

Analysis of cases and judgments

ON RACISM, XENOPHOBIA,
LGBTIPHOBIA AND OTHER
FORMS OF INTOLERANCE,
2014-2017

SUMMARY



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This study was commissioned by the Follow-up Committee on the Agreement for institutional cooperation to combat racism, xenophobia, LGBTIphobia and other forms of intolerance (Comisión de Seguimiento del Acuerdo para cooperar institucionalmente en la lucha contra el racismo, la xenofobia, la LGBTIfobia) and was funded by the Secretariat of State for Migrations under the Ministry of Labour, Migrations and Social Security and the Fund for Asylum, Migration and Integration (FAMI). The study was performed by a team of researchers belonging to the Foundation for Applied Research in Crime and Security (Fundación para la Investigación Aplicada en Delincuencia y Seguridad - FIADYS) and Madrid's Universidad Autónoma

PRESENTATION

We are pleased to present the study "**Analysis of cases and judgments on racism, xenophobia, LGBTIphobia and other forms of intolerance, 2014-2017**" conducted with the support of the Secretariat of State for Migrations under the Ministry of Labour, Migrations and Social Security.

This study was commissioned by the Monitoring Committee on the *Agreement to cooperate institutionally to combat racism, xenophobia, LGBTIphobia, and other forms of intolerance* presided over this year 2019, by the Director General for Relations with the Justice Administration of the Ministry of Justice.

The study analyses judgements handed down on hate crimes during the 2014 to 2017 period and identifies the judicial trends in this field. The cases tried were analysed based on a series of variables such as the characteristics of the persons investigated and the victims as well as the procedural and material aspects mentioned in the judgements. This study therefore offers the analysis of a sample of definitive judgements handed down by judicial bodies in our country in hate crime proceedings during the mentioned period, and makes a pioneering report in Spain and Europe available to the public administration, civil society and the public at large.

Cooperation with experts from Madrid's *Universidad Autónoma* and the FYADIS- Foundation for Applied Research on Crime and Safety (*Fundación para la Investigación Aplicada en Delincuencia y Seguridad*) was indispensable to conduct the study.

In addition, this research would not have been possible without the active participation of the *Consejo General del Poder Judicial* (General Council for the Judiciary), signatory to previously mentioned inter-ministerial Agreement, which facilitated information on the cases analysed.

We trust that the publication of this report will come to further knowledge on hate crimes and contribute to better addressing them in the criminal system given that they are so harmful for the harmonious social coexistence and for a positive management of diversity in Spain.

Estrella Rodríguez Pardo

D.G for Integration and Humanitarian Aid
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Secretariat of State for Justice

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1 Introduction

This report comes in response to a request for research on the part of the **Follow-Up Committee on the Agreement for Institutional Cooperation to combat Racism, Xenophobia, LGBTIphobia and other forms of intolerance**, funded by the Secretariat of State for Migrations under the Ministry of Labour, Migrations and Social Security. The report aims to analyse the various court rulings handed down by courts on hate crimes, to ascertain the legal regulations on hate crimes and to describe the hate crimes that have been tried in court. It compiles the court rulings handed down from 2014 to 2017 on hate crimes and hate speech obtained from the CENDOJ data base.

The difficulties involved in conceptually circumscribing the category of 'hate crimes' should not be overlooked. As Lawrence¹ brought to light in a leading study, depending on the ideal model (*discriminatory selection model* or *animus model*) chosen by the legislator to sanction 'hate crimes', their definition will vary. The definition of "hate crime" offered by the RAJYL dictionary² reflects this conceptual duality:

1 LAWRENCE, *Punishing Hate: Bias Crimes under American Law*, 1999, Harvard University Press, Cambridge, *passim* and pp. 34 & ss.

2 *Diccionario Jurídico de la Real Academia de Jurisprudencia y Legislación*, 2016, p. 357.

"A set of crimes open to various interpretations. Firstly, this denomination refers to crimes aggravated by having been committed with a given motivation or motive consisting of hate or prejudice on the part of the perpetrator towards a stereotype characterised by an actual or merely perceived personal condition of the victim (ethnic group, gender, beliefs, etc.). This concept may also refer to those crimes committed, irrespective of the perpetrator's actual intention, that offend, humiliate or intimidate a group in society which has traditionally been discriminated against due to any of the previously mentioned personal conditions. Any crimes in which the general aggravating factors of intolerance or prejudice as well as several types of crimes included in the special section of the Criminal Code, paradigmatically those on the so-called 'hate speech' (among them, the crime of inciting hate, hostility, discrimination or violence against a group, a part of that group or a given person due to their belonging to that group as stated in article 510 of the criminal code may be included among these crimes or hate crimes)."

Based on its consideration as such according to either of these two ideal models, for the purposes of this study, **hate crimes** have been understood as those covered by the following articles in the Criminal Code³:

- Article 170.1 which makes reference to the crime of threats aimed at spreading fear among an ethnic, cultural or religious group, a social or professional group, or any other group of persons.
- Article 173.1 which makes reference to the degrading treatment and damage to moral integrity, only in revised cases where a motive of hate has been observed in treatment or damage of moral integrity.

³ Among its novel aspects and focusing exclusively on those that are particularly pertinent to hate crimes in Spain, the reform of our Criminal Code enacted through Organic Law 1/2015, dated 30 March: a) amended article 22.4 of the Criminal Code, including among the personal conditions or causes for discrimination it enumerates "gender-motivated"; b) among the duties that may entail suspending enforcement of the sentence provided for in article 83 of the criminal code, participation in training programmes on "equal treatment and non-discrimination"; c) the crime of hate speech set forth in article 510 of the Criminal Code was overhauled. A reference to gender among the grounds for committing this crime was introduced and the description of typical conduct was enhanced (including to a substantial extent conduct that had been typified in article 607.2 of the criminal code) and punishments were significantly stiffened for some of the sub-types, going beyond the three years that had previously been stipulated in article 510 as a maximum sentence; d) legal liability was introduced for the legal person with regard to the previous crime (article 510 bis of the Criminal Code); and e) amendment was made to the wording of the crime of illicit association to promote hate (articles 515.5 and 515.6 of the Criminal Code after the reform), and increased the ways in which the crime could be committed, currently including "foster", as well as "promote" in addition to those that "indirectly incite".

- Article 174 which punishes torture when occurring for any reason based on any type of discrimination.
- Article 314 related to the crime of discrimination at work.
- Articles 510 and 510.bis on the crime of incitement of hatred, violence and discrimination.
- Article 511 referring to the crime of refusing to provide public benefits committed by an individual or a civil servant.
- Article 512 on the refusal to provide services in one's business or professional practice.
- Article 515.4 referring to the crime of illicit association to promote hate, violence or discrimination.
- Articles 522 through 526 referring to crimes against freedom of conscience and religious sentiment.
- Articles 607 and 607.bis referring to the crimes of genocide and crimes against humanity.
- Finally, all of those crimes in which an aggravating circumstance included in article 22.4 of the Criminal Code has been applied.

Secondly, in the final sample, this study has also included other crimes in which **hate speech** was detected among the proven facts, regardless of whether reference was made in final legal qualification in the judgement to the previously mentioned hate crimes.

Clearly, "**crimes of terrorism**" and "**gender violence**" refer to conduct that cannot necessarily be classified as "hate crimes".⁴ However, because these crimes have certain traits in common with "genuine" hate crimes, and because of the need to maintain a certain degree of neutrality and not take sides in the controversy in the doctrine, we have taken a pragmatic decision on crimes of gender violence and terrorism which will be explained subsequently.

4 On the distinction between hate crimes and crimes of terrorism and gender violence, vid. DÍAZ LÓPEZ, *El odio discriminatorio como agravante penal*, 2013, *passim*.

2 Objectives

The main objectives pursued in analysing the judicial decisions between 2014 and 2017 are the following:

- a. To further knowledge on aspects relating to the **judicial decision** including for instance the date of the judgement, the ruling body, the crimes stated, the facts involved in the case and where they took place, the operative part of the judgement, motivations of intolerance and prejudice, the indicators of hate crimes and the means of perpetration.
- b. To ascertain the profile of the **accused** included in the judicial decision, as the number of persons accused, their gender, nationality, age and belonging to a specific group.
- c. To ascertain the profile and characteristics of the **victims** appearing in the judicial resolution, including their number, gender, nationality, age, their belonging to a specific group and their relationship with those accused.
- d. To analyse in depth the **sentences handed down** in the decisions, including the number and type of sentences per person accused, their duration, the application of aggravating or attenuating or exculpatory circumstances; and other legal matters such as precautionary measures taken, grounds for acquittal, the existence of witnesses, sentences for civil liability and acquittal or mistrials.

3 Methodology

A mixed methodology was used for the analysis. Descriptive statistical analysis was used as well as contingency tables on a sample of the judicial decisions on hate crimes included in the CENDOJ database search engine. Qualitative analysis was also done on certain variables when it was deemed that furthering the qualitative and legal information on the judgement was of interest.

3.1. Selecting the total sample of judicial decisions on hate crimes

The following criteria were established to select the sample:

- a. The judgements must involve one of the hate crimes on the previously mentioned list.
- b. The decisions must have been handed down during the period under study.
- c. The crime must involve an element of hate or the application of the aggravating circumstance as provided for in article 22.4 of the Criminal Code.
- d. Explicit mention of hate must be made in the legal grounds set forth in the judgement or order.
- e. Hate speech must have been observed⁵ in the facts entailed in the accusation or the facts declared to be proven.

⁵ This criterion was applied twice: a) when a generic attack was on a specific group that the victim belonged to, for example: ethnic, gender, religion, disability and so forth was observed; and b) when the victim was insulted due his or her belonging to one of these groups.

As mentioned in the introduction, crimes of terrorism are not strictly considered to be hate crimes. However, it was considered that they very well may be included under certain circumstances having set very clear criteria to do so. The specific criteria adopted to include crimes of terrorism were as follows:

- a. The following were considered to communication conduct typified as support or justification of apology (of the ideology) of a terrorist group: under the crime of collaboration (art. 577.2): "indoctrination"; under the crime of glorification (art. 578): "glorification" or "justification" of terrorism; under the crime pre-provocation (art. 579.1): "dissemination of messages or slogans"; and under the crime of provoking terrorism (arts. 579.2 and 579.3): "inciting" and "provoking".
- b. Humiliation of victims was considered together with the conduct typified in art. 578 glorifying terrorist crimes or perpetrators. It can be assumed in all these cases that all conduct typical of humiliation of victims involves hate speech towards them.

Insofar as judgements on *gender*-based hate crimes, the following criteria were used:

- a. The judicial decision must include some *generic assertion* aimed at the group, indicating that women are inferior because of their gender.
- b. The judicial decision must include *specific assertions* constituting attacks against the dignity of the victims due to their condition as women or insults oriented to women from whence it can be interpreted that the crime is based on hatred towards women.

3.2. Instruments used for information gathering

Based on the general indications provided for the research, a file was produced to import information on judgements or orders on the variables of interest. The file was designed based on the most pertinent variables, the information available in judicial decisions, and the subsequent coding in the database in order to do statistical processing. The variables are found in the annex to the report: Analysis of cases and judgments on racism, xenophobia and other forms of intolerance, published on the Spanish Observatory on Racism and Xenophobia (2014-2016) web.

3.3. Final sample of hate cases

The final sample of judgements analysed included 102 cases. Table number 1 illustrates the sample distribution. When disaggregating the sample using the previously mentioned selection criteria, 61 cases were included as hate crimes, and there were 17 cases where the aggravating circumstances set forth in art. 22.4 of the criminal code applied, 21 cases included under 'other crimes' where hate speech was observed, and 3 cases of hate crimes with aggravating circumstances set forth in art. 22.4 of the criminal code.

Table 1. Sample Distribution. Final Sample Selected (N = 102)

| | |
|--|-------|
| Hate Crimes | N= 61 |
| Aggravating circumstance. Art. 22.4 | N= 17 |
| Hate Speech | N= 21 |
| Hate & Aggravating circumstance. Art. 22.4 | N= 03 |

3.4. Importing information into the databases

The information in the final sample of cases was imported into two databases to facilitate statistical processing. One a case database⁶ (N= 102) and other database including the accused in these cases (N= 176). Table 2 illustrates the distribution of cases in the two databases and the number of variables collected.

Table 2. Cases and variables of the two databases where the sample was distributed

| Complete database | Database of the accused |
|-------------------|-------------------------|
| 102 cases | 176 accused persons |
| 249 variables | 66 variables |

⁶ Cases were chosen as the unit for analysis because there were several decisions on a single case. There, information was gathered on all of the decisions in order to provide the most complete information possible about the case.

4 Main findings

What follows is a presentation of the findings after analysing the judicial decisions handed down from 2014 to 2017 obtained from the CENDOJ (Judicial Documentation Centre) database on hate crimes and hate speech. The study aims to offer a descriptive analysis of the content of the decisions based on previously determined variables grouped together in four sections:

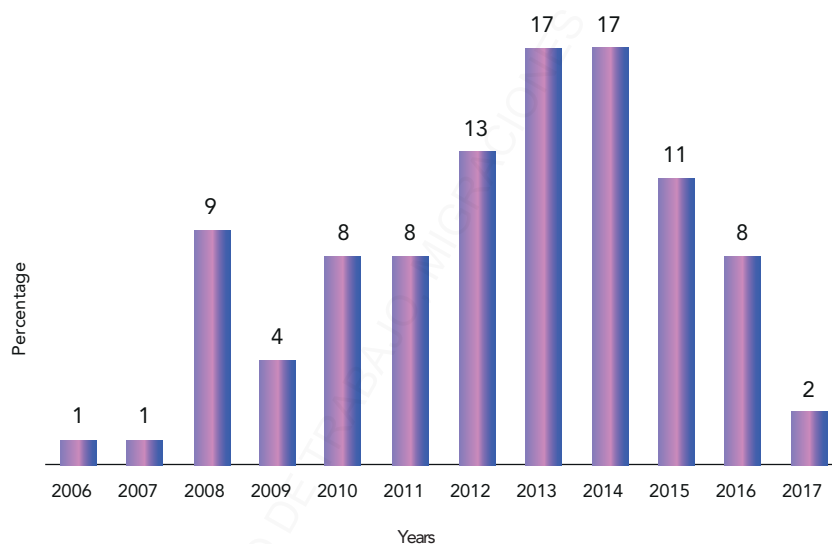
- a. Aspects related to the cases contained in the decisions.
- b. Profiles of the accused.
- c. Profiles of the victims.
- d. Procedural and juridical aspects of the decisions such as the content of the ruling, the sentences handed down, the crimes appearing in the decisions, and the inclusion of aggravating, attenuating or exculpatory circumstances.

4.1. Characteristics of the hate cases analysed

Time and place the crimes were committed

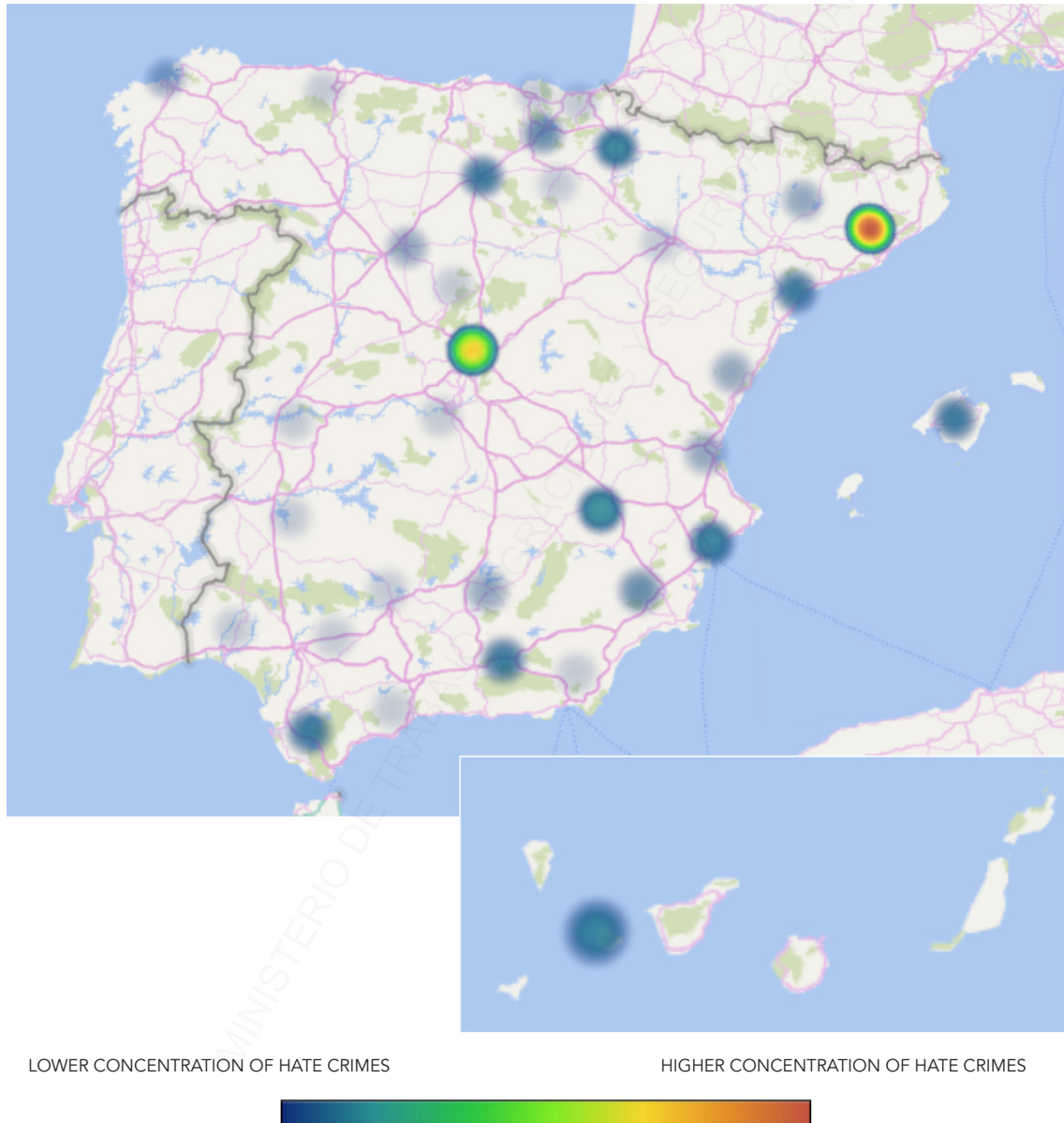
- The judgements handed down from 2014 to 2017 refer to crimes committed mainly from 2010 to 2015 (74%) (see figure 1). The average time elapsed between when the crime was committed and the judgement is two and a half years, with a range of between 0 and 10 years.

Figure 1: Annual distribution of hate crimes leading to judgements during the 2014-2017 period (N = 102)



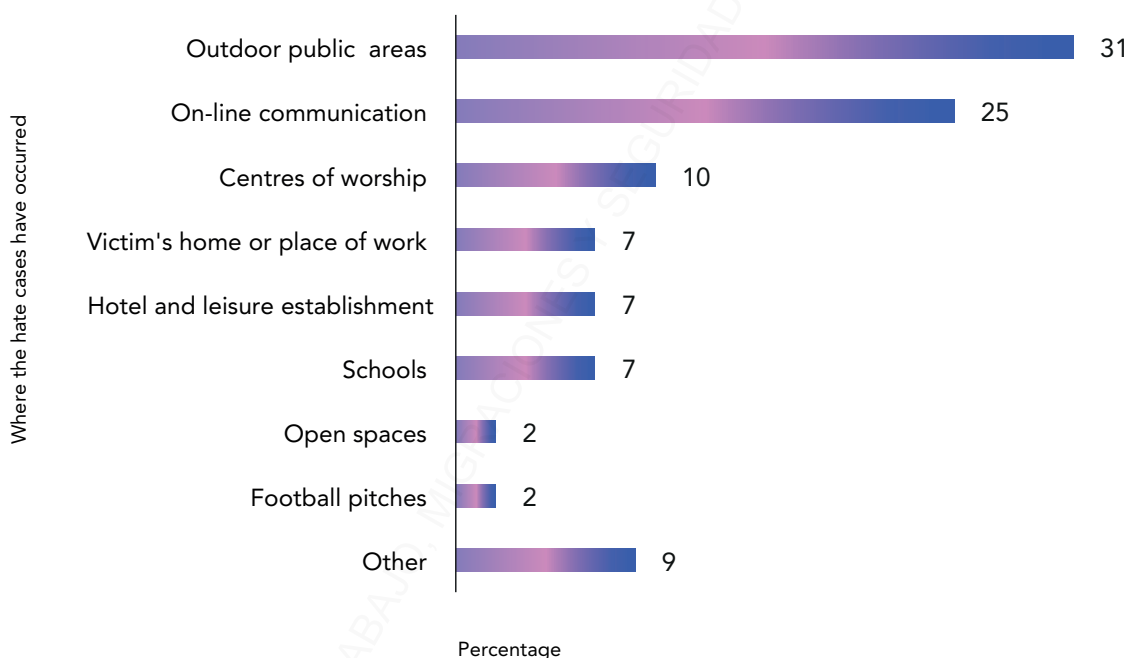
- Most of the cases (65%) occurred in the evening/night on Tuesday, Friday and Sunday, which includes Saturday night. However, the day on which the most occurred was Sunday (30%).
- More than half of the sample of cases were one-off (64%) while the rest were continuous actions.
- The regions where the most cases analysed occurred were Catalonia, Madrid, Castile-León and the Valencia region. These regions are followed in a lower proportion by Andalusia, Castile La-Mancha, Navarre, Extremadura, the Balearic Islands and the Basque Country, and in an even lower proportion by Aragon, Asturias, Galicia, the Canary Islands and La Rioja (see figure 2).

Figure 2: Map with the geographical distribution of hate cases leading to judgments in the 2014-2017 period (N = 102)



- Listed in their order of importance, the areas where these cases occurred were: outdoor public areas, on-line communication, religious centres, the victim's home or place of work, hotel and leisure establishments, schools, and open spaces and football pitches (see figure 3).

Figure 3: Where the hate cases occurred (N = 102)



4.2. Characteristics of the cases motivated by intolerance and prejudice

The following characteristic profiles were identified based on the qualitative analysis of cases classified by intolerance and prejudice:

- The analysed **racially or ethnically** motivated cases (N=34) are usually perpetrated by Spaniards or groups of Spaniards with an extreme right ideology who insult and on occasions threaten and injure a foreign national (male) victim. These acts are usually perpetrated face to face, 77%, while the remainder are perpetrated technologically (via social media or websites). The presence of weapons can be highlighted in 8 cases.

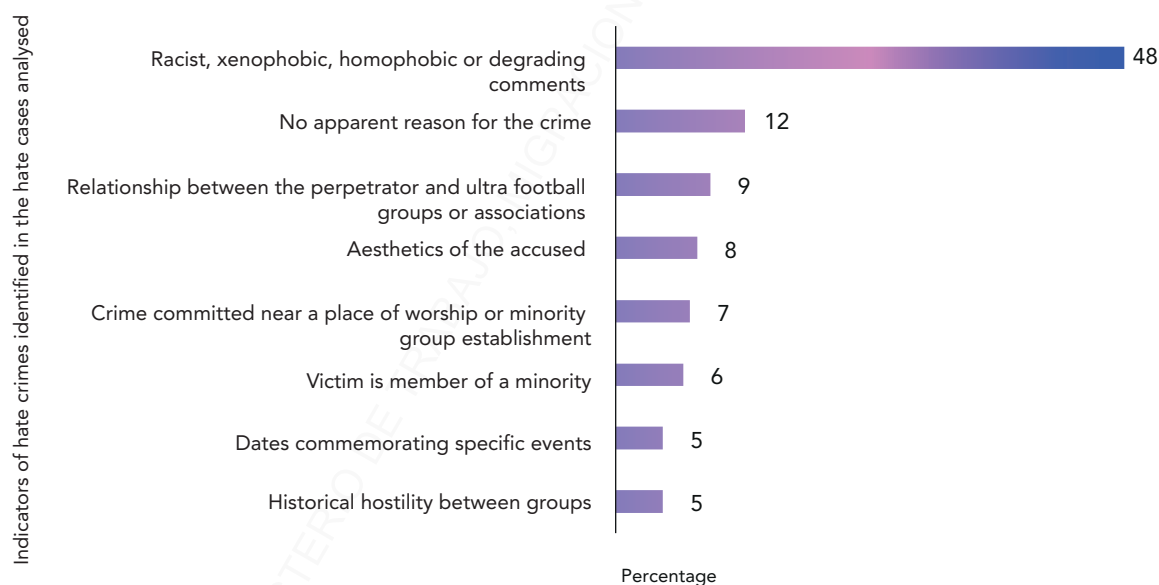
- **Ideologically motivated** cases (N=21) generally consist of aggression and insults from a member of a radical ideological group acting on his own or with one to three members of his group against one or two persons belonging to a rival group, normally with an opposite ideological affiliation. These cases are usually perpetrated in public spaces or establishments and 33% occur on-line, where hate speech is disseminated for ideological reasons.
- **Gender-motivated** cases (N=16) are perpetrated by Spaniards who insult women they know at the work place or educational settings. The insults include vexation because the victim is a woman and occurred on a sustained basis over time.
- The **religion-motivated** hate cases (N=10) are committed by single perpetrators barging into Christian temples and insulting the priests or vicars or religious symbols.
- The **sexual orientation-motivated** cases (N=16) consist of physical aggression perpetrated by Spanish males against other males. These aggressions come together with threats due to alleged homosexuality. They usually take place in outdoor public areas or in leisure establishments (55%), on the job or at the work place or in educational settings at school (34%), and, to a lesser extent, on-line (11%).
- The **disability-motivated** cases (N=2) are characterised by insults and mockery, perpetrated in groups, against the moral integrity of a single person with a disability.
- The **aporophobia-motivated** cases (N=3) consist of physical aggression and insults from a single perpetrator accompanied by other persons who in no event recriminate this behaviour towards the homeless victims sleeping in public areas.

4.3. Hate Crime indicators⁷

Based on the analysis of hate cases, there is usually one single indicator of the hate crime per judgement (57%).

The most commonly identified indicator is racist, xenophobic, homophobic or “degrading expressions or comments” (48%). The least identified is the “victim’s perception”, which did not appear in a single case. The remaining indicators are present in lower proportions because they are linked to specific hate motivations (see figure 4).

Figure 4: Indicators of hate crimes identified in the hate cases analysed (N = 155)



⁷ Hate crime indicators are those that must be gathered or incorporated into the police report to provide judges or prosecutors with enough of an indication to bring charges or hand down sentences.

Table 3 lists the hate crime indicators and their motivations broken down by reason of intolerance and prejudice. This enables the indicator applied in each case to be more easily observed.

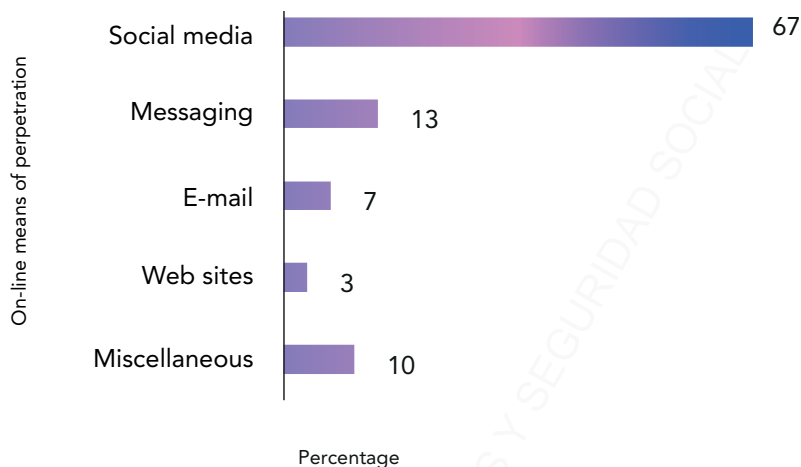
Table 3. List of hate crime indicators broken down by motive for intolerance and prejudice

| Hate Crime indicator | Motivation |
|---|---|
| Racist, xenophobic, homophobic and derogatory expressions or comments | Race/ethnicity /gender |
| Perpetrator relationship with Ultra football groups or associations | Race/ethnicity /political orientation |
| Aesthetics of the accused | Race/ethnicity /political orientation |
| Crime committed near a place of worship or a minority group establishment | Religion |
| Victim's belonging to a minority group | Race/ethnicity sexual orientation/disability |
| No apparent reason for the crime | Race/ethnicity sexual orientation/aporophobia |
| Historical hostility between the groups | Race/ethnicity /political orientation |
| Dates commemorating specific events | Ideology |

4.4. Physical, psychological, face to face or virtual committing of the crime

- Most crimes are committed face to face (73%), that is, the perpetrator has directly confronted the victim. On certain occasions the confrontation was physical (28%) or psychological (19%), but most of the time both were involved (25%).
- Normally, no confrontational weapons are used (67%), although in a third of the instances (33%) knives (9%) and other hazardous instruments (24%) are used.
- The remainder of the cases were committed on-line, as broken down in figure 5.

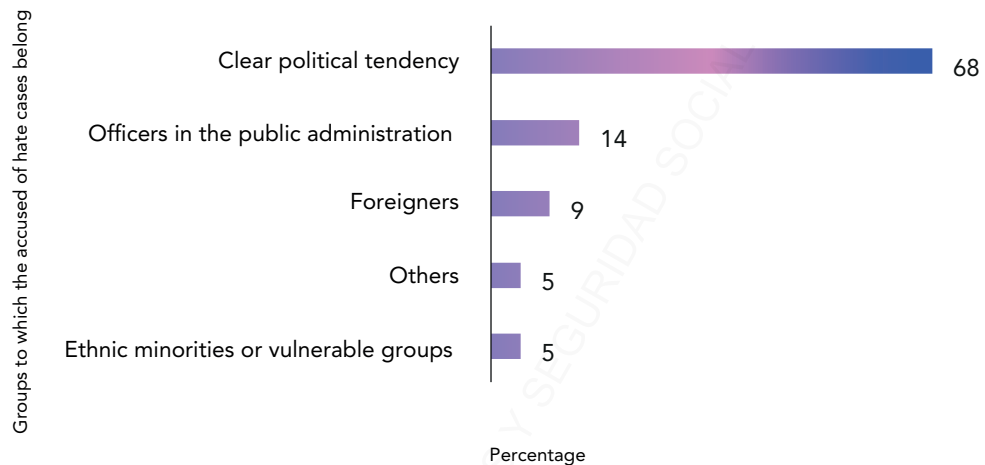
Figure 5: Means used to perpetrate on-line hate cases (N = 30)



4.5. Characteristics of the accused

- In most of the cases (65%) there was one single accused person. The cases where we find more than one accused person are usually racially or ideologically-motivated hate cases.
- 86% of the accused are **of age** mainly related to hate cases due racial or ethnic origin (38%), to ideology (28%) and to religion (8%).
- 14% of the accused are **minors** mostly related to hate cases motivated by gender (42%), racial origin (33%) and sexual orientation (13%).
- While 90% of the accused are **male**, only 10% are female.
- 91% of the accused are **Spaniards** who are most often the perpetrators in hate cases motivated by race or ethnicity (49%), ideology (30%) and gender (8%).
- The accused who are **foreign nationals** come mainly from African countries (Morocco, Tunisia, and Western Sahara), Latin America (Peru and the Dominican Republic) and Europe (France). They are most often the perpetrators in racially motivated (14%) hate cases, and sexual orientation and disability-motivated hate cases (14%).
- In 56% of the hate cases, the accused **belong to a given segment of the population or group**, the most representative categories of which are: groups with an ideology (far right, far left, and pro-independence), foreigners and officers in the public administration (mostly police officers). See figure 6.

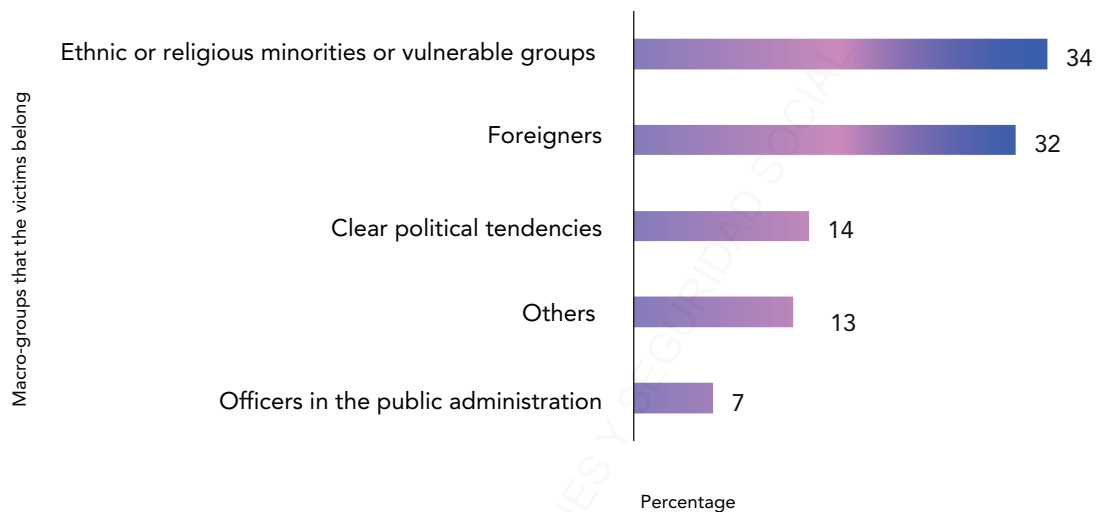
Figure 6: Groups to which the accused of hate cases belong to (N = 66)



4.6. Characteristics of the victims

- Most hate cases affect **one single victim** (51%) while in 41% of the cases there are two or more victims.
- The vast majority of the victims are **male** (61%), while women are victims in a smaller proportion (39%).
- Unlike the accused, most of the victims are of **foreign** nationality (58%), and most come from Africa (Morocco, Senegal and West Africa), Latin America (the Dominican Republic, Columbia, Ecuador and Honduras) and European Countries (Romania).
- The vast majority of the victims of the analysed cases belong to a **concrete group or segment of the population** (80%) and are mainly: ethnic minorities or vulnerable groups, of foreign nationality, groups with clear ideologies and public administration officials (see figure 7).

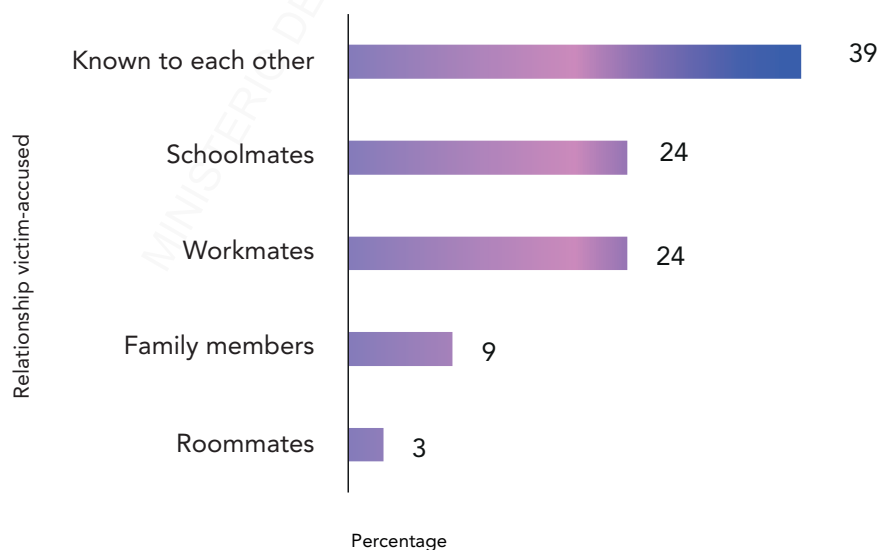
Figure 7: Groups that the victims belong to (N = 76)



Relationship between the victim and the accused

- Normally, in the hate cases analysed, the victim and accused do not know each other. Only in 34% of the cases is there any relationship, as shown in figure 8.

Figure 8: Breakdown of the different types of relationship between the accused and the victim in the hate crimes analysed (N = 33)



- Regarding the relationship between the victim and the accused according to the motivation as per reason of intolerance and prejudice, there is most often a relationship between the two in gender and ideologically-motivated hate cases and none in cases of discrimination due to race, ethnicity or ideology.

4.7. Sentences and other judicial matters

The following is a presentation of the results of judicial factors in the judgements, the verdicts, the application of aggravating circumstances according to article 22.4 of the criminal code and the crimes mentioned in the judgement. In addition, the sentences handed down are analysed, including the type of sentence, the length of the sentence, aggravating, attenuating or acquitting circumstances, complaints filed before the cases, adoption of precautionary measures, the presence of witnesses (their number and their view), whether or not there is a plaintiff, civil liability, requests for pardons and finally, whether there are acquittals and mistrials.

Verdict

Insofar as the verdict is concerned, as seen in table 4, 65% of the verdicts were guilty, 12% were acquittals, and 16% involved a combination of guilty and acquittal verdicts⁸. As indicated in table 4, only one case was dismissed.

⁸ This figure is not very representative given that most of the Provincial Court (Audiencia Provincial) sentences are at the second instance meaning, firstly, that there may be many acquitting first instance judgements that are never appealed, particularly because overturning the judgement is very difficult in cases of acquittal due to lack of proof. In the second instance, the declaration of proven facts cannot be revised without a new hearing. In addition, the percentage of appealed guilty rulings is higher than the percentage of acquitting rules which are over-represented if the judgements handed down in the first instance are not included in the sample.

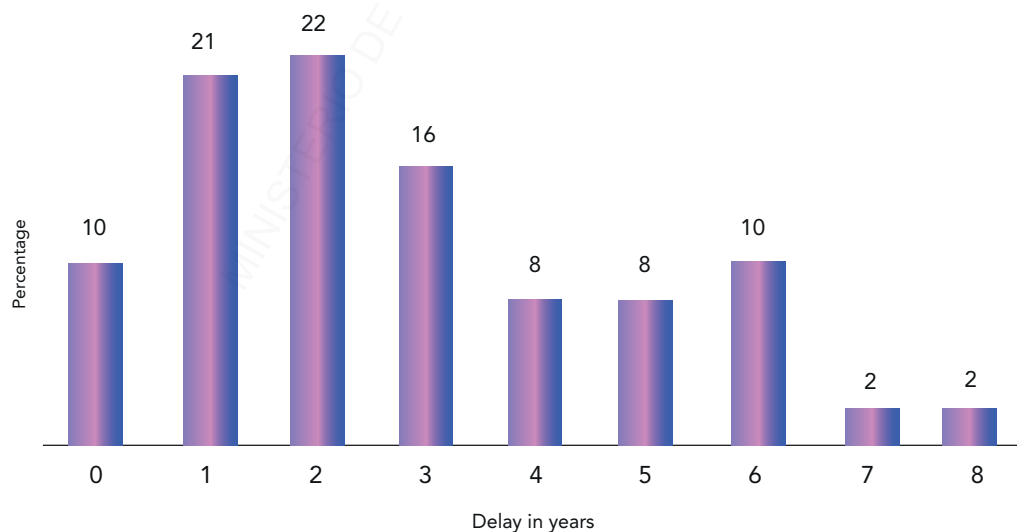
Table 4. Verdicts of hate cases

| | Frequency | Percentage |
|-----------------------------|-----------|------------|
| Acquittal | 12 | 12 |
| Guilty | 66 | 65 |
| Both | 16 | 16 |
| Dismissal | 5 | 5 |
| Failed appeal for dismissal | 1 | 1 |
| Revocation of dismissal | 2 | 2 |
| Total | 102 | 100 |
| N = 102 | | |

The delay of the judgement

The delay of the judgement refers to the time elapsed between the date that the crime was committed and the date of the judgement. Figure number 9 shows that in 53% of the cases, two years or less had elapsed between the occurrence of the crime and the court's decision. A two-year delay including a range of between 0 and 10 years was most frequent (22%).

Figure 9: Delay in years between the crime and the verdict (N = 97)



Aggravating circumstances set forth in article 22.4 of the criminal code

- The aggravating circumstance set forth in article 22.4 of the criminal code was only applied in 19% of the cases, mainly sexual orientation (31%), racial origin (26%) and ideology (19%)⁹.

Crimes mentioned in the judgement

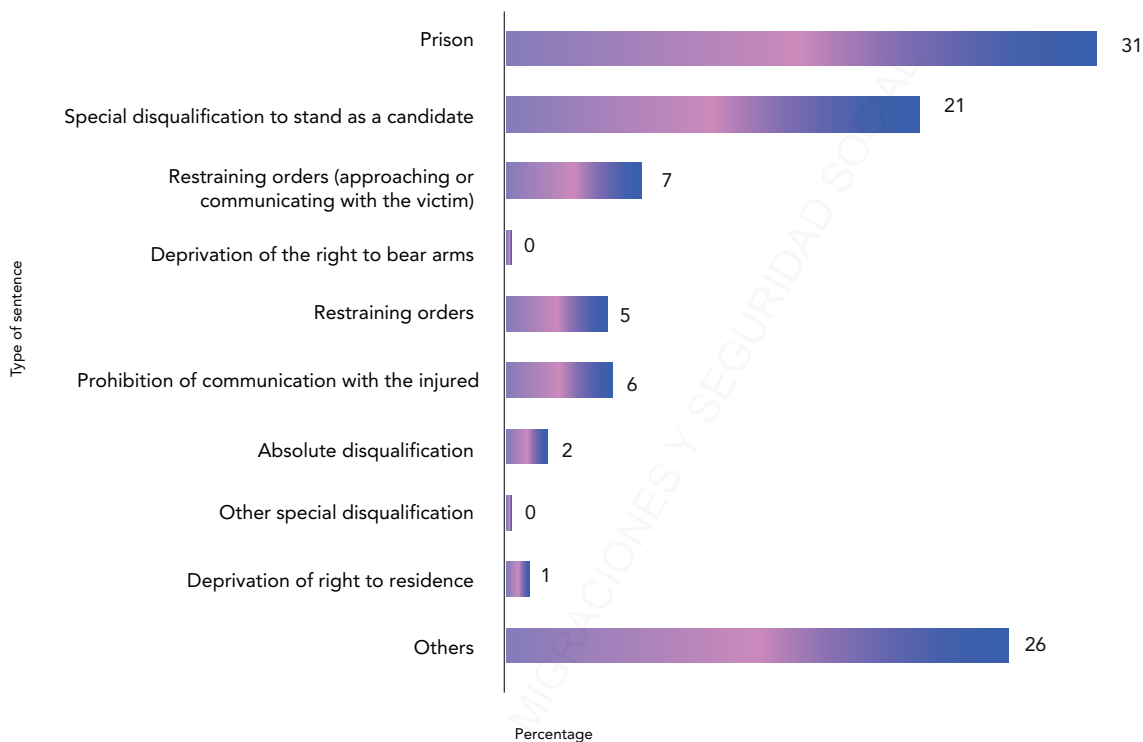
- The crimes most frequently found in the examined sample were crimes against moral integrity set forth in art.173.1 of the criminal code (12%), the offence of injuries mentioned in art. 617.1 of the criminal code (11.2%) and the offence of unfair degrading comments mentioned in art. 620.2 of the criminal code (9%).
- In hate crimes per se, crimes against moral integrity (as per art. 173.1 of the criminal code) were invoked the most.
- When breaking down the crimes found in the sample by crime or offence set forth in the Criminal Code, those most frequent are the currently repealed offences (27%), followed by crimes against moral integrity (17.4%), ill-treatment and injuries (15%), crimes against religious sentiment and threats, illegal detention and coercion (7%).

Sentences handed down in hate cases

- The number of sentences handed down ranges from 1 to 3. In 29% of the cases there was 1, in 17% there were 2, in 3% there were three, and in 21% there were more than 6. In 16% of the cases, there was an acquittal verdict.
- Prison sentences were the most frequent (31%), followed by special disqualification to stand as a candidate to be an elected official (21%) and restraining orders prohibiting approaching or communicating with the victim or the injured or damaged parties (7%). To a lesser extent, prohibition of the right to bear arms and restraining orders vis-à-vis the victim or the injured or damaged parties were handed down, as seen in figure 10.

⁹ This is without prejudice to the limitations that may prevent its application grounded on the principle of interference (art. 67 criminal code) applied in conjunction with the special part (ex. art. 510 criminal code).

Figure 10: Breakdown of sentences handed down to the accused in hate cases (N=325)



- The average duration of prison sentences is 2 years. Longer sentences have been handed down in cases involving hate motivated by ideology, race or ethnicity.
- The type of sentences handed down for hate motivation appear in table 5.

Table 5. Type of sentence by motivation

| Type of sentence | Intolerance or prejudice motivation |
|--|---|
| Prison | Religion, disability and ideology |
| Special disqualification to stand as a candidate to be an elected official | Disability, religion and aporophobia |
| Restraining orders (including communication) | Sexual orientation and ideology |
| Deprivation of the right to bear arms | Gender |
| Restraining orders | Aporophobia, gender and race or ethnicity |
| Absolute disqualification | Ideology |
| Special disqualification | Ideology |
| Fines | Gender, sexual orientation and ideology |

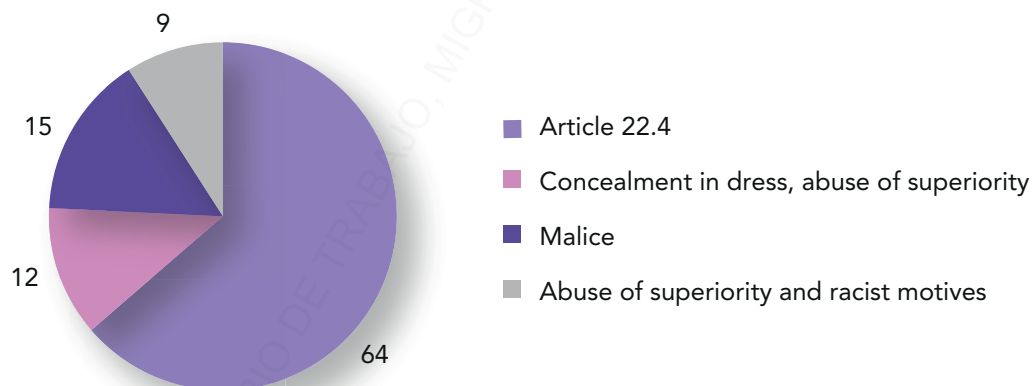
- In the sentences handed down, there are virtually no differences between the Spaniards and foreigners accused. Prison sentences are slightly higher among foreign nationals (31%) than they are among Spaniards (22%).

Aggravating, attenuating and exculpatory circumstances

- Only in 29% of hate cases have aggravating circumstances been applied, the most frequent of which being article 22.4 of the criminal code (64%), malice (15%) and concealment in dress and abuse of superiority (12%) and abuse of superiority and racist motives (9%).

The aggravating circumstance set forth in article 22.2 of the criminal code (concealment in dress, abuse of authority...) has been applied in ideologically motivated hate cases, while malice has been applied in cases motivated by sexual orientation (figure 11).

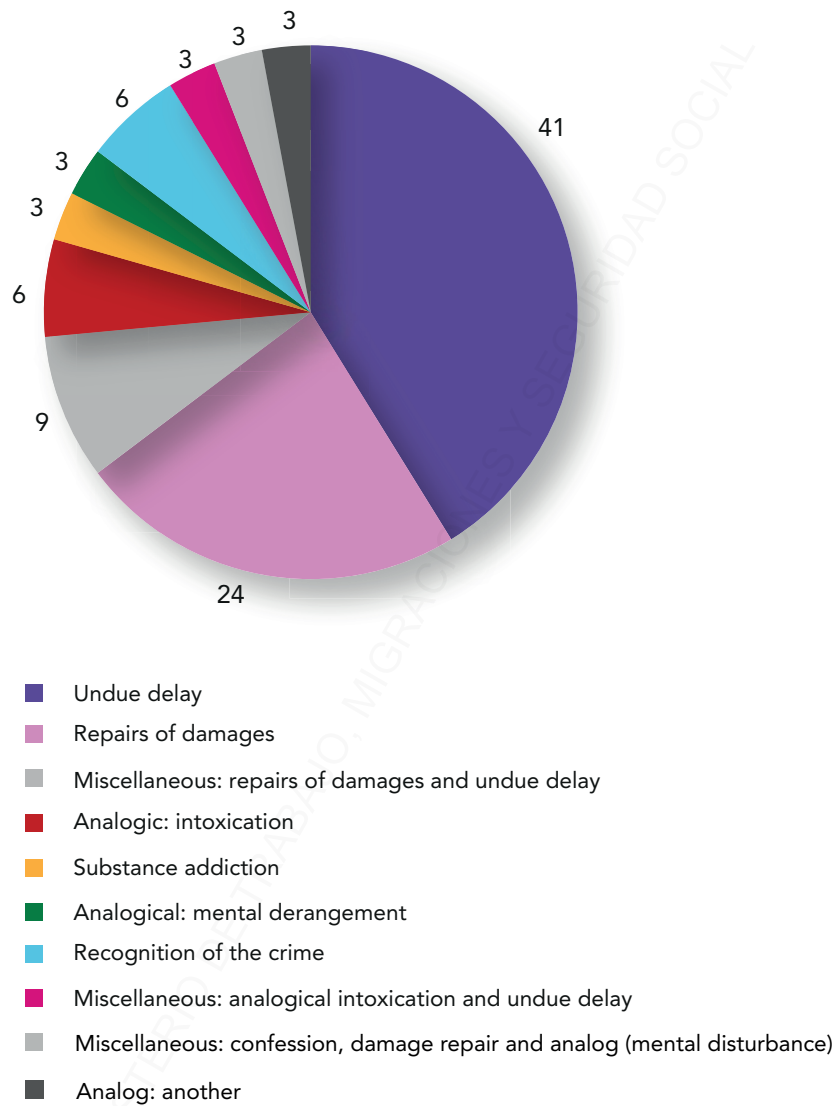
Figure 11: Breakdown of aggravating circumstances in the sample of hate cases¹⁰ (%) (N = 33)



- Attenuating circumstances were only applied in 30% of the cases, mostly undue delay (41%), reparation of victim damages (24%) and both (9%), as indicated in table 12.

¹⁰ The superiority and racist motive category refers the concurring of these aggravating circumstances, set forth in articles 22.2 and 22.4 of the criminal code.

Figure 12: Breakdown of attenuating circumstances in the sample of hate cases (%) (N = 33)



The following results are obtained from applying the attenuating circumstances broken down by motivation for intolerance and prejudice:

- The attenuating circumstance of substance addiction was mainly applied in cases of discrimination due to racial or ethnic origin.
- The attenuating circumstance of mental derangement was applied in cases of hate due to sexual orientation.
- The attenuating circumstance of alcoholic intoxication is applied in gender motivated cases, and undue delay was applied in cases motivated by disability and race or ethnicity.
- Reparation of damage was applied in cases of aporophobia as well as those motivated by ideology.
- Only in 4 cases were **exculpatory** circumstances applied, specifically psychological derangement and full intoxication.
- In 23% of the cases analysed, there had been **prior complaints** lodged, and in most of these instances, the complaints were lodged by a person unknown to the accused. These prior complaints were lodged most often in cases of discrimination on religious grounds, or on the grounds of race or ethnicity or ideology.
- The **precautionary measures** applied (in 25% of the cases) were mainly: pretrial detention of the accused (54%), confiscation of weapons (15%) restraining orders prohibiting approaching and/or communicating with the victim (15%) and his or her family members. These precautionary measures usually lasted up to one year.
- **Preceding measures or sentences had been taken or handed down** in 50% of the cases, mostly in hate cases where the aggravating circumstance in article 22.4 of the criminal code was applied.
- In 49% of the cases (N= 53) there were **eye-witnesses** and most often there was 1 witness.
- Regarding the accusations, these were most often made in person at the offices of public institutions (39%) and there was a combination of a private accusation and public prosecution (32%).
- In 15% of the cases, the accused was sued for **civil liability**.
- There was only one case in which the jury gave a **pardon** and the judgement was in favour of that pardon.
- **Acquittal** came in 12% of the cases, on two types of grounds: failure to determine and/or prove the charges; and the classification of the facts involved in the alleged crime or the application of substantive criminal legislation.

5 Conclusions of the study and limitations of the methodology and procedure used

Limitations of the official judicial decision database: This study, and all of those that have used judicial decisions as a source of data, entails a structural problem insofar as accessing the total universe of judicial judgments or decisions handed down in Spain. The existing databases include many of the judicial decisions (the percentage of which is not known) but mainly include only those handed down by collegiate bodies.

Limited access to judicial decisions involved in the same case: This conclusion is linked to the previous one. Because the entire universe of decisions cannot be accessed, neither is possible to access all the judicial decisions involved in the same crime or case. In this study, we have used the case as unit for the analysis. We initially intended to gather all of the resolutions involved in the same case in order to have the maximum amount of information available, but this was not possible in most instances.

Despite this, we consider **the sample analysed to be representative** of hate cases occurring in Spain that have been denounced and tried during this period of time (2014-2017).

Incomplete information regarding some of the variables of the established facts: Due to personal data protection, the analysis of the judicial decisions has limitations, particularly regarding the personal information about the accused and the victims. Age is the most difficult variable to identify (as it is present in only 5% of the cases) but there is also scant information about aspects as significant as when the crime took place and the countries of origin of the accused and the victim.

Appropriate procedures and methodology: The procedure and methodology used in this study is the most appropriate for gathering information on judicial decisions. The data collection sheet and selection of variables to generate the database can be replicated for other studies after having adapted the subject and crimes to be analysed. Also, the variables gathered give us a sample of the information available in judicial decisions and the extent to which we can gather information.

Complexity of the databases: Generating databases for this study was far more complex than expected. The issue that caused the greatest difficulty was the diversity of the crimes and the diversity of sentences that can be handed down to each accused person in each hate case.

Because some **judgments have been rendered anonymous**, not all the crimes can be linked to a perpetrator. This made it impossible to analyse the crimes or sentences per person accused and to identify whether any person accused is repeated in the sample, meaning that the crime or sentence corresponds to the same individual.

Limitations of the description subsequent to the 2015 reform of the criminal code.

For this study, in order to gather and analyse data, we took into account the list of crimes included in the amended articles of the Criminal Code enacted by Organic Law LO 1/2015, of 30 March amending the Criminal Code Organic Law 10/1995, of 23 November. But we were unable to run any comparative analysis of the status before and after the amendments of the Criminal Code. Given that it takes an average of two years before the trial, and the amendments came into force on 1 July 2015, only 13 hate cases were found occurring after that date, of which we only have judgements for 9. With this small sample, the effects of the amendments on the Criminal Code cannot properly be assessed. Therefore, a study on the impact of the reform of the Criminal Code should be done in the next years.

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