The Federal Anti-Discrimination Agency’s research projects at a glance:
Options for efficient law enforcement in cases of hate crime

Overview of the expert opinion

The examination, in the Bundestag, of the series of murders committed by the so-called 'National Socialist Underground' revealed the existence of a lack of sensitivity among Germany’s law enforcement authorities when faced with criminal acts the motives for which might be based on prejudice. The need for action noted in this connection was the starting point for the legal expertise 'Options for efficient law enforcement in cases of hate crime', which was conducted by Professor Dieter Kugelmann from the German Police University in Münster on behalf of the Federal Anti-Discrimination Agency (FADA).

This legal expertise offers an overview of the possibilities for pursuing hate crime that exist within the German legal system. It provides good examples of and concepts for increasing the efficiency of law enforcement in cases of prejudice-motivated crime, and the prevention thereof. To this end, the term of 'hate crime' is, first of all, defined. The legal foundation for the prosecution of hate crime in Germany, both at Land and at Federal level, is described in the expert opinion. This foundation is then used to illustrate the differences in comparison with the prosecution of hate crimes in other European countries. The expert opinion concludes by offering recommendations to improve the situation of hate crime prosecution in Germany, at both the legislative and the institutional level.

Authors, title and publication year of the expert opinion
Prof. Dr. Dieter Kugelmann: 'Options for efficient law enforcement in cases of hate crime' (2015).

The results

Understanding the term

- The term **hate crime** covers criminal offences that are directed against a person or an object simply or primarily because of group characteristics shared by this person or the owner of the object, in particular for reasons of political affiliation, nationality, ethnic origin, on grounds of race, skin colour, religion, world view, origin, sexual orientation, disability, external appearance or social status.
- Hate crime is characterised both by the motivation of the perpetrator and by the victim’s perspective. In criminal law, it is decisive that the act is motivated by reasons that go beyond the personal damage done to the victim, and that this act is linked to specific characteristics pertinent to the victim. It can be assumed that the choice of the victim, who possesses specific characteristics, is meant to elicit a reaction in society.
Protection from hate crime in the Basic Law
The prosecution of hate crimes can be inferred from the protective duties of the state that are provided for in the Basic Law. These include, above all, the protection of human dignity (Article 1 (1) of the Basic Law), the right to the free development of one's personality (Article 2 (1) of the Basic Law) and combating discrimination (Article 3 (1) of the Basic Law).

Legal provisions against hate crime at Federal and Land level
Criminal law offers sufficient basis for prosecuting hate crime. This also includes the legislative initiative to introduce the current Section 46 subsection 2 of the Criminal Code, under which sentencing must explicitly give consideration "in particular to the motives and aims of the offender where they are of a racist or xenophobic nature or where they show contempt for human dignity". There is no need for further action on the part of the legislator. Criminal law and criminal procedure law contain sufficient tools for the prosecution of hate crime. However, it is the Laender that are responsible for the organisation and management of the police authorities. Within this framework, they are called upon to establish rules for the effective implementation of federal criminal laws by their authorities.

Potential for action in existing administrative practice
Essential factors for success in the fight against hate crime therefore lie at the implementation level and in administrative practice, which is directed towards implementation and enforcement of the statutory provisions. The prosecution of hate crime can be improved by subjecting it to increased observation and by awarding it greater weight when criminal legislation and the Code of Criminal Procedure are applied. For this level of implementation, first and foremost, the internal police classification of a crime as a hate crime is relevant. However, within the existing Criminal Police Reporting Service for Politically-Motivated Crime (Kriminalpolizeilichen Meldedienstes über politisch motivierte Kriminalität (KPMD-PMK)) a clear and uniform classification of a criminal act as hate crime does not appear to be guaranteed sufficiently. Additional measures, such as the appointment of special police contact persons for homophobic acts of violence, for example, differ widely from one Federal Land to another and are, consequently, not guaranteed in a uniform manner.

The author's recommendations for action

(1) Administrative regulations should be issued, accompanied by the explicit recommendation to the public prosecution offices that, in the event of a hate crime, the special public interest in criminal prosecution under material criminal law, for example pursuant to Section 230 of the German Criminal Code, as well as the public interest that runs counter to a discontinuation of proceedings pursuant to section 153 of the Code of Criminal Procedure, must generally be affirmed.

(2) The creation of mechanisms for targeted data acquisition and a simplified procedure for coordinating the pertinent data between the police and the public prosecution offices.

(3) The setting up of a 'contact person for hate crime' at the state protection departments of the police, as well as the expansion of their powers beyond politically motivated crime to include hate crime.

(4) Expanding the administrative powers of the KPMD-PMK to include the independent category of hate crime, especially in order to increase the awareness of first contact police officers.
(5) Greater inclusion of the topic of hate crime in the training and further training efforts of the law enforcement and criminal justice system.

(6) Increased cooperation between the authorities and civil society in order to build confidence, while differentiating among the contact persons and the latter's' cooperation within a network, whereby the communication channels of the crime prevention councils could be used.

(7) Supplementing the Federal Republic of Germany's National Action Plan to combat racism, xenophobia and anti-Semitism to include the specific topic of hate crime.

(8) Creating the obligation to draw up an annual national report on hate crime in the Federal Republic of Germany.

More information:

The expert opinion 'Options for efficient law enforcement in cases of hate crime' is available => here (German language only).

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