

## Aporophobia

### Challenging Hate Crime Against People Experiencing Homelessness in the EU

Aporophobia is a neologism created by the Spanish philosopher Adela Cortina to describe the “rejection of the poor”. It describes an adverse attitude from the non-poor against the poor, going from antipathy, contempt, disgust and disregard, to fear and hate. Aporophobia can lead to hate and in the most extreme cases to hate crime against poor people including the homeless.

Hate crime is the most severe expression of discrimination and a core fundamental rights abuse. Various member states adopted measures targeting such crime, but most hate crime across the EU remains unreported and unprosecuted, leaving victims without the possibility for compensation.<sup>1</sup>

The reality of homeless people often remains invisible and unknown making it easier to perpetuate stigma, stereotypes and prejudice. This stigmatization is sometimes accompanied by attitudes of intolerance, which are the breeding ground for hate crimes. Nevertheless, in both the EU and Member States’ legislation, hate crime against homeless people is not always conceptualised as “hate crime” because homelessness is not understood as a ground for discrimination like race, disability, gender etc.

#### **International norms and the definition of hate crime**

The United Nations (UN), the Council of Europe’s European Commission against Racism and Intolerance (ECRI), and the Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) all monitor human rights violations, including hate crime, and report regularly on gaps and improvements related to hate crime recording and data collection.<sup>2</sup>

Both the **Racial Equality Directive (2000/43/EC)**<sup>3</sup> and the **Employment Equality Directive (2000/78/EC)**<sup>4</sup> define harassment as unwanted conduct with a bias motivation taking place with

---

<sup>1</sup> FRA, *Ensuring justice for hate crime victims: professional perspectives*, 2016, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-justice-hate\\_crime-victims\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf)

<sup>2</sup> Ibid

<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. When the EU Member States prohibit such conduct in their criminal legislation, it qualifies as a hate crime.

The **EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)**<sup>5</sup> acknowledges that hate crime victims are particularly vulnerable and stresses their right to protection following their particular needs.

The **2013 Council Conclusions on combating hate crime in the European Union**<sup>6</sup> stress, in particular, the need for an efficient collection of reliable and comparable data on hate crimes, including, as far as possible, the number of such incidents reported by the public and recorded by the authorities and the bias motives behind these crimes.

The ECtHR imposes a positive duty for an effective investigation of all crimes and an additional positive duty related to unmasking the bias motivation of a crime. In this particular context, **Article 14 of the European Convention on Human Rights (ECHR)** is read as obliging states to render visible bias motives underlying criminal offences.

### **Recording and combatting hate crime against homeless people**

A **report by the EU Fundamental Rights Agency (FRA)** from 2016<sup>7</sup>, based on interviews with justice experts in several member states, rates the severity of the problem of hate crime (bias-motivated crimes, including incitement to such offences) motivated by discrimination on various grounds as follows:

1. Racism and xenophobia
2. Sexual orientation or gender identity
3. Islamophobia/ Anti-muslim racism
4. Homeless persons
5. Antisemitism

Homelessness ranks thus as the fourth ground of discrimination leading to hate crime in seriousness. Several experts, for instance in Germany, Portugal and Sweden, described violence against homeless persons as an issue of mounting significance.

Hate crimes against homeless people are under-reported, as victims do not report aggressions, and under-recorded, as most EU MS do not collect this data. Consequently, there is a serious lack

---

<sup>5</sup> 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, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

<sup>6</sup> Council conclusions on combating hate crime in the European Union, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/139949.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139949.pdf)

<sup>7</sup> Fundamental Rights Agency, *Ensuring justice for hate crime victims: professional perspectives*, 2016, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-justice-hate\\_crime-victims\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf)

of data for evaluating the grounds of hate crimes. Of the 19 EU Member States that publish data on recorded hate crime, only 15 disaggregate these data by different bias motivations.<sup>8</sup>

### **EU and member state's action on hate crime against homeless people**

In its **Report on access to decent and affordable housing for all** by rapporteur Kim Van Sparrentak, adopted on 21 January 2021 the European Parliament:<sup>9</sup>

*...calls on the European Union Agency for Fundamental Rights for greater monitoring of hate crimes and incidents motivated by aporophobia; stresses that poverty and homelessness are not a crime; urges Member States to establish mechanisms in their public policies to guarantee the safety of homeless people and to introduce aporophobia in their public security policies as a hate crime; calls on the Commission and the Member States to prohibit and tackle discrimination on the grounds of homelessness or other housing status, and repeal all laws and measures that criminalise or penalise people for being homeless or behaviours associated with being homeless, such as sleeping or eating in public spaces, as well as to prohibit the forced expulsion of homeless persons from public spaces, unless a safe housing alternative is provided to them, and the destruction of their personal belongings...*

Currently, no EU Member State has specific legislation on hate crime against homeless people in place. Some do, nevertheless, consider crimes committed as a consequence of hate or discriminative bias, as aggravating factor.

In Germany, for instance, there is the possibility for judges to increase the punishment for crime that shows prejudice-led motives. However, this possibility is used only very rarely, mostly in the case of very obviously racist attacks.

Spain is working for the Penal code to explicitly recognise aporophobia as a ground for hate crime in its legislation. The approval of the aggravating circumstance of aporophobia in the Penal Code is pending for this year. This will allow for the police that suspects that someone has been the victim of a hate crime to report it based on several bias motivations: racism/xenophobia, ideology, sexual orientation or identity, gender, religious beliefs, antisemitism, disability, and also aporophobia.<sup>10</sup> Aporophobia would also be included as a discriminatory motive in the field of employment, which could be prosecuted.

---

<sup>8</sup> Fundamental Rights Agency, *Hate crime recording and data collection practice across the EU*, 2018, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-hate-crime-recording\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf)

<sup>9</sup> European Parliament resolution of 21 January 2021 on access to decent and affordable housing for all (2019/2187(INI)), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0020\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0020_EN.html)

<sup>10</sup> Ibid, p. 84

The NGO Hogar Si published a terrifying report on homelessness in 2016, which explained that in Spain, almost half of those sleeping rough had been subjected to an incident or offence related to aporophobia – 80% on more than one occasion and 20% involving physical violence.<sup>11</sup>

Hate crime against homeless people is a major problem also in other EU member states, and should be addressed accordingly. Despite all the international and European efforts, aporophobia and homelessness are still not recognised or given sufficient importance in the area of hate crime, thus the importance of holding this seminar.

This webinar is addressed to a wide audience composed mainly of FEANTSA member organisations and their staff working directly with homeless people, but also to national and EU policymakers.

**Objective 1:** to raise awareness about hate crime against homeless people, particularly as motivated by aporophobia.

**Objective 2:** to improve the protection of homeless people through national and EU law.

---

<sup>11</sup> El País, Hate crimes against homeless people in Spain on the rise, 2018  
[https://english.elpais.com/elpais/2018/08/08/inenglish/1533726375\\_662755.html](https://english.elpais.com/elpais/2018/08/08/inenglish/1533726375_662755.html)