free of LGBTphobia. However, according to some authors, violence against LGBT people is part of the reality of a cisheteropatriarchal society (Bell & Perry, 2015; Herek, 1990), and the state can create the conditions for hate crime (Perry, 2001).

Notwithstanding the difficulties in conceptualizing hate crimes and the limitation of this concept in addressing violence against LGBT people, such violence is a serious problem. Several studies show the major and different impacts on victims (Iganski & Lagou, 2015), specifically with regards to mental health (Meyer, 1995; Rees et al., 2021; Russell & Fish, 2016, among others), suicidal behavior (O'Brien et al., 2016; Ream, 2019, among others), and social relationships (Snapp et al., 2015; Wang et al., 2022, among others).

Some authors challenge the hate crime model, arguing that the widespread failure of criminal punishment to act as a deterrent to crime calls into question the extent to which hate crimes legislation actually reduces violence towards a particular group. Clearly, this model contributes to increased public awareness about the unacceptability of violence committed against vulnerable groups such as LGBT people, and the need to provide them

with formal protection. However, this model tends to focus on individual expressions of prejudice and therefore eclipses an understanding of the systemic nature of inequalities and violence (Spade and Wilse, 2000). Additionally, existing legislation tends to focus on the punishment of the offender and does not allow healing for hate crime victims, beyond perhaps appeasing a visceral desire for an offender to receive his/her 'just desserts' (Dixon and Gadd, 2006).

The hate crimes paradigm is grounded in retributive justice, which conceives crime as an act against the laws established by the State (Coates, Umbreit and Vos, 2006). This is characterized by a two-party adversarial design in which the offender (who is presumed innocent) and the state (which carries the burden of proving guilt) are pitted against one another (Saulnier and Sivasubramaniam, 2015). The current retributive penal system is configured in such a way that the victim attends as a mere witness to an event that directly affects them, in this instance, the crime. The retributive perspective distances the crime from the victim, situating the latter as a simple passive subject in the judicial process (Domingo de la Fuente, 2017).

All of the above obliges us to look for reparative measures in order to appraise the hidden dimensions of hate crime that cannot be dealt with judicially, and to contribute to situating the victim at the core of the process (Gavrielides, 2012). One alternative or complement to the punitive and individualistic approach of hate crimes that may ensure adequate reparation for victims of crime, and therefore increase their trust in the judicial system, is the implementation of restorative justice programs. According to the Commission on Crime Prevention and Criminal Justice of the United Nations (2002), restorative justice includes any process through which the victim and the offender – and, where appropriate, any other individuals or community members affected by a crime – participate together actively in the resolution of matters arising from the crime, generally

with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles, and may be used at any stages of the criminal justice proceedings. These processes should only be undertaken with the free and voluntary consent of the victim and the offender.

The restorative justice paradigm emerged in the 1970s as a means of ensuring justice in the criminal sphere while focusing on returning attention to victims and ensuring repair of the damage done (Braithwaite, 2002). Restorative justice focuses on the harm caused and the actions required to make amends for this harm. It is based on the premise that crime causes damage to people and the community, and that justice can repair these damages, ceding participation to the parties in the process (Domingo de la Fuente, 2017). According to Zehr (1990), it is a process that involves those affected by the crime as much as possible and allows the damage to be identified and addressed.

Previous key research shows that restorative practices in addressing hate crimes can empower victims, encourage offenders to take personal responsibility, and reduce feelings of anxiety, fear and fearfulness of the victims (Kayali & Walters, 2021; Domínguez Ruiz, Roiha and Jubany, 2022; Walters, 2014). Along these lines, Coates, Umbreit and Vos (2006) also suggest two points that are central to this article, firstly arguing that dialogue is the tool for combating hatred, and secondly noting that the battle against hatred is fought through social organizations and community action.

However, some authors (e.g., Braithwaite, 1999) are still reticent to apply restorative justice in cases of hate crimes (and also gender-based violence), arguing that there is an imbalance of power between victims and offenders that cannot be counteracted by these practices. Among the potential dangers of restorative justice, are that it can place victims in positions that cause them to fear revictimization; may disadvantage persons

recognized as subordinate in the traditional hierarchy of social status, such as women, children, and racial minorities, and has not been proven to significantly lower crime rates (Saulnier and Sivasubramaniam, 2015).

Three instruments are particularly important in the European context in terms of victims' rights and restorative justice, and its application to hate crime. Firstly, the Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of victims of crime. It is the first piece of binding EU legislation that addresses restorative justice, and which goes beyond mere mediation. This instrument also represented a key step forward in the development of restorative justice in its inclusion of a definition of the concept: any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offense through the help of an impartial third party. Secondly, Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters (Council of Europe), though not binding, is the most innovative piece of legislation on restorative justice. The document finds a more balanced approach to victim and offender needs, calling for a broader shift toward a criminal justice system that adopts a more restorative culture. Third, the EU Strategy on Victims' Rights, which frames the Commission's work for the period 2020-2025, pays particular attention to the specific needs of victims of gender-based violence, although it also addresses victims of hate crimes.

According to Jubany et al. (2020), in the countries analyzed, restorative justice is still far from enjoying a solid legal framework which clearly determines the cases in which it should be applied. With the exception of Belgium and the Netherlands, even if there are some legislative frameworks that allow for the application of restorative justice, these tend to refer to specific fields of justice (e.g., minors). Moreover, they do not

provide a strong framework with scopes and procedures for application. Therefore, restorative justice is still not an alternative — under equal conditions — to punitive justice.

## **Materials and methods**

In order to capture the views of professionals regarding the application of restorative justice in cases of hate crimes, a survey in each participant country was developed. The survey questionnaire was designed to be answered in about 10 minutes. Closed questions predominated (with the presence of Likert scales), with some open questions at the end of the questionnaire to assess the strengths and weaknesses of the restorative paradigm. In terms of its thematic structure, the questionnaire was divided into five sections: socio-demographic questions; organizational questions; knowledge about restorative justice; training needs; organizational positions on restorative justice.

### ***Data collection and sample***

To obtain the sample of the survey, each national partner compiled an exhaustive list of existing NGOs within their country, locating the corresponding contact email address, and organizing them by their field of work. Subsequently, an email was sent to each identified organization, presenting the research, the ethical considerations and the specific objective of the survey. A 15-day reminder email was sent to those organizations that had not yet responded to the survey.

The survey was designed and implemented in an online format using the Limesurvey platform and was available between 15 April and 31 May 2020. Each partner distributed the survey in their national language and then translated all responses into English for joint analysis. 737 organizations received the questionnaire (Belgium 167;

Bulgaria 31; Italy 182; the Netherlands 75; Poland 84 and Spain 198). Of these, 288 responded (Belgium 20; Bulgaria 21; Italy 55; the Netherlands 48; Poland 63 and Spain 81), constituting a response rate of 39%. Of the 288 questionnaires received, only 239 responses were ultimately analyzed (Belgium 16; Bulgaria 20; Italy 46; the Netherlands 44; Poland 53 and Spain 60), as the others (49) did not contain the minimum information required for the analysis.

### ***Profile of the sample***

In terms of the socio-demographic characteristics, the profile of the respondent is male (44.8%), 41.44 years old, with a BA/MA level of education (37.3%), with a sexual orientation of gay/lesbian (46.1%), atheist/agnostic (50.2%) and on the left of the ideological spectrum (7.18/10). In terms of their position within the organization in which they work, the respondent is an executive employee (33.7%) who has been working in the organization for between one and five years (41.9%).

In relation to the field of the organizations to which the respondents belong, 50% work in LGBT issues, 40.4% are transversal organizations (working in all fields of discrimination), 20.7% fight against racism and xenophobia, 16.6% work to combat social exclusion and aporaphobia, and 15.5% are religious organizations (multi-response). The profile is of an organization operating at a nationwide level (46.9%), based in just one location (51.5%), partially funded by public funds (51.7%), and carrying out its work in a big or medium city (+300.000 inhabitants; 34.9%). Most of them (77.4%) deal with hate crimes (67.6% with anti-LGBT hate crimes). The main services provided by the responding organizations are counselling (90%), emotional and psychological support (66.7%), legal advocacy (57.1%) and reporting violence and discrimination (53.3%).

## ***Data analysis***

To analyse the quantitative data, we used SPSS v25. Mean and standard deviation were calculated about *Knowledge of Restorative Justice* (Table 2) and regarding the *assessment of the relevance of training on LGBT issues* through a 11-point scale (Table 4). On the other hand, the one-way analysis of variance (ANOVA) was used to determine whether there are any statistically significant differences between the means of four independent variables - gender, sexual orientation, Ideological position, and if organization deals with victims of anti-LGBT hate crimes - regarding three main topics:

- Feeling confident in the understanding of restorative justice according to some variables (Table 3)
- Relevance of RJ in a training on LGBT issues according to several variables (Table 5)
- If the issue of restorative justice been discussed in the organization (Table 6)

For the outcomes regarding tables 2 and 4, p-value, F, df, and Levene have been calculated. In addition, to analyse the variables in the bivariate analyses regarding *the discussion of restorative justice in the organizations* (Table 6), differences were studied using the Chi-squared test and effect size. The values about the effect size are  $\phi$  = Phi  $\phi$  and V = Cramer's V.

In the questionnaire three was a question about which actor benefits the most from restorative justice, and linked to this question, there were two open questions aimed to identify the benefits of and barriers to restorative justice. Using the open answers texts, a content analysis was performed, and eight themes emerged from the main two categories: three for the benefits of and five for the barriers (see more detail in table 7 below).

Therefore, a categorization and coding process was followed, and the selected quotations showed in the qualitative results section respond to this process.

### ***Ethical considerations***

The confidentiality of the data was guaranteed, in line with the ethical guidelines of the project, as well as in accordance with Act 3/2018 on data protection and digital rights.

### **Results**

The results are presented according to the four specific objectives, both in general and disaggregated according to gender, sexual orientation, ideological position of the members of the organizations that responded to the questionnaire, and whether they belong to an organization that works specifically with victims of hate crimes against LGTB people. Although the results could also be presented disaggregated by country, it was decided not to do so, as the sample is too small in the case of some of the countries to carry out certain statistical tests. Nevertheless, some testing has been done, and it has been observed that the overall sample does not contain statistically significant differences between countries. The only observation is that members of the Bulgarian organizations tended to score lower compared to those of the other participating countries, albeit without reaching significance. On the other hand, showing the results of the overall sample of all countries renders the results easier to read.

#### **a) Knowledge on Restorative Justice**

In general, the low confidence of respondents regarding their knowledge in relation to restorative justice should be stressed (see **Table 2**). On a scale of one to five (1. None; 5. Totally), 32.7% of respondents admitted to having little or no confidence regarding their knowledge about restorative justice, whilst 22.4% responded 'to a large extent' or 'totally'.



However, most respondents admitted familiarity with restorative justice to a 'moderate extent' (34.9%). The calculation of the average also returns a rather low value (2.72).

Similarly, the overwhelming majority of respondents (75.7%) admitted unawareness of the restorative justice programs put place in their respective country, with 7.9% responding – mistakenly - that there are no restorative justice programs in their country. Only 16.4% of respondents had knowledge of existing restorative justice programs. In relation to existing restorative justice programs and/or bodies mentioned by the respondents from each country (open question only for those who answered 'yes'), it should be noticed that respondents tended to mention restorative justice techniques rather than programs put into place by specific public or private bodies.

Furthermore, we wished to discover whether there were differences according to gender, sexual orientation, types of care offered by their organization, or ideological position (see **Table 3**). With regard to the latter variable, the 10-point scale (1=far-right to 10=far-left) was recoded into three values: Right (1-4); Middle (5-7); Left (8-10). It can be seen that there are no statistically significant differences in terms of any of these five variables, showing that poor knowledge on the subject does not vary according to the characteristics or ideology of the members, or the type of organization to which they belong.

#### **b) Training needs in the organizations**

Regarding the specific LGBT topics for which training needs were detected (see **Table 4**), the most relevant (scoring above 8) were the adoption of an intersectional perspective of oppressions, social prejudices against LGBT people, LGBT concepts, terminology and inclusive language, and specific needs of LGBT victims. On the other hand, the least relevant were legal assistance to victims of anti-LGBT hate crimes, barriers

to accessing to restorative justice for victims of anti-LGBT hate crimes, primary contact with victims of LGBT hate crimes, and strategies and techniques for applying restorative justice in anti-LGBT hate crimes. In terms of these results, it should be highlighted that the least demanded areas for training were linked to legal assistance and restorative justice.

If we analyze the three items related to legal support and restorative justice separately (see **Table 5**), we can see that there is no statistical significance with respect to the variables of respondents' characteristics, although statistical significance is observable in terms of whether their organization provides assistance to LGBT victims of hate crimes, in that they recognize training in legal assistance to victims of anti-LGBT hate crimes, strategies and technologies for restorative justice in anti-LGBT hate crimes, and barriers to accessing restorative justice for victims of anti-LGBT hate crimes as being more necessary. It would also appear that, for more left-wing ideological positions, these scores are slightly higher, although not to a statistically significant degree.

### **c) Discussing the issue within the organizations**

Respondents were asked if the issue of restorative justice had been discussed within their organization (see **Table 6**), with the majority (78.2%) stating that their organization had never discussed this issue. Among those organizations that had addressed issues related to restorative justice (a question for those who answered 'yes'), the topics were: the need to provide reparation to the victim, the efficiency of restorative justice, and the ways to apply it taking into account national legal frameworks. There are no statistically significant differences according to gender or sexual orientation, neither in the field of ideological positions nor the type of victims that they assist in their organization.

#### **d) Benefits of and barriers to restorative justice**

Linked to the question 'which actor benefits the most from restorative justice?', the majority of respondents (67.3%) believed that the victim is the main beneficiary, while 39.2% indicated that it is the offender. Only 8.5% believed that restorative justice benefits both actors, whereas 5.8% responded that society as a whole benefits.

#### **Qualitative data on benefits and barriers**

The last two questions of the survey were open-ended and devoted to the identification of the two main categories regarding (1) benefits of and (2) barriers to restorative justice (see **Table 7**). Regarding the main benefits of this alternative judicial practice, all responses can be organized into three themes: benefits for victim and offender, for the judicial system, and for society. In relation to the main barriers, all responses have been organized into five categories: lack of an adequate legal framework, lack of training skills, the conceptualization of justice as a punitive mechanism, the difficulty of obtaining the willingness of the two parties and the lack of protection and well-being of the victim.

The majority of respondents pointed out several benefits of restorative justice for the two main parties: victim and offender. In this sense, restorative justice is conceived as a tool that facilitates reparation for the crime, by promoting empathy, listening and mutual recognition between victim and offender. While they stressed that restorative justice helps the offender to hear the victim and recognise the harm caused, and therefore reduce their risk of recidivism and strengthen their social inclusion, it is was also highlighted that this paradigm promotes the victim's recovery and avoids their secondary victimization. Reducing the stress of having to deal with the criminal justice system for both the perpetrator and the victim was also posited as an advantage.

*Reparation offers to the offender (...) the possibility to enter into the victim's world, understand the nature of their humanity, build relationships to allow to overcome the prejudice (Italian respondent).*

The second theme is the benefit to the judicial system. Respondents considered that restorative justice unburdens criminal justice bodies of cases that can be resolved with the same success through alternative means. Moreover, they stressed that restorative justice should lead to a more rapid and efficient resolution of the case than in conventional criminal justice practice. The victim-centered approach of restorative justice and its efficiency could allow the victim to gain more confidence in the justice system, and thus decrease the under-reporting in which affects hate crimes.

*Restorative justice focuses on the consequences of the facts for both parties and on how this can be remedied. Restorative justice is looking for agreements, instead of polarizing, looking for restoration instead of adding suffering. This from a respectful approach and with the voluntary cooperation of those involved (Belgian respondent).*

Lastly, regarding the benefit to society, respondents considered that restorative justice creates a common knowledge and commitment regarding the consequences of hate crimes, conceptualizing hate crime as the responsibility of the whole community and not only of the offender. Furthermore, restorative justice is also seen as an alternative to violence-based structures.

*This is an alternative to the culturally reinforced structure of strengthening violence: punishment for the offender, blaming the victim - the person who has experienced violence and lack of visibility of the most causative side of the situation - witnesses and witnesses. It makes it possible to understand that*

*violence is not an incident but a social mechanism - giving or taking power away (Polish respondent).*

On the other hand, several barriers to the application of restorative justice were highlighted by respondents. Amongst these, the lack of an adequate legal framework was pointed out by respondents from all countries. In this sense, they emphasized the absence of a legal framework that clearly determines the cases in which restorative justice can be applied, and which guarantees the rights of all parties. Moreover, the weak commitment of key stakeholders (politicians, judges, prosecutors) to legislating, developing and applying restorative justice was also posited as a barrier. For this reason, respondents pointed out that it is necessary to enhance training skills of key actors:

*The main barrier is the lack of legislation. In the future, if or when this model is introduced, the risk of abuse of the principle of voluntariness would be an obstacle. One [weaker] party may be pressured to accept the case by alternative means in order to avoid criminal proceedings with all their consequences, which will not only compromise the objectives of restorative justice but may also cause additional harm (mainly intangible) on the weaker side. There is also a risk that the judicial authorities will start "forcing" parties to choose restorative justice in order to get out off work without complying with the principle of voluntariness (Bulgarian respondent).*

Another factor that hinders the application of restorative justice is the conceptualization of justice as a punitive mechanism, rather than restorative one. Following this paradigm, crime is socially perceived as an event with irreversible consequences, which can be only compensated by punishing the offender. In this punitive

perspective, restorative justice is conceived as a well-intentioned mechanism that leaves crime unpunished.

*Society is based on the traditional punishment, and they may see restorative justice as something soft or useless. We have to influence public opinion and demystify the beliefs that are held in traditional justice. Media is another big factor that can influence opinion [about traditional and restorative justice]. And the public administrations themselves play a decisive role. It is about changing a whole paradigm that has been in place since the history of humanity regarding punishment (Spanish respondent).*

Respondents also expressed that restorative justice needs the willingness of both parties to participate in it, and that often either the victim or the offender does not want to, or above all does not trust in it. Similarly, other voices questioned the sincere will of the offender, pointing out that they may decide to involve themselves in restorative justice practices only to have their sentence reduced.

*Restorative justice can be useful for those who wish to make use of it, but should not be an obligation. I think the choice to use it (or not) lies with the directly involved parties. Widely informing individuals that there is the possibility to deal with the consequences of a crime in a recovery-oriented way is very important. With regard to the offer of victim - offender mediation: the suspect must at least partially confess to the facts. Mediation is almost impossible when there is complete denial (Belgian respondent).*

Other limitations regarding the application of restorative justice concerned the lack of protection and well-being of the victim. Without an adequate implementation mechanism, victim's contact with the perpetrator can be traumatizing, and thus result in

secondary victimization. Several respondents warned that hate crimes cause deep psychological damage to victims, something that must be taken into account when applying restorative justice, which should be only used by taking care of the victim.

*Perpetrators do not always take responsibility for the underlying motives of hate.*

*Therefore, there may be a risk of secondary victimization (Belgian respondent).*

## **Discussion**

The results obtained show that restorative justice is still an incipient jurisdictional paradigm that requires further consolidation to constitute an alternative to the punitive model of hate crimes. Proof of this is the limited knowledge of restorative justice by professionals who work in the field of non-discrimination and assistance to victims of hate crimes. Accordingly, the overwhelming majority of the professionals surveyed were unable to mention a single specific restorative justice program for anti-LGBT hate crimes and discrimination in place in their country, and in most countries this absence was also extended to crimes in general. Although it should be taken into account that these professionals do not work directly in the application of restorative justice programs, their responsibilities to victims (among these, informing about and offering legal support) indicate that a greater knowledge of the restorative justice programs offered in their country could strengthen the availability of an alternative (or complement) to the path of retributive justice.

This limited knowledge is directly due to the fact that the majority of the organizations to which the respondents belong had never discussed the issue of restorative justice. In turn, this ignorance on the part of the organizations and their members results from the fact that, with the exception of Belgium and the Netherlands, the countries analyzed have not implemented a strong legal framework with scopes and procedures for

the application of restorative justice. Moreover, the majority of restorative justice programs existing in the countries analyzed relate to specific fields of justice (especially, juvenile justice), and are implemented by specific regional and local governments.

This need for greater legal and formal implementation of restorative justice, which explains the lack of knowledge of this paradigm by professionals and their organizations, also determines the training priorities of the organizations dedicated to non-discrimination and providing assistance to victims. Indeed, when asked about the most important topics to address in order to be well-trained in LGBT issues, respondents were least likely to indicate those related to restorative justice (although it is true that, in general, topics linked to restorative justice obtained a high relevance score of 7.55/10).

In this regard, it can be considered that, in order to obtain the necessary skills to work with LGBT issues, intersectionality training (that which juxtaposes sexuality and gender with other factors of oppression, such as age, race or ethnicity) should be prioritized, in addition to the correct use of LGBT terminology. Consequently, the organizations that fight against discrimination and assist victims should prioritize understanding of LGBT experiences and associated discrimination and violence over the domain of a legal alternative such as restorative justice, logically so if we consider that it is necessary to first understand the phenomenon and offer adequate assistance to the victims directly affected.

On the other hand, what the majority of those surveyed seem to agree on is that the victim is the main beneficiary of the application of restorative justice. This is in line with the main justification for the application of this paradigm expressed by the participants, which, as we have seen, consists of placing the victim at the heart of the process and prioritizing reparation for the harm they have suffered. However, it is noteworthy that only a minority of respondents indicated that restorative justice benefits



the victim and the offender at the same time. This collides with the purpose of restorative justice, based on the complete restoration of the damage, for which an active transformation of the two direct actors involved is required: that the victim feels that reparation for the harm suffered has been achieved through their active participation in the process, but also that the offender has understood and recognized the damage they have caused.

It is true that this double benefit both for the victim and the offender was one of the main advantages indicated in the application of restorative justice in response to the open questions included in the questionnaire. In this sense, the respondents highlighted that reparation consists of mutual empathy, listening and recognition between the victim and the offender. Aside from the actors directly involved, other agents that, at a macro level, benefit from this paradigm were also indicated: the judicial system and society as a whole. In this regard, those surveyed concurred with the thinking of authors such as Braithwaite (1999) or Gavrielides (2012), who point out that restorative justice can make the application of justice faster and more effective, increasing public trust in it. Likewise, this paradigm contains a social dimension, by conceiving of crime (especially hate crimes) not so much as a matter that concerns the state and the offender, but as a phenomenon that concerns the entire community.

In turn, among the open responses, we can also identify the main barriers - or challenges - facing the application of restorative justice. As has been pointed out previously, one of the most important of these relates to the absence of an adequate legal framework offering legal certainty, and which determines its scope of application and guarantees the rights of all parties. More specifically, the danger that an inadequate restorative process might affect the well-being of the victim, subjecting them to secondary victimization, was also highlighted. All of this arises from the broader context of the

hegemonic punitive paradigm in the criminal justice system, which encourages society to continue to associate the criminal punishment of the offender with the final resolution of the crime.

## **Conclusions**

Although the paradigm of hate crimes is inherently limited in its ability to neutralize violence against LGBT people and, above all, guarantee full reparation for the harm suffered by victims of crime, the alternative (or complementary) model of restorative justice still has a long way to go to consolidate itself in legislation and reach the same standing as the punitive model. In this regard, the results of the survey show the limited knowledge that professionals working in the field of human rights and the non-discrimination have of the restorative model, and especially of the existing restorative justice programs in their respective countries.

This alternative model is rarely appraised by the organizations referenced, which prioritize strengthening their knowledge about LGBT experiences and the nature of LGBT-phobic violence ahead of restorative mechanisms when asked about the issues they wish to see addressed to ensure adequate handling of anti-LGBT hate crimes.

Moreover, the restorative model is conceived as a victim-centered paradigm, insofar as the majority of respondents consider that the victim is the main actor who benefits from a restorative intervention. In turn, only a minority understands restorative justice according to the spirit in which it was conceived, that is, as a mechanism for justice focused on repairing the damage, so that it benefits both a victim who is heard and an offender who recognizes the damage caused.

However, the study shows some limitations that will have to be addressed at a later date: the data obtained does not show significant differences in terms of the socio-

demographic characteristics of the respondents in relation to their position regarding restorative justice, nor does it allow for the identification of the areas of intervention against discrimination (eg. racism, xenophobia, LGBTphobia, against religious beliefs, etc.) in which restorative mechanisms to deal with hate crimes could be most favorably applied.

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## **Declaration of interest**

No potential conflict of interest was reported by the authors.

## **References**

- Arvin, M., Tuck, E., & Morrill, A. (2013). Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy. *Feminist Formations*, 25(1), 8-34. <https://doi.org/10.1353/ff.2013.0006>
- Bell, J. G., & Perry, B. (2015). Outside Looking In: The Community Impacts of Anti-Lesbian, Gay, and Bisexual Hate Crime. *Journal of Homosexuality*, 62(1), 98-120. <https://doi.org/10.1080/00918369.2014.957133>
- Bourdieu, P. (1998). *La Domination Masculine*. Éditions du Seuil.

Braithwaite, J. (2002). Setting Standards for Restorative Justice. *British Journal of Criminology*, 42, 563-577.

Braithwaite, J. (1999). Restorative justice: Assessing optimistic and pessimistic accounts. *Crime and Justice Canadian*, 25, 1–127.

Brown, W. (1995). *States of Injury: Power and Freedom in Late Modernity* (1st ed.). Princeton University.

Brudholm, T. (2015). Conceptualizing Hatred Globally: Is Hate Crime a Human Rights Violation? In J. Schweppe & M. A. Walters (Eds.), *The Globalization of Hate: Internationalizing Hate Crime?*. Oxford University Press, 31-48.

Chakraborti, N. (2014). Introduction and overview. In N. Chakraborti & J. Garland (Eds.), *Responding to hate crime: The case for connecting policy and research*, Policy Press, 1-9.

Coates, R. B., Umbreit, M. S., & Vos, B. (2006). Responding to Hate Crimes through Restorative Justice Dialogue. *Contemporary Justice Review*, 9(1), 7-21.  
<https://doi.org/10.1080/10282580600564784>

Commission on Crime Prevention and Criminal Justice (UN). (2002). *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. ECOSOC Resolution 2002/12.

Dixon, B., & Gadd, D. (2006). Getting the message? ‘New’ Labour and the criminalization of ‘hate’. *Criminology and Criminal Justice*, 6(3), 309-328.

Domingo de la Fuente, V. (2017). Justicia restaurativa como ciencia penal o social, encaminada a mejorar la justicia. *Educació Social. Revista d’Intervenció Socioeducativa*, 67, 73-90.

Domínguez Ruiz, I.E., Roiha, M., & Jubany, O. (2022). Restorative solutions for anti-LGBT victimisation experiences: potential pathways for victims' wellbeing and key challenges and needs, *Culture, Health & Sexuality*, <https://doi.org/10.1080/13691058.2022.2105401>

Gavrielides, T. (2012). Contextualizing Restorative Justice for Hate Crime. *Journal of Interpersonal Violence*, 27(18), 3624-3643. <https://doi.org/10.1177/0886260512447575>

Godzisz, P., & Viggiani, G. (2018) (eds). *Running Through Hurdles: Obstacles in the Access to Justice for Victims of anti-LGBT Hate Crimes*. Lambda Warsaw Association.

Freeman, A.D. (1996). Legitimizing Racial Discrimination Through Anti-discrimination law: A critical review of Supreme Court Doctrine. In K. Crenshaw, N. Gotanda, G. Peller and K. Thomas (eds.), *Critical Race Studies: The Key Writings that Formed the Movement*. New York: The New Press, 29-45.

Herek, G. M. (1990). The Context of Anti-Gay violence. Notes on Cultural and Psychological Heterosexism. *Journal of Interpersonal Violence*, 5(3), 316-333. <https://doi.org/10.1177/088626090005003006>

Iganski, P., & Lagou, S. (2015). Hate Crimes Hurt Some More Than Others: Implications for the Just Sentencing of Offenders. *Journal of Interpersonal Violence*, 30(10), 1696-1718. <https://doi.org/10.1177/0886260514548584>

Jubany et al. (2020). *Restorative justice in current Europe: Qualitative and quantitative transnational research*. University of Barcelona and University of Girona. Report of the project LetsGoByTalking. European Union's Justice Programme (2014-2020). Available at: <https://www.lets gobytalking.eu/publications>

Kayali, L., & Walters, M. A. (2021). Responding to hate incidents on university

campuses: Benefits and barriers to establishing a restorative justice programme.

*Contemporary Justice Review*, 24(1), 64-84.

<https://doi.org/10.1080/10282580.2020.1762492>

Lawrence, F. M. (2002). *Punishing Hate: Bias Crimes under American Law*. Harvard University Press.

Meyer, I. H. (1995). Minority stress and mental health in gay men. *Journal of Health and Social Behavior*, 36(1), 38-56.

O'Brien, K. H. M., Putney, J. M., Hebert, N. W., Falk, A. M., & Aguinaldo, L. D. (2016). Sexual and Gender Minority Youth Suicide: Understanding Subgroup Differences to Inform Interventions. *LGBT Health*, 3(4), 248-251.  
<https://doi.org/10.1089/lgbt.2016.0031>

Organization for Security and Co-operation in Europe. (2003). *Reports to the Maastricht Ministerial Council Meeting*. Available at:  
<https://www.osce.org/files/f/documents/a/0/40533.pdf>

Perry, B. (2001). *In the Name of Hate. Understanding Hate Crime*. Routledge.

Puar, J. K. (2007). *Terrorist Assemblages: Homonationalism in Queer Times*. Duke University Press.

Ream, G. (2019). What's Unique About Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth and Young Adult Suicides? Findings From the National Violent Death Reporting System. *Journal of Adolescent Health*, 64(5), 602-607.  
<https://doi.org/10.1016/j.jadohealth.2018.10.303>

Rees, S. N., Crowe, M., & Harris, S. (2021). The lesbian, gay, bisexual and transgender communities' mental health care needs and experiences of mental health services: An

- integrative review of qualitative studies. *Journal of Psychiatric and Mental Health Nursing*, 28(4), 578-589. <https://doi.org/10.1111/jpm.12720>
- Richardson, D. (2017). Rethinking Sexual Citizenship. *Sociology*, 51(2), 208-224. <https://doi.org/10.1177%2F0038038515609024>
- Rubin, G. (1984). Thinking Sex. Notes for Radical Theory of Politics of Sexuality. In C. S. Vance (Ed.), *Pleasure and Danger. Exploring Female Sexuality*. Routledge, 267-319.
- Russell, S. T., & Fish, J. N. (2016). Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth. *Annual Review of Clinical Psychology*, 12, 465-487. <https://doi.org/10.1146/annurev-clinpsy-021815-093153>
- Sadurní Balcells, N., & Langarita, J. A. L. (2020). Estado penal y disidencias sexo-genéricas. Apuntes para una comprensión crítica. In O. Jubany & O. Guasch (Eds.), *Intersecciones Encarnadas*. Bellaterra, 107-127.
- Saulnier, A., & Sivasubramaniam, D. (2015). Restorative Justice: Underlying Mechanisms and Future Directions. *New Criminal Law Review*, 18(4), 510–536. <https://doi.org/10.1525/nclr.2015.18.4.510>
- Snapp, S. D., Watson, R. J., Russell, S. T., Diaz, R. M., & Ryan, C. (2015). Social Support Networks for LGBT Young Adults: Low Cost Strategies for Positive Adjustment. *Family Relations*, 64(3), 420-430. <https://doi.org/10.1111/fare.12124>
- Spade, D. (2015). *Normal Life. Administrative Violence, Critical Trans Politics, and the Limits of Law*. Duke University Press.
- Spade, D., & Wilse C. 2000. Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique. *Chicano-Latino L. Rev*, 21, 38-52.
- Walters, M. A. (2014). *Hate crime and restorative justice: Exploring causes, repairing*

*harms*. Oxford University Press.

Wang, Y., Lao, C. K., Wang, Q., & Zhou, G. (2022). The Impact of Sexual Minority Stigma on Depression: The Roles of Resilience and Family Support. *Sexuality Research and Social Policy*, 19(2), 442-452. <https://doi.org/10.1007/s13178-021-00558-x>

Weeks, J. (1998). The Sexual Citizen. *Theory, Culture & Society*, 15(3-4), 35-52.

Zehr H. (1990). *Changing lenses: a new focus for crime and justice*. Herald Press.

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