

Abstract: Hatecrimes in Denmark – An analysis

The purpose of this study from the Danish Institute for Human Rights (DIHR) is to analyse how hate crimes are handled in Denmark and to assess whether the procedures that have been developed by the police, the prosecution and the courts ensure effective protection against hate crimes.

The study shows that legal protection against hate crimes in Denmark is not effective. The report therefore also forwards recommendations that hopefully can help to show the way to effective protection against hate crimes.

The term ‘hate crime’ is internationally interpreted as covering criminal acts – most often violence – motivated by prejudice and hatred based on the victim’s gender, race, ethnicity, religion or faith, sexual orientation or disability.

In the Danish context, hate crime is associated with article 81, no. 6, of the Criminal Code, according to which there is an aggravating sentencing clause in cases, where a crime is motivated by prejudice and hatred based on the victim’s race, ethnicity, faith, sexual orientation or similar.

The study contains a review of Danish law and case-law, as well as of relevant EU law and human rights obligations. It also contains a description of the practice of the police and the prosecutors in this field as well as an analysis of NGOs’ and victims’ perceptions of this practice.

The study builds on qualitative interviews with the police and the prosecutors at various levels in two police districts, as well as on interviews with a number of NGOs. The interviews were conducted from September 2009 till September 2010. Besides the qualitative interviews, a description of the relevant procedures is provided and documented through questionnaires sent to all police districts in Denmark.

The study does not focus on the prevention of hate crimes in Denmark. However, it should be emphasized that although an effective criminal law is seen to have a general deterrent effect, dedicated crime preventive efforts should still be undertaken. This is fundamental in relation to combating hate crimes.

Main results of the analysis

EU and international human rights law impose a set of minimum obligations on the Danish authorities that places demands both on the Danish regulation of hate crimes and on the Danish authorities’ practice in this field.

This is especially the case with respect to hate crimes motivated by the victims’ race or ethnic origin. According to the EU Framework Decision on Combating Racism and Xenophobia and the Convention on the Elimination of Racial Discrimination, the Danish government is obliged to have a provision in the Danish Criminal Code according to which racially motivated crimes are sentenced with aggravating circumstances. Under the Convention on the Elimination of Racial Discrimination, the Danish government is also committed to guarantee access to effective remedies to the victims of hate crimes. In addition, the equality principle formulated in Article 14 of the European Convention on Human Rights commits the Danish government to investigate and prosecute possible hate motives for crimes which constitute a violation of human rights.

As far as state action against hate crimes is concerned, the Committee on the Elimination of Racial Discrimination and the OSCE at large recommend that information be broadly disseminated about the right not to be subjected to a hate crime, and about the possibility of reporting hate crimes to

the police. In addition, it is recommended that the police, the prosecutors and the judges are trained in handling hate crimes, and that data collection on hate crimes should be implemented by these actors. It follows from article 81, no. 6, of the Danish Criminal Code that there is an aggravating sentencing clause in cases, where a crime is motivated by prejudices and hatred of the victim's ethnicity, faith, sexual orientation or similar. However, this provision is unclear as far as the protected categories are concerned. It cannot be said with certainty whether "sexual orientation or similar" covers e.g. gender identity, including hate crimes against transgender persons, or affiliation to other specific groups.

The number of hate crimes in Denmark is unclear and the statistical accounts and inquiries point to different results.

Reported hate crimes are recorded regularly by the Police Intelligence Service (PET). In addition, surveys of victims are made by the Research Unit of the Ministry of Justice. These data reveal a large discrepancy between the extent of hate crimes experienced by individuals, and the actual number of reported hate crimes. The study shows that this is due to a number of causes. The interviewed NGOs and individuals, who had experienced being victims of a hate crime, refer both to a lack of trust in the benefit of reporting such hate crime to the police, as well as to a fear that reporting the crime will have personal consequences for them. They also express a lack of knowledge about their rights and about what would be regarded as a criminal offence by the police. In addition, the interviews with the police and NGOs suggest that cases that are investigated as hate crimes are not always recorded as such by the police, and thus do not figure in the official statistics on hate crime.

Concerning the reporting of potential hate crimes, the interviews with NGOs, victims and the police show that refusal by the police to register complaints of hate crime does occur. As far as the investigation and the prosecution are concerned, declarations by the police and the prosecutors show that there are several challenges associated with securing evidence in hate crime cases. Difficulties can especially occur during the investigation if there is, from the start of the investigation, an insufficient focus on a possible hate crime. Potential hate crimes are therefore, in some cases, treated as ordinary criminal cases.

Interviews with the police and the prosecutors in two police districts also show that awareness of the Danish Criminal Code's article 81, no. 6, varies within the police. Both the police and the prosecutors believe that an increased awareness of hate crimes could lead to more cases being detected and handled as hate crimes and, consequently, that there is a need for capacity building in this area both within the police and the prosecution office.

However, the study also shows that there is already a growing focus on, and awareness of, hate crimes among the police, the prosecutors and the NGOs. In addition, a number of positive developments in the field can be registered, including training of police, various campaigns and a contact system specifically targeting homosexuals, who want to report hate crime.

Regarding case law on hate crimes, the study shows that it can be extremely difficult to determine the volume of criminal cases dealing with hate crimes. In 2007, the prosecution service established a temporary registration system of judgements in cases involving criminal offences committed on account of the victim's race, colour, national or ethnic origin, religion or sexual orientation. During the period, a total of 10 judgements were Registered. Since this special registration system for the year 2007, no separate system for registration of cases in which article 81, no. 6, is invoked and / or applied by the courts, has been established. It is therefore in principle only possible to find case law on hate crimes, if one is aware of the cases in advance.

A review of the sparse case law indicates that hate crimes mostly occur in the form of violence on the street, that the perpetrator(s) and victim(s) do not know each other prior to the crime, and that the violence occurs without any provocation from the victim's side. The case law also shows that the primary evidence of a hate motive is the words/insults pronounced by the perpetrator about the victim's ethnic background or sexual orientation during the commission of the crime. Where such words/insults have been documented as evidence, the courts conclude on the existence of aggravating circumstances in the case when deciding on the sentencing of the perpetrator.

The analysis of the case law indicates also that it may be difficult to assess solely from the written judgements whether or not article 81, no. 6, has been invoked by the prosecution, and what the court's assessment of its application has been during the examination of the case.

To conclude, the study contains a summary of the problem areas that have been identified as well as concrete proposals for consideration in relation to strengthening the handling of hate crimes in Denmark.

The most central recommendations are:

- To provide information on hate crimes through a systematic collection of data from police, prosecutors and courts as well as through research.
- To clarify further which discriminatory motives are covered by article 81, no. 6.
- To promote reporting of hate crimes to police through a nationwide effort to raise knowledge of hate crimes, rights and remedies.
- Reinforcement of the efforts of the police through the undertaking of systematic efforts in all police districts.
- Improvement of the registration of cases by the courts.
- Establishment of a permanent incident reporting scheme
- Identification of initiatives for crime prevention. Among others implementation of information campaigns on respect for fundamental rights.