

PRACTICAL GUIDE ON

FIGHTING

DISCRIMINATION AND

HATE CRIME

AGAINST LGBTI PEOPLE

Author:
Ioana Mureșan
representative of The Equality and Human Rights
Action Centre (ACTEDO)

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FOREWORD

LGBTI people in Romania are often targets of discrimination and hatred. Although domestic and international legislation offers protection to LGBTI people against discrimination and hate crimes, Romania has been repeatedly condemned by the European Court of Human Rights (ECHR) for inadequate investigations in cases of violence against people belonging to sexual minorities, a sad reality in a democratic state that legislatively supports equal rights of citizens and non-discrimination.

This guide has been developed out of the desire to help LGBTI people who face situations of discrimination, as well as those who are victims of hate speech or hate crimes, so that they can more easily identify such instances in practice while understanding their rights and the legal steps that can be taken in each individual case.

This guide is particularly aimed at LGBTI people, but can be applied to anyone who believes they have been a victim of discrimination, hate speech, sexual harassment, workplace bullying or hate crime.

Ioana Mureșan

Legal Advisor and Program
Coordinator for The Pro Bono
Network for Human Rights



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STEREOTYPES

WHAT ARE STEREOTYPES?

Stereotypes represent "cognitive shortcuts", or rather over-generalizations consisting of certain preconceived opinions circulating in society regarding the characteristics of people who are members of different groups or social classes, or about various aspects of daily life.

Stereotypes refer to perceived, accepted and circulating ideas in society that help us relate to the world around us and navigate our daily lives.

Remember: Stereotypes can be negative or positive.
Example of a positive stereotype: Germans are punctual.
Example of a negative stereotype: Italians are loud.



PREJUDICE

WHAT IS PREJUDICE?

Prejudice is a dislike of a person or group, based on beliefs and generalizations about them. Prejudice can be felt as well as expressed. Prejudice is always marked by negative feelings.

Prejudice involves adopting a negative attitude towards a stereotype.



WHAT ARE THE TYPES OF PREJUDICE?

- ***Racism***: a group of attitudes, practices and actions that have their source in the belief that social and cultural differences are explained by biological, including hereditary, differences between human races.
- ***Xenophobia***: is the fear or hatred of strangers and the unknown. This refers not only to the repulsion felt against a different ethnicity, culture or religion, but also to the fear of unknown people and unknown concepts.
- ***Misogyny***: it is an attitude of hostility or contempt towards women.
- ***Misandry***: is an attitude of hatred, aversion, hostility, or contempt towards persons of the male sex.
- ***Islamophobia***: is a prejudice against Muslims.
- ***Serophobia***: is prejudice, fear, rejection and discrimination against people living with HIV. People living with HIV may face unequal treatment both socially and institutionally.
- ***Anti-Christian sentiment***: denotes a critical attitude, opposition, hostility, discrimination, repression or persecution of Christianity.





OTHER KNOWN TYPES OF PREJUDICE

- ***Homophobia***: is the term used to define *a mixture of emotions such as anxiety, disgust, aversion, anger, embarrassment and fear* that a person feels towards a person who identifies as LGBTI.
- ***Transphobia***: refers to an aversion or hatred of transsexuality and transsexual or transgender people. It is a form of discrimination based on gender identity.
- ***Heterosexism***: is the assumption that all people around us are heterosexual until proven otherwise.
- ***Antigypsyism****: represents hostility, prejudice or racism directed at Roma people.
 - * It is recommended to use the term "Roma" when talking about a person of Roma ethnicity. The term "gypsy" does not exist in the Romani language and is considered to be pejorative and offensive. It comes from the Greek term "athinganos", which means untouchable, impure, and during the period of slavery it referred to a social category of indentured serf/slave.
- ***Antisemitism***: it is a hostile attitude towards Jews, solely because they are Jews.

Note: The list is incomplete.

DISCRIMINATION

WHAT IS DISCRIMINATION?

In accordance with art. 2 para. (1), O.G. nr. 137/2000:

discrimination means any difference, exclusion, restriction or preference based on the criteria provided by the legislation in force.

Discrimination refers to the treatment of a person less favorably than other persons in a comparable situation, because the former belongs or is perceived to belong to a certain group, and when such treatment cannot be justified in an objective and reasonable manner. Prejudice is often the basis of acts of discrimination.

Discrimination involves going beyond attitude, acting on personal prejudices, with effects on the people we interact with.



WHAT ARE THE CRITERIA PROVIDED BY ROMANIAN LEGISLATION?

The criteria established by Romanian legislation are:

*race, nationality, ethnicity, language, religion, social category, beliefs, sex, **sexual orientation**, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category,*

*as well as **any other criterion** that has the purpose or effect of restriction or removal of the recognition, use or exercise, under conditions of equality, of human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural spheres or in any other areas of public life.*

Note: The list is open. For example, the **criterion of gender identity** is not provided for in the Ordinance, but a trans person can submit a petition reporting a situation of discrimination on this criterion.





WHAT ARE THE CONDITIONS FOR AN ACT TO BE CONSIDERED DISCRIMINATORY?

- It must involve differential treatment of the person concerned (distinction, exclusion, restriction or preference).
- It must be based on a criterion (gender, ethnicity, race, sexual orientation, etc.).
- The act must have aim at or have an effect on fundamental rights and freedoms.
- The treatment manifests itself in areas of public life.

WHAT ARE THE TYPES OF DISCRIMINATION?

- **Direct discrimination:** when one person denies another person a right or limits their access to information.

Example: An employee was denied a raise because he was part of the LGBTI community.

- **Indirect discrimination:** a provision, a criterion, an apparently neutral practice that puts people belonging to a vulnerable group at a disadvantage compared to people belonging to the majority group.

Example: Questioning a job interview candidate about her marital status, sexual orientation, or pregnancy plans.

- **Harassment:** any behavior that creates an intimidating, hostile, degrading or offensive environment.

Example: A lesbian employee is regularly the subject of offensive comments about her sexual orientation from her colleagues

- **Order to discriminate:** an order received from a person or group of persons to discriminate.

Example: The department manager of a company asks his subordinate not to hire any transgender person.

- **Victimization:** any adverse treatment that comes as a reaction to a complaint/action in court or to the competent institutions, regarding the violation of the principle of equal treatment and non-discrimination.

Example: A transgender person who complained of discrimination at a company where he previously worked is denied a referral by his former employer.

- **Multiple discrimination:** a person is discriminated against on several criteria, in different situations or in the same situation.

Example: A lesbian woman is harassed at work by some colleagues because she is a woman and by others because of her sexual orientation.

- **The right to personal dignity** (OG. 137/2000): It is a contravention, according to this ordinance, unless the deed falls under the scope of the criminal law, any behavior manifested in public having the character of nationalist–chauvinistic propaganda, or inciting racial or national hatred, or that behavior which precludes or aims to preclude human dignity or creates an atmosphere of intimidation, hostility, degradation, humiliation or offense, directed against a person, a group of persons or a community and related to their belonging to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category, or related to one's beliefs, gender or sexual orientation.

Example: Gay men are often the target of attacks in the press when discussing the legalization of same-sex marriage and, implicitly, adoption, by being accused of pedophilia.



WHAT ARE THE EFFECTS OF DISCRIMINATION ON A PERSON?

- **Psychological effects:** low self-esteem, anxiety, depression, low performance, suicidal ideation, dysfunctional relationships
- **Physical/health effects:** chronic disease, central nervous system disorders, premature mortality, high blood pressure
- **Economic effects:** low productivity, poverty



ARE THERE INSTANCES WHERE DIFFERENTIAL TREATMENT IS JUSTIFIED?

The difference in treatment based on a characteristic related to the criteria provided for in art. 2 para. (1) from O.G. 137/2000 does not constitute discrimination when, based on the nature of the occupational activities or the context in which they are carried out, such a characteristic represents a real and determining professional requirement, provided that the objective is legitimate and the requirement proportionate.

Example: One of the justified conditions for occupying a position of legal advisor within a company is the graduation from the Faculty of Law.

WHAT IS AFFIRMATIVE ACTION?*

Affirmative action is a set of policies that aim to reduce disparities between the majority and minorities or their representatives who have historically been disadvantaged and/or are in a position of inferiority.

Note: Affirmative action **DOES NOT** constitute discrimination according to Ordinance nr. 137/2000.

* Some people use the term "**positive discrimination**". This term is **incorrect** and we do not recommend its use because the word "discrimination" is intrinsically negative, while affirmative action is a set of policies aimed at redressing systemic or historical inequalities.

Example: Special places in high school or university education for people of Roma ethnicity or gender quotas in key positions such as Government or Parliament (currently non-existent in Romania).



WHAT CAN I DO IF I WAS DISCRIMINATED AGAINST?

If you have been the victim of discrimination, you can contact the National Council for Combating Discrimination (C.N.C.D.).

Any natural or legal person can submit a petition to C.N.C.D.

- The deadline for reporting an act of discrimination is **1 year** "starting from the date of the act or from the date on which one could become aware of it".
- Keep all evidence of discrimination.
- C.N.C.D. resolves the referral within 90 days of the date of its submission.
- The decision of the C.N.C.D. can be appealed in the administrative court, in accordance with the law.

OTHER INFORMATION

Find out how to submit a complaint to C.N.C.D. by accessing the following link: <https://actedo.org/ghid-de-redactare-a-petițiilor-la-consiliul-national-pentru-combaterea-discriminării-c-n-c-d/>.

WHAT ARE THE SANCTIONS APPLIED BY THE C.N.C.D.?

1

The contravention fine, which varies between 1,000 and 30,000 lei for individuals and between 2,000 and 100,000 lei for legal entities that have committed acts of discrimination.

2

The warning, based on art. 7 para. (3) from O.G. 2/2001, even if it is not expressly provided by O.G. 137/2000.

3

The party that committed the act of discrimination may be obliged **to publish in the mass media a summary of the decision** establishing discrimination.

Note: If the victim of discrimination wants to be financially compensated, they must go to civil court. The contravention fine applied by the C.N.C.D. goes into the state budget.

C.N.C.D. JURISPRUDENCE

DECISION NO. 421 OF

20.05.2020:

**Discriminatory statements against people
belonging to the LGBTI community**

The decision is available at:

<https://www.cncd.ro/wp-content/uploads/2021/01/Hotarare-421-2020-1.pdf>

On 04.10.2019, on the Realitatea TV station, in the "Realitatea Românească" show, discriminatory statements were made against people belonging to the LGBT community, such as: "Aaah... abnormality and homosexuality and scumbags we're now turning into progressives. (...) As a woman, I think you should stop this talk with the scumbags (...) And what should I call them? Homosexuals, progressives? Can I call them prosecutors?". The message of the complained party targeted a group of individuals based on certain characteristics protected by art. 15 of OG no. 137/2000, namely **sexual orientation**. The complained party is a public and political person, being an opinion maker at the local and national level.

Following these discriminatory statements, several organizations in Romania submitted a petition to the National Council for Combating Discrimination (C.N.C.D.). On 20.05.2020, the Board of Directors found the existence of a differentiated, discriminatory treatment based on the criterion of sexual orientation, according to art. 2 para. 1 and as well as of art. 15 of the O.G. 137/2000 regarding the prevention and sanctioning of all forms of discrimination and mandated the payment of a contravention fine in the amount of 2000 lei.





DECISION NO. 125 OF 20.02.2019

Offensive and intimidating messages to homosexuals on a Facebook group

The decision is available at:
<https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-125-19.pdf>

On 06.03.2017, when accessing his personal account on Facebook, the petitioner found that the complained party requested registration in the FaceBook Gay Rights Romania group, of which he is a member. After joining the group, the complained party made certain offensive and intimidating comments towards homosexuals, such as: "You talk, you are blind and mentally ill, go get treatment, you homosexual!...; Only for you I wouldn't have hit accept, you homosexual[.] I would pull out your nails with clamps".

Following the petition submitted to the National College for Combating Discrimination (C.N.C.D.), the Board of Directors noted the fact that the reported issues fall under the provisions of art. 2 para. 1 and art. 15. of O.G. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, with subsequent amendments and additions, republished, and applied the penalty of contravention warning to the complained party.

HARASSMENT IN CIVIL MATTERS

It is important to note that harassment falls under several laws, depending on its form and severity, and attracts disciplinary, material, civil, contraventional or criminal liability, as the case may be, of the guilty persons.

Harassment as discrimination is provided for as follows::

- **Harassment as a form of discrimination**
 - regulated by Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination
 - is considered a form of discrimination as it is based on a discrimination criterion (race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, etc.)
 - the victim can address the National Council for Combating Discrimination (C.N.C.D.) through a petition
- **Bullying at work**
 - is a form of harassment provided by Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination
 - the victim can address the personnel of the human resources department within the company/institution, the Ethics Commission, the Administrative Council or the department responsible for guaranteeing equal and fair treatment
 - if they are not satisfied with the measures taken, the victim can address the court through a civil appeal
- **Sexual harassment as discrimination based on sex**
 - according to Law 202/2002, it is a form of discrimination
 - the victim has the right to file reports, claims or complaints to the employer or against him, if he is directly involved
 - the victim can address the court through a civil action, which can order, in addition to other sanctions, that the guilty person pay compensation to the person who considers themselves discriminated against
 - **IMPORTANT!** The victim of sexual harassment at work can also file a criminal complaint, based on art. 223 of the Criminal Code.

HARASSMENT IN O.G. 137/2000

HARASSMENT, ACCORDING TO O.G.

137/2000

Conform Ordonanței 137/2000:

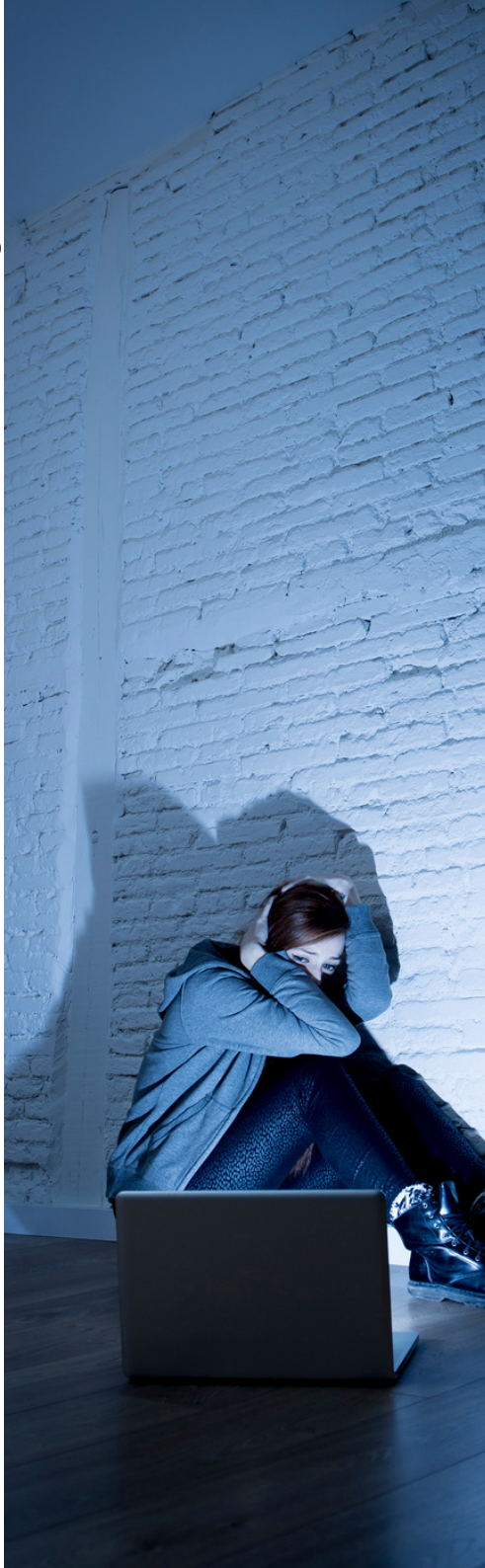
Any behavior based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, belonging to a disadvantaged category, age, disability, refugee or asylum seeker status or any other criterion, which leads to the creation of an intimidating, hostile, degrading or offensive environment, constitutes harassment and is penalized as a contravention.

WHAT CAN I DO IF I WAS A VICTIM OF HARASSMENT?

This form of harassment is considered a form of discrimination and falls under the jurisdiction of the National Council for Combating Discrimination, and the victim of harassment can file a petition.

OTHER INFORMATION

Find out how to file a complaint to the C.N.C.D. by accessing the link:
<https://actedo.org/ghid-de-redactare-a-petițiilor-la-consiliul-national-pentru-combaterea-discriminării-c-n-c-d/>.



BULLYING IN THE WORKPLACE



WHAT DOES WORKPLACE BULLYING LOOK LIKE?

According to O.G. no. 137/2000 workplace harassment represents:

any behavior exercised with regard to an employee by a subordinate and/or by a comparable employee from a hierarchical point of view, in relation to employment relations, which has as its purpose or effect a deterioration of working conditions by infringing the rights or dignity of the employee, by affecting his physical or mental health or by compromising his professional future, behavior manifested in any of the following forms:

- a) hostile or unwanted conduct*
- b) verbal comments*
- c) actions or gestures.*

WHAT CAN I DO IF I WAS HARASSED AT WORK?

If an employee experiences harassment at work, it should be addressed first to their supervisor or HR staff. If they are not satisfied with the solution proposed by the employer as a result of the disciplinary investigation, they can submit a complaint to the National Council for Combating Discrimination or to the competent court.

EMPLOYER OBLIGATIONS

When the designated person within the institution receives a complaint of harassment, they are required to perform the following tasks:

- to immediately record the dates, times and facts of the incident (or incidents)
- to clarify the victim's point of view regarding the desired outcome;
- to ensure that the victim understands the complaint resolution procedures
- to document the complaint in writing
- to ensure that the victim knows that he can submit the complaint outside the institution, based on the legislative framework/relevant legislation

According to Ordinance 137/2000, "the employer has the obligation to take any necessary measures in order to prevent and combat acts of workplace harassment, including by stipulating in the internal regulations of the unit disciplinary sanctions for employees who commit acts of harassment in the workplace."

WHAT MEASURES CAN THE COURT TAKE?

According to Law no. 167/2000, the court may:

- Order the obligation of the employer to take measures to stop acts of discrimination;
- Order the reinstatement of the employee in question;
- Order the employer to pay compensation to the employee in an amount equal to the equivalent of the salary rights he was deprived of, if applicable;
- Order the obligation of the employer to pay compensatory and moral damages to the employee;
- Order the obligation of the employer to pay the employee the amount necessary for psychological counseling if the employee needs it, for a reasonable period established by the occupational medicine doctor.



SEXUAL HARASSMENT IN THE WORKPLACE

In addition to the Criminal Code, Sexual harassment is also recognized by Law 202/2002 and is defined as "undesirable behavior with a sexual connotation, expressed physically, verbally or non-verbally, having the object or effect of harming the dignity of a person and, in particular, creating an intimidating, hostile, degrading, humiliating or offensive environment".



WHAT CAN I DO IF I WAS THE VICTIM OF SEXUAL HARASSMENT?

The employee has the right to make reports, claims or complaints to the employer or against them, if they are directly involved, and to request the support of the trade union organization or the representatives of the employees in the unit to resolve the situation at the workplace.

According to art. 30 para. (2) "If this referral/complaint has not been resolved at the unit level through mediation, the employed person who justifies a violation of his rights in the field of work has the right to lodge a complaint with the competent court [...] no later than one year from the date of the act."

At the same time, the person who justifies an infringement of their rights based on the provisions of this law, in other fields than work, has the right to file a complaint with the competent court, according to common law.

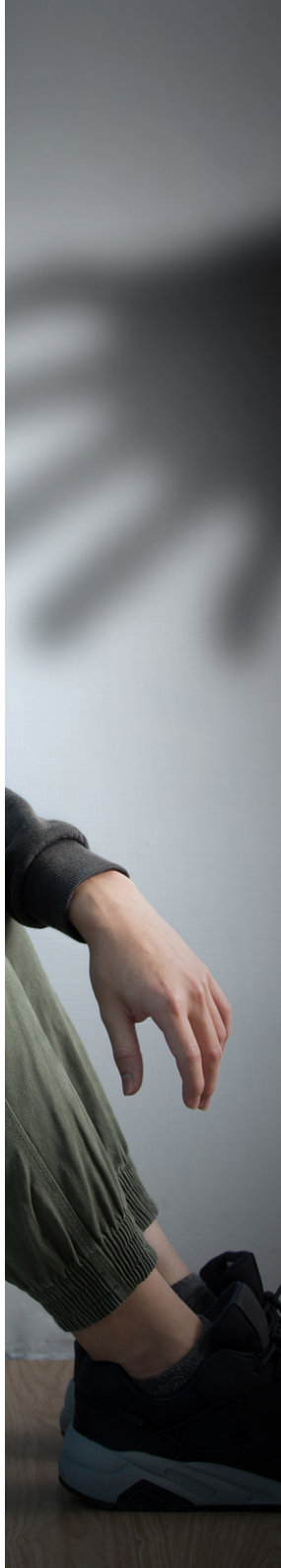
HARASSMENT IN CRIMINAL MATTERS

Harassment as a crime is regulated in the Criminal Code as follows:

- **Art. 208 - Harassment**
 - represents the act of someone who, repeatedly, follows, without right or without a legitimate interest, a person or supervises their home, workplace or other places frequented by them, thus causing him a state of fear
 - other manifestations: making telephone calls or communications by means of remote transmission, which, by frequency or content, cause fear to a person
 - shall be punished with imprisonment from 1 month to 6 months or with a fine
 - the criminal action is initiated upon the prior complaint of the injured person
- **Art. 223 - Sexual harassment**
 - is the repeated claim of favors of a sexual nature in the framework of a work relationship or a similar relationship, if through this the victim was intimidated or put in a humiliating situation
 - is punishable by imprisonment from 3 months to 1 year or a fine
 - the criminal action is initiated upon the prior complaint of the injured person

The difference between the two crimes lies in the premise and purpose:

- in the case of harassment it is not necessary to have a specific employment relationship or similar relationship between the offender and the victim, as is required in the context of sexual harassment
- the purpose of the crime of harassment is not necessarily to obtain sexual favors, but in the crime of sexual harassment the victim is repeatedly asked for favors of a sexual nature.



HARASSMENT AND SEXUAL HARASSMENT



WHAT CAN I DO IF I WAS THE VICTIM OF HARASSMENT AND/OR SEXUAL HARASSMENT?

- taking screenshots of all pages, posts, messages received from the perpetrator
- taking screenshots with the list of received calls, if the perpetrator made calls
- reporting online pages with inappropriate content and getting them shut down
- the formulation of a criminal complaint, which will not have to be technical, together with legal frameworks (it is the obligation of the criminal investigation bodies to do the latter)

Remember: Under no circumstances alter the content of the messages in any way, and keep the original device on which they were stored.

WHAT MUST THE CRIMINAL COMPLAINT CONTAIN?

According to the provisions of art. 289 of the Criminal Procedure Code, the criminal complaint must contain the following:

Name, surname, personal numerical code, address of the victim and the quality of the petitioner in relation to the victim

- It is recommended to indicate the address where the victim is sure to receive the documents, not a temporary one
- It is recommended to provide a phone number and an email address
- It is recommended that the description of the act be made in detail, in chronological order, with a clear indication of how the materials came into the possession of the perpetrator, when they were distributed by him, with the indication of the dates when the acts were committed, with a mention at the end of how the victim is affected by the behavior of the perpetrator

Identification of the perpetrator

- It is recommended that in addition to the name, any data that could lead to their identification should be indicated: address, telephone, e-mail, places frequented, workplace, etc.

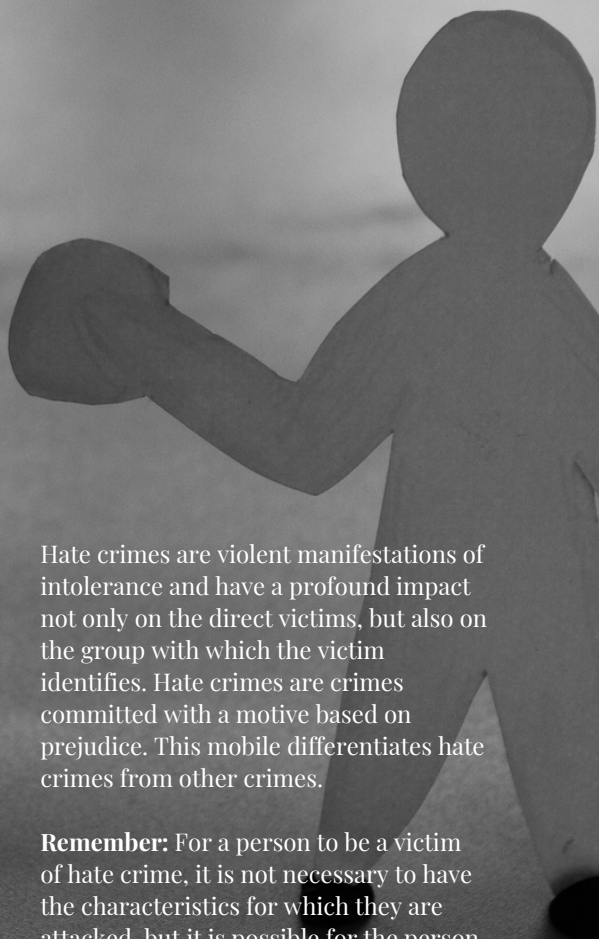
Indication of evidence

- It is recommended to list the screenshots referred to above, conversations with the perpetrator, conversations with his entourage, etc.

Signature



HATE CRIME

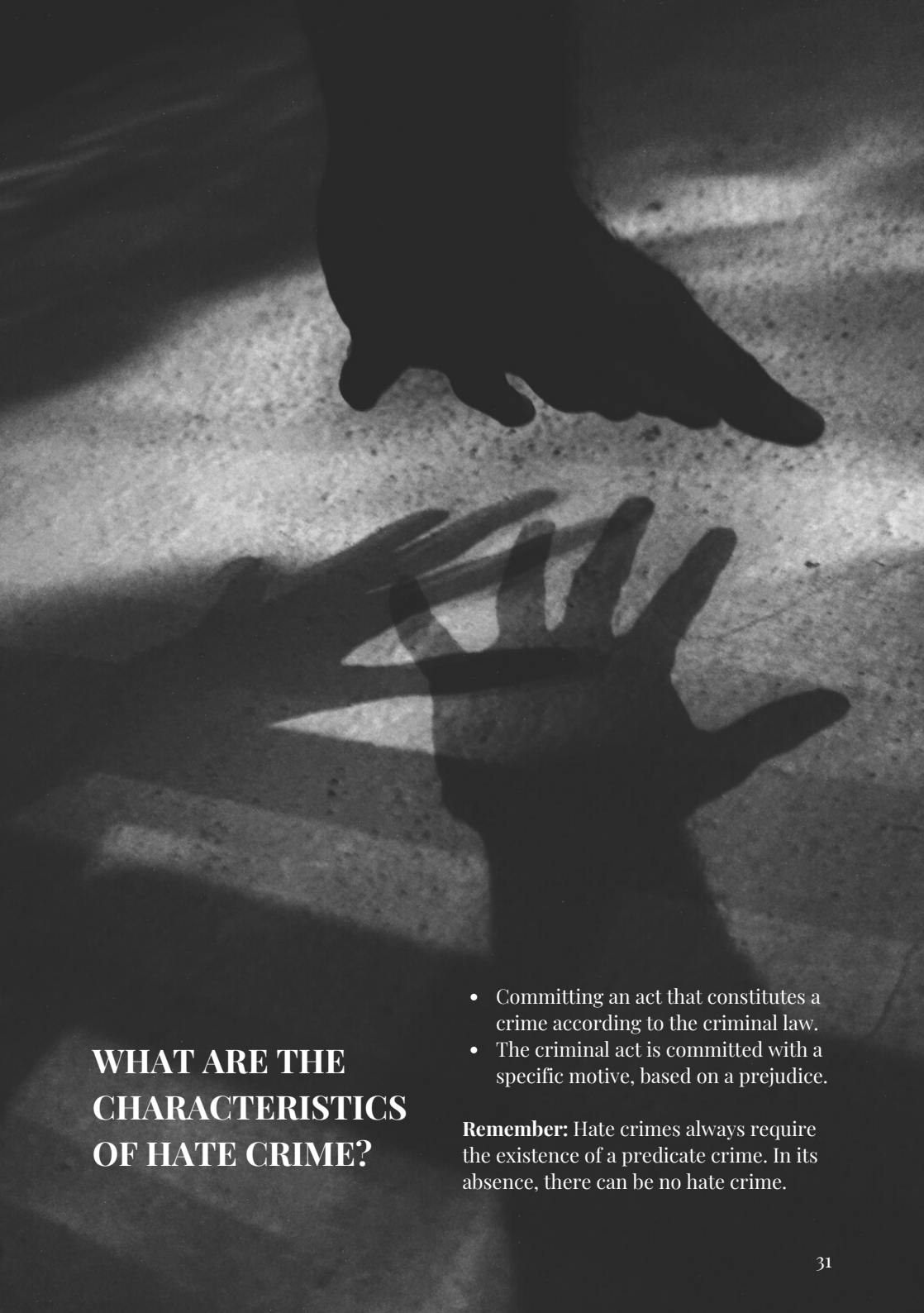


Hate crimes are violent manifestations of intolerance and have a profound impact not only on the direct victims, but also on the group with which the victim identifies. Hate crimes are crimes committed with a motive based on prejudice. This motive differentiates hate crimes from other crimes.

Remember: For a person to be a victim of hate crime, it is not necessary to have the characteristics for which they are attacked, but it is possible for the person to only believe that the victim has those characteristics.

Example: A young woman was assaulted in a supermarket by security staff while she was shopping with her girlfriend.

WHAT IS HATE CRIME?

A black and white photograph showing a hand reaching down from the top of the frame towards a shadowed hand on a textured surface. The lighting creates strong shadows, emphasizing the textures and the gesture of reaching.

WHAT ARE THE CHARACTERISTICS OF HATE CRIME?

- Committing an act that constitutes a crime according to the criminal law.
- The criminal act is committed with a specific motive, based on a prejudice.

Remember: Hate crimes always require the existence of a predicate crime. In its absence, there can be no hate crime.

WHAT ARE THE EFFECTS OF HATE CRIME?

The effect on the victim:

By targeting a person's identity, hate crimes are considered to be of increased seriousness compared to the same crime without the hate component. The direct victim may suffer greater psychological harm and feel more vulnerable because they cannot change the characteristic that made them a victim, for example, they cannot change their sexual orientation or gender identity. Also, the aggressor can target not just an individual, but a group or any other LGBTI person. Hate crimes can have a more pronounced psychological impact on the victim, often leading to depression, anxiety and post-traumatic stress disorder.

The effect on the community:

The community that shares the same characteristic as the victim may also be affected and intimidated.

Problems related to safety:

Hate crimes pose serious risks to public safety and order. They can exacerbate existing tensions between groups and contribute to inter-ethnic or social unrest.

WHAT DOES HATE CRIME LOOK LIKE?

Example: A school was set on fire. The police initially decide that it is a simple arson. However, LGBTI people also attend the school, and research reveals that there have been incidents of graffiti containing homophobic slogans at the school. The perpetrators are caught and admit that they set the fire and made the graffiti. They say that they were motivated by the desire to "cleanse" the area of undesirable people. The predicate crime is arson, but the motivation based in prejudice against LGBTI people makes this a hate crime.

WHAT IS THE LEGAL FRAMEWORK FOR HATE CRIME IN ROMANIA?

The criminal legal framework in Romania approaches hate crimes from two perspectives:

- Apprehension of an aggravating circumstance
- The existence of independent crimes provided for in the Penal Code and other special laws in the structure of which part or all of the criteria provided by the aggravating circumstances are included

WHAT ARE THE AGGRAVATING CIRCUMSTANCES MENTIONED?

According to art. 77 let. (h) of the Criminal Code, the following circumstances constitute aggravating circumstances: „, the perpetration of the crime for reasons related to race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or for other circumstances of the same kind, considered by the perpetrator as causes of a person's inferiority in relation to others."





WHAT ARE THE STAND-ALONE HATE CRIMES?

- Art. 282, par. (1): Torture on a ground based on any form of discrimination
- Art. 297, par. (2) Penal Code: Abuse of office based on discrimination
- Art. 369 Penal Code: Incitement to hatred or discrimination
- Art. 381 Penal Code: Obstructing the exercise of religious freedom
- Art. 382 Penal Code: Desecration of places or objects of worship
- Art. 383 Penal Code: Desecration of corpses or graves, in certain situations and with the retention of aggravating circumstances

WHAT CAN I DO IF I WAS THE VICTIM OF HATE CRIME?

Hate crime falls under the Criminal Code, and the person who was the victim of the hate crime can file a criminal complaint.

ECHR JURISPRUDENCE

THE DECISION OF APRIL 12, 2016 IN THE CASE OF M.C. AND A.C. AGAINST ROMANIA

The decision is available at: <http://ier.gov.ro/wp-content/uploads/cedo/MC-si-AC-impotriva-Romaniei.pdf>

- On June 3, 2006, the plaintiffs participated in the annual gay march in Bucharest, organized by the ACCEPT Association. The march was protected by the police.
- At the end of the march, the plaintiffs and four other participants left the area and headed for the subway, according to the instructions provided by the authorities. The persons did not wear distinctive clothes or badges that could have identified them as participants in the march. After boarding, they were attacked by a group of six men and one woman wearing hooded sweatshirts. The attackers approached the victims directly and started hitting them in the head and face area.
- The attack lasted several minutes. During the attack, the rest of the passengers retreated to the opposite side of the carriage. Among them was a photographer, who participated in the march. At the requests of the victims, he photographed the incident, and the attackers also hit him.



The Court's decision:

- The Court found that there was a violation of Article 3 (**prohibition of inhuman or degrading treatment**), together with Article 14 (prohibition of discrimination) of the Convention, considering that the investigation was not carried out in an effective manner, it being excessively long and being marked by serious oversights on the part of the authorities and **without taking into account the possible reasons for discrimination**.
- The Court awarded each plaintiff the sum of EUR 7,000 in respect of non-pecuniary damage.
- The Court observed the fact that the plaintiffs acted promptly by informing the authorities about the alleged crimes, filing a criminal complaint within a few hours of the incident. In the following days, they presented to the authorities all the material evidence at their disposal that could have contributed to the identification of the perpetrators and the correct classification of the crimes allegedly committed. The investigation followed its course and, on October 4, 2011, the prosecutor decided not to prosecute the case.
- The Court considers that the authorities did not take reasonable steps to examine the role played by possible homophobic motives behind the attack. The need for a proper investigation into the possibility that discrimination was the motivation for the attack was indispensable, given the hostility towards the LGBTI community in the respondent State and in light of the applicants' statements that hateful, clearly homophobic words were uttered by the attackers at the time of the incident. The authorities should have done this – despite the fact that hate speech was not punishable at the time when the incidents took place – because the crimes would have been given a legal framework that would have allowed a better administration of justice. The Court considers that, without such a rigorous approach by law enforcement authorities, prejudice-motivated crimes are inevitably treated on an equal footing with cases that do not involve such connotations, and the resulting indifference would be tantamount to official approval, or even complicity in hate crimes.



HATE SPEECH

WHAT IS HATE SPEECH?

Hate speech can be considered a form of discrimination, harassment or violation of the right to personal dignity and constitutes a contravention stipulated by O.G. 137/2000.

WHAT CAN I DO IF I WAS THE VICTIM OF HATE SPEECH?

Victims of hate speech can file a petition with the National Council for Combating Discrimination or go to civil court.

WHAT ARE THE REMEDIES FOR THE VICTIM?

Administrative remedies cannot provide damages or other types of compensation to victims of hate speech. C.N.C.D. can issue decisions that may impose administrative financial sanctions on the perpetrator. If victims of hate speech wish to obtain compensation, then they must resort to common law remedies.

OTHER INFORMATION

More information on hate speech can be found at:
<https://actedo.org/discursul-urii-2019-2020-document-pozitie/>.

Notes

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



As part of the "FEMPOWER: Giving Voice to Queer/LGBTQ+ Women" project, ACTEDO offers pro bono legal assistance through the **Pro Bono Network for Human Rights** for cases of discrimination based on gender, such as: discrimination or harassment at work, hate speech or hate crimes, sexual violence, etc.

We also monitor society-wide homophobic and sexist abuses and report them to C.N.C.D., so if you need assistance, our team is here to support you.

Contact us at:

- ✉ info@actedo.org
- in [/asociatia-actedo](https://www.linkedin.com/company/asociatia-actedo)
- globe www.actedo.org
- 📷 [@actedo.ngo](https://www.instagram.com/actedo.ngo)
- f [/ACTEDO](https://www.facebook.com/ACTEDO)

Legal assistance
request form:

