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The Duties and Role of the Police in Combating Hate Crime

A Praxis-Oriented Discussion from a German Perspective

The Duties of the Police

In democratic societies, the duties of the police are defined in law. In Germany, the code of criminal procedure (*Strafprozessordnung*) defines them in relation to law enforcement, and the police acts (*Polizeigesetz*) of the various *Länder* define them with regard to public security. In addition, whether, where, and when the police are required to perform their duties are further defined by the law relating to petty offences (*Ordnungswidrigkeiten*) and related regulations defining jurisdiction, ordinances (*Verordnungen*), implementing provisions (*Ausführungsbestimmungen*), decrees (*Erlasse*), and ministerial orders. Finally, court rulings are constantly being made in an effort to eliminate or reduce vagueness in rules and determinations of scope of action.

This is a highly simplified representation of the extremely complex legal environment in which the police perform their everyday work. And yet, as representatives of state authority, the police are required to make decisions – often spontaneously, preferably without errors, and based on law – on an everyday basis, and these decisions are not always accepted by all members of society. For instance, it is hard to explain why the police should accompany a demonstration by a far-right group and protect it – why they are required to protect it – from attacks by counter-demonstrators if it is registered with the authorities and conducted in an orderly manner. Media reports of such events then mention injured police officers, arrests of “leftists”, and smashed window panes. Cause and effect seem to have been reversed, and yet the police were only carrying out their allotted tasks in accordance with the law. It would be easy to wrongly conclude that the state here has protected the wrong side. The following discussion will demonstrate just how absurd that is.

What is Hate Crime?

In Germany, responsibility for controlling criminality, including hate crime, lies with the interior ministers of the *Länder* and with the German minister of the interior. To ensure standardized procedures – specifically with regard to law enforcement and public security – common regulations are adopted, as in

the case of the Politically Motivated Crime Definition System (*Definitionssystem politisch motivierte Kriminalität*¹) that was developed by the Federal Criminal Police Office (*Bundeskriminalamt*) for the federal republic and the *Länder*.

The term “hate crime” describes politically motivated crimes² an appraisal of whose circumstances³ and/or the attitude of whose perpetrator provide evidence that they were directed at a person on account of his or her nationality, ethnicity, race, colour of skin, religion, origin, external appearance, the presence of a disability, sexual orientation, or social status (lack of) and where the criminal act is causally related to this or is directed at an institution, property, or other object in the same causal relationship. In simple terms, a crime is a hate crime when a crime is committed and the objective and subjective criteria apply or can be assumed to apply to the perpetrator.

The legal framework and related regulations governing questions of fine detail provide the police with the necessary means of investigating cases identified as hate crimes and establishing the basis for prosecution. This very framework, however, makes it clear that only behaviour that could lead to criminal proceedings can be considered a case of hate crime, while other acts motivated by hate are not documented in this category and are of no concern to the police. While it is clearly discrimination when a landlord immediately tells a potential tenant that he is not getting the lease because of the colour of his skin, from a legal point of view this is not criminal, and therefore not a case of hate crime. Discrimination by itself is not a criminal offence, although it can amount to one in certain manifestations, e.g. when used as an insult.

The Role of the Police in Combating Hate Crime

As the above example shows, in their everyday work the police are required to use existing legal provisions to evaluate the behaviour of individuals and decide on appropriate actions. But the real-life situation is not always as transparent and unambiguous as in the above example. If we were to only slightly change the circumstances in the example so that the landlord also made an insulting comment, intended to make it clear to the potential tenant that his skin colour was the reason for his rejection, that would be a case of politically motivated crime, and it would be recorded as a hate crime.

If the police receive information of an incident of this nature, they are required to investigate it – to gather all the relevant facts, to take statements, to interview witnesses, and to acquire any other relevant evidence necessary to initiate criminal proceedings and ultimately to hand all this on to the public

1 Bundeskriminalamt, “Definitionssystem PMK”, 3 August 2004, pp. 8ff.

2 Cf. *ibid.*, pp. 5ff.

3 The investigative activities undertaken by the police are crucial in this respect.

prosecutor for evaluation. This is where the role of the police begins, or, more precisely, where one of their roles begins.

Hate crime thus presents itself to police officers in the field not as a clearly defined offence contained in the criminal code, but is rather revealed as a complex behaviour, which it is the task of police officers on the ground to identify. As well as evidence of the basic criminal offence, it is also necessary that the political motivation of the perpetrator be evident or clearly deducible from the way the crime was committed. Only then is it possible to take (and succeed with) further steps (punishment, entry into criminal statistics, prevention).

Hate crime does not terminate with a procedure at the public prosecutor's office or in the courts, and the introduction of criminal proceedings by no means amounts to victory over this kind of discrimination. There are far too many types of "hatred" and, as is well known, the real-life situations that arise cannot always be regulated by means of criminal laws designed to deter.

In its first country report on Germany, which was published in 1998, the European Commission against Racism and Intolerance (ECRI) notes: "The police response to attacks on members of minority groups seems to have improved considerably over the past two years. Nevertheless, many minority groups still seem to feel that they cannot rely on the police for protection."⁴

While it is not my intention to write a socially critical analysis of the reasons for this, it may nonetheless certainly be assumed that social change, migration policy, evolving attitudes towards lifestyle choices, shifting values, etc. lead to the transformation of social norms⁵ and with them the reaction of the state to the sorts of real-life situations that prevail "on the ground". While the police may today take steps against a husband in a case of domestic violence and may issue a protection order banning him from his own home, this would have been unthinkable in times when German housewives were still receiving instruction from etiquette manuals on how to receive their husbands home after a hard day's work.

Here, we must also not omit to note that the police are increasingly required to perform the work of mediators and helpers in all sorts of situations, something that has a not inconsiderable impact on the question of resources in daily relations between police and citizens.

4 European Commission against Racism and Intolerance, *ECRI's country-by-country approach: Report on Germany*, Strasbourg, March 1998, at: http://www.coe.int/t/e/human_rights/ecri/5-Archives/1-ECRI%27s_work/1-Country_by_country/CBC1-Germany.pdf

5 An example is the changing attitude to homosexuality. In 1994, section 175 of the German Criminal Code was abolished. Some 140,000 men had been condemned under various versions of this clause (source: http://de.wikipedia.org/wiki/§_175).

What Significance Does This Have for the Application of Rules to Combat Hate Crime and Does the Role of the Police Change Here, too?

Of course, as definitions of criminal offences are adapted in law with the fundamental aim of optimizing the ability of people to live together in a society, the reaction of the police to a given offence may also change significantly. What does not change is the role that the police play within the society.

However, these reform processes do not occur overnight. It takes training and education, awareness raising among the organs of the criminal justice system, and changes to curricula to first create the conditions that will enable the goals set by the legislature to be met. This process is inevitably accompanied by continually changing priorities in the everyday work of the police. Ultimately, however, investigations by independent organizations tend to speak clearly in indicating where opportunities for improvement may still be found and also whether minorities feel that their views are being adequately taken into consideration.

Incidentally, in international comparison, the record of the German police in combating hate crime stands up to scrutiny well.

Other relevant topics in relation to the phenomenon of hate crime are the documentation and statistical recording of cases, and the publication of trends based on statistical data. The responsible police body in each region classifies crimes reported to it, organizes this information and passes it on in the form of structured datasets to the office for criminal investigation in the relevant *Land* (*Landeskriminalamt*). Here, data for the entire *Land* is collected and processed, and this, in the form of tables and graphics, serves as the basis for public statements, press conferences, annual reports, and other documents produced by the politician responsible for security at the *Land* level (the interior minister of the *Land*). The various offices for the protection of the constitution in the *Länder* (*Landesbehörden für Verfassungsschutz*) also receive this information from the regions and publish annual reports in which they draw their own conclusions. This procedure is in principle identical in each German state; at the national level, the minister of the interior carries overall responsibility.

On request at one of the *Landeskriminalämter*, statistical data is also made available for academic studies. The hope is that knowledge gained in this way may lead to the development of crime policies or strategies that could reduce the phenomenon.

Thus, following the local processing of cases, data analysis at regional and/or state levels, the publication of this data and the reactions of political groups (and hence public opinion in general), a kind of feedback loop is created, one of whose functions is to answer the following question: "Do we have a problem with the phenomenon and, if so, what do we intend to do about it?" This closes the loop, which will also always encompass the urgent

desire to do something to combat the phenomenon before another “incident” occurs. Attempts to address this danger also fall within the spectrum of police duties as aspects of the task of upholding public safety and security.

In order to ensure that the activities of the police are consistent across the entire state, their procedures are regulated, for instance by ministerial decree. However, initiatives undertaken by individual police forces to tackle known problems have also proven themselves as a means of approaching an issue such as hate crime. One such example is the GIRAFFE project,⁶ which was introduced at the police headquarters in Münster at the start of 2000 to run for several years, and one of whose targets was hate crime.

A Ground-Level Look at a Project to Target “the Right”

An officer from the police agency responsible for hate crime in the region of Münster (North Rhine-Westphalia) spent three hours talking to year nine and ten pupils on civil courage, the meaning of forbidden insignia, the danger of music as a “gateway drug”, and ways the far right scene is known to try to encourage young people to join – as well as opportunities to get out.

He used video and music clips, illustrative material, and many real-life items to encourage the children to engage with the topic of contemporary right-wing extremism. Statistics on hate crime published by the *Landeskriminalamt* of North Rhine-Westphalia in 2006 revealed that the far right accounts for more than 90 per cent of cases. This very clear statement underlines that it is necessary for the police to remain intensively involved in right-wing extremism in the field on a day-to-day basis. This cannot, however, be a task for the police alone; other actors in society also need to become involved in preventive activities. From courageous individual citizens in specific local situations (solidarity with the victim) up to international organizations such as the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), there are all sorts of conceivable forms of action against racism and discrimination.

Here, the police, who with their considerable experience and knowledge of both victims’ and perpetrators’ issues are directly involved in cases before charities, victims’ groups, the media, or politics even hear of them, have an integrative role to play. Leaving aside political responsibility, which is the task of interior ministers in the *Länder* and the heads of local police authorities, the police are in great demand as partners for the exchange of information on developments in criminality, including politically motivated crime. To the extent that they are able, the police are also responsible for the propagation of information, which is both necessary and serves a cautionary pur-

6 The name is an acronym of the German name: *Gegen Intoleranz Rassismus Antisemitismus Faschismus Fremdenfeindlichkeit Extremismus* [Against Intolerance, Racism, Anti-Semitism, Fascism, Xenophobia, and Extremism].

pose: They advise the victims and are the first to show them understanding; they speak to the perpetrator and warn against a repetition of the act (“preventative conversations”⁷); they interpret statistical tables and advise on the trends they detect; they advise politicians, and act as contacts for the media (to the extent that they receive political authorization to do so); they attend expert meetings and conferences,⁸ and develop programmes and initiate projects and “partnerships for order” that aim both to investigate known flash-points and to protect against further dangers; and they carry out training measures among their own numbers designed to spread specialist knowledge as broadly as possible.

From the perspective of the police, “preventative conversations” are a very promising means of letting a newcomer in the far-right scene know that society – here represented by the police – will not tolerate such aberrant behaviour and will not turn a blind eye – neither at a forthcoming football match, nor at an impending demonstration. It should not be considered intimidation on the part of the state, but rather as a means of making a potential lawbreaker aware of the law and advising him to remain on the right side of it while letting him know that he has been identified as someone with the potential to commit a criminal act. Removing the shield of anonymity that a potential perpetrator may believe protects him is effective and can set limits to human behaviour. And yet this effectiveness is neither measurable nor predictable – although this is well known in the field of prevention.

The latest “Report on the Protection of the Constitution” of North Rhine-Westphalia has the following to say about dealing with young adults in general:

To the extent that perpetrators could be identified at all, it appears that they were frequently not active in far-right circles. For instance, such acts are frequently no more than acts of provocation on the part of young people. In view of this finding, ongoing efforts to combat right-wing extremism therefore need to be expanded by means of intensive efforts to raise awareness among young people who are not involved in right-wing activities.

They need to be shown clearly that a swastika daubed on a wall is not merely a “successful provocation”. It can be perceived as highly threatening by certain groups of people and may create an impression that right wing groups have general support in our society [...]⁹

7 The police also speak to individuals they have identified as potential perpetrators of crimes not yet committed and attempt to dissuade them from acting as predicted. The aim of this preventative legal procedure is to make a strong appeal to potential lawbreakers.

8 OSCE events, such as the *Tolerance Implementation Meeting: Addressing the Hate Crime Data Deficit*, held in Vienna on 9-10 November 2006, and other anti-racism conferences.

9 *NRW Verfassungsschutzbericht 2006* [Report on the Protection of the Constitution of North Rhine-Westphalia 2006], at: <http://www.im.nrw.de> (author's translation).

Conclusion

With the procedures described here, which would of course be immeasurably more complex in the real world, it would be possible to meet society's requirement for protection and anti-discrimination adequately and to tackle the phenomenon of hate crime with long term success... if it wasn't for the human factor.

Albert Einstein remarked pertinently: "The world is a dangerous place to live, not because of the people who are evil, but because of the people who don't do anything about it."

Let us therefore take our role seriously.