

Hate crimes and their handling in the criminal process



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Processing of hate crimes in the criminal procedure

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Abstract	<p>This study investigates how hate crimes are identified at the different stages of the criminal procedure; how the suspicion of a possible hate motive is relayed from the police to the prosecutor; and how it affects the severity of the sentence. Hate crimes reported to the police in 2017 were followed up as cases progressed from pre-trial investigation to the prosecutor, ending up in district courts.</p> <p>The corpus consisted of two main categories of hate crime: cases in which an increase of the severity of the punishment was requested by the prosecutor on grounds of a hate motive, and cases in which a hate motive fulfils the essential elements of the crime. Among the cases studied, final judgements had been issued for 92 hate crimes by district courts by March 2021. In 12 cases, the severity of the punishment was increased because of a hate motive. A hate motive was part of the elements of the punishment in 80 hate crimes with a final ruling.</p> <p>The study found shortcomings in the identification and processing of hate motives in the criminal procedure. It is proposed, among other things, that it should be compulsory to code certain reports of offences as hate crimes and that collaboration in criminal investigation should be intensified and the instructions on police interrogation updated.</p> <p>The author assumes full responsibility for the content of this publication. The views presented are not necessarily representative of those of the European Commission, the funder of the Facts against Hate project, or the positions of Finland's Ministry of Justice.</p>		
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Viharikokset ja niiden käsittely rikosprosessissa

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Tiivistelmä	<p>Selvityksessä tarkastellaan sitä, miten viharikokset tunnistetaan rikosprosessin eri vaiheissa, miten tieto mahdollisesta vihamotiivista välittyy poliisilta syyttäjälle ja miten se vaikuttaa tuomioon. Selvityksessä on seurattu vuonna 2017 poliisin tietoon tulleita viharikoksia esitutkinnasta syyttäjälle ja käräjäoikeuteen.</p> <p>Selvityksen aineistossa viharikoksia oli kahta päätyyppiä: sellaisia, joissa syyttäjä oli vaatinut rangaistuksen koventamista vihamotiivin vuoksi ja sellaisia, joissa vihamotiivi kuuluu rikoksen tunnusmerkistöön. Aineistoon kuuluvista tapauksista käräjäoikeus oli antanut maaliskuuhun 2021 mennessä langettavan tuomion 92 viharikoksesta. Vihamotiivin vuoksi rangaistusta kovennettiin 12 tapauksessa. Vihamotiivi kuului rangaistuksen tunnusmerkistöön 80 langettavaan tuomioon johtaneessa viharikoksessa.</p> <p>Selvityksessä havaittiin, että vihamotiivin tunnistamisessa ja käsittelyssä on puutteita rikosprosessissa. Ratkaisuksi ongelmiin esitetään mm. viharikosluokituksen pakollista käyttöä rikosilmoituksen kirjauksen yhteydessä, esitutkintayhteistyön tehostamista ja poliisin kuulusteluohjeistuksen päivittämistä.</p> <p>Julkaisun sisällöt ovat täysin tekijän vastuulla, eivätkä ne välttämättä edusta Tiedolla vihaa vastaan -hanketta rahoittavan Euroopan komission tai oikeusministeriön näkemyksiä.</p>		
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Hatbrott och behandlingen av dem i en straffprocess

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Utgivare	Justitieministeriet		
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Språk	engelska	Sidantal	117
Referat	<p>I utredningen granskas hur hatbrott identifieras i olika skeden av straffprocessen, hur information om eventuellt hatmotiv förmedlas från polisen till åklagaren och hur detta påverkar domen. I utredningen har man följt upp de hatbrott som 2017 kom till polisens kännedom från förundersökningen till åklagaren och tingsrätten.</p> <p>Det fanns två huvudtyper av hatbrott i utredningsmaterialet: sådana där åklagaren hade krävt straffskärpning på grund av hatmotiv och sådana där hatmotiv ingår i brottsrekvisitet. I de fall som ingick i materialet hade tingsrätten före mars 2021 meddelat en fällande dom för 92 hatbrott. Straffet skärptes på grund av hatmotiv i 12 fall. Hatmotiv ingick i straffrekvisitet i 80 hatbrott som ledde till en fällande dom.</p> <p>I utredningen konstaterades att det finns brister i identifieringen och behandlingen av hatmotiv i straffprocessen. Som lösningar på problemen föreslås bland annat obligatorisk klassificering av hatbrott i samband med registrering av polisanmälan, effektivisering av förundersökningssamarbetet och uppdatering av polisens anvisningar om förhör.</p> <p>Författaren ansvarar helt och hållet för publikationens innehåll som nödvändigtvis inte representerar synpunkterna hos Europeiska kommissionen, som finansierar projektet Fakta mot hat, eller justitieministeriet.</p>		
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1 Introduction

This study examines hate crimes in the criminal process. A hate crime is an offence committed on the basis of a hate motive. A hate motive may refer to a crime committed on the basis of “race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or other corresponding grounds”. A hate motive is a factor in determining the punishment, regardless of against whom or where the crime is committed (HE 317/2010, 13).

The criminal process encompasses the pre-trial investigation, consideration of charges, court proceedings and enforcement (Rantaeskola 2019, 17). This report examines the investigation process for hate crimes; from the involvement of police through to the involvement of the prosecution services and the court of law. The report provides information on the ways in which hate motives are identified and communicated throughout the criminal process, how large a proportion of suspected hate crimes are referred from the police to the prosecutor and onwards to district courts, how the use of the grounds for increased punishment are justified in judgments, and the ways in which this use affects sentencing.

The study was carried out by the Police University College as part of the Facts Against Hate project coordinated by the Ministry of Justice, which aims to improve the effectiveness of work against hate crimes through better monitoring practices. One of the key outcomes of this project is the new information it provides on the handling of hate motives in the criminal process. The report defines what hate crimes are and how they are recorded. It also explains the categorisation of hate crimes under different types of offences and motives, how a motive is identified and communicated throughout the criminal process and, finally, how the hate motive is cited in the grounds for convictions and the penal sanctions. Finally, the study also makes recommendations on ways to improve the effectiveness of work against hate crime.

The data of the report consists of the pre-trial investigation records of hate crimes recorded by the police in 2017, the applications for summons concerning cases referred

to the prosecutor, and the resultant court decisions. The Finnish police recorded 1,165 suspected hate crimes in 2017.

The report has six chapters: Chapter 1 provides the general background to the study, definitions of key terms and the methods applied. The second chapter discusses the ways in which hate crimes are handled in police-led pre-trial investigations, the third chapter addresses this issue in the decisions of prosecutors, and the fourth chapter in court rulings. Chapter 5 briefly examines the perpetrators of hate crimes and the places where hate crimes were committed. Finally, Chapter 6 presents conclusions and a summary of findings, as well as recommendations for further actions. Additionally, the findings of Chapters 2, 3 and 4 have been compiled in more detail at the end of these chapters.

1.1 Previous research

This report serves as a pilot study concerning the national reporting on the identification of hate crimes, their handling in the criminal process and the use of hate motives as grounds for increasing the severity of a punishment. This topic has previously been studied by Laura Peutere, whose 2008 report focused on criminal reports within the Helsinki region in which racist motives were suspected. In Peutere's study, the research data excluded police pre-trial investigation records, which are part of the data informing the present study. In 2008, the legislation on hate crimes was also narrower in scope, which explains Peutere's specific focus on racist hate crimes. However, hate crimes motivated by ethnicity or religion do represent the majority in the more recent research material.

A report authored by Milla Aaltonen and published in 2019 discussed the use of the grounds for increasing the severity of punishments in district courts. Aaltonen's data consisted of cases that had been classified by the police under a hate crime code and heard in court in 2018. Materials produced by the police or the prosecution services were not discussed. According to the report, 55 offences recorded by the police in 2018 under a hate crime code were heard in a district court. Of these, 35 resulted in a conviction for a hate crime. This material shows that incitement to hatred was by far the most common type of hate crime resulting in a conviction at a district court, with only four cases representing other categories. (Aaltonen 2019.)

In comparison, an extensive report was published in Sweden on the process of handling suspected hate crimes; from the police to the prosecutor and then to the district court in 2002. This report was based on data on suspected hate crimes detected dur-

ing 2000, which was obtained from the Swedish Security Service by the Swedish National Council for Crime Prevention (Brottsförebyggande rådet Brå). Of the approximately 4,300 hate crimes reported, 9% proceeded to the consideration of charges, and charges were brought in a total of 344 cases, which equates to approximately 8% of the offences reported to the police. Of these, hate crime sentences were passed in 46 cases, which corresponds to approximately 1% of all suspected hate crimes reported. (Lönnheden & Schelin 2002, 18, 26, 31.)

Hate crimes can be seen as an extreme consequence of certain underlying social processes. The antecedents to hate crimes are much broader than is manifest in crime statistics. On the one hand, the ideas and perceptions that are reflected on and that shape people's values fly in the face of the fundamental values that form the basis of our social order, namely equality between all people. On the other hand, even quite benign groups of people can become a breeding ground for hate crimes if mistrust of others is used as a tool for forging internal cohesion within that group. Consequently, research into hate crimes invites cross-disciplinary scientific inquiry and, as a research interest, it merits a much wider than purely jurisprudential examination: hate crimes can be approached from multiple angles and using a variety of methodologies.

In studies concentrating on hate crimes, the key focus areas include the ability of the justice system to identify hate crimes, the assessment of hate motives as part of the consideration of the sanctions, the experiences of victims of hate crimes and the underreporting of hate crimes. What makes hate crimes challenging to identify is the difficulty of establishing the motive and the legal grounds for addressing it, as the motive is not necessarily evident and usually not part of the statutory definition of a petty offence (Bell 2002; Burney and Rose 2002; Tiby 2006, 11; Hall 2010, 153; Schoultz 2015, 37). However, it is the very motive that causes the deepest wounds for the victim. For example, hitting another person with an open hand may meet the criteria of petty assault, i.e. it does not cause any permanent physical injury or disability. If, however, the motive for such assault was hatred towards a person because of their background or other personal characteristics, its repercussions on the victim may be much more harmful than the physical violation. Offences with a hate motive have been found to cause more anxiety, fear and harmful levels stress than similar crimes committed without a hate motive (Funnell 2013; Ministry of Justice 2016).

In addition to challenges in the pre-trial investigation, the identification of a hate motive and the adoption of more severe sentence may be prevented by a backlog in police investigations, attitudes held by the police and the perceptions of what is normal and permissive behaviour together with inadequate practices in communicating the hate motive between the police and the prosecutor (Bowling 1998; Hall 2010, 160–162).

Another factor impeding work against hate crime is underreporting. This is partly explained by the victims' experience that filing a criminal complaint is irrelevant or that discrimination is commonplace and to be expected. Victims may also fear stigmatisation as a member of a minority subjected to discrimination, which also reduces the willingness to report hate crimes (Gadd 2010, 212; Mellgren 2019; 110).

1.2 What is a hate crime?

From the point of view of criminal law, a hate crime refers to any offence motivated by hatred. In the present study, hate crimes are divided into two categories: in the first category, the hate motive is an integral part of the crime and is included in the statutory definition of the offence; in the second category, the hate motive is not included in the statutory definition of the offence. Such offences include assault, menace or defamation and are punishable regardless of the motive. If these offences have a hate motive, it may result in a more severe punishment.

Typical offences in which the hate motive is included in the statutory definition of the offence are incitement to hatred (also referred to as incitement offences later on) and discrimination. These offences were introduced into the Criminal Code of Finland (the Criminal Code) in some form as early as 1970, when Finland ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Chapter 11, section 10 of the Criminal Code defines incitement to hatred (translation of Criminal Code uses the term ethnic agitation) as follows:

A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message in which a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years.

Chapter 11, section 11 of the Criminal Code defines discrimination as follows:

A person who in his or her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason

1) refuses someone service in accordance with the generally applicable conditions;

2) refuses someone entry to the amusement or meeting or ejects him or her;
or

3) places someone in a clearly unequal or otherwise essentially inferior position

owing to his or her race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, disability or state of health, or religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as work discrimination or extortionate work discrimination, for *discrimination* to a fine or to imprisonment for at most six months.

Whether discrimination is punishable is dependent on its intentionality. The preliminary work of the Act states that the definition of punishable discrimination is not, however, dependent on the purpose of discrimination on the basis of the above reasons or an explicit hate motive. If a business owner chooses their customers solely to maximise profit, they do not have a hate motive. Under the provision, selection of customers constitutes punishable discrimination even if the selection is not motivated by hate but is based on the customers' race or nationality, and if the offender is aware of the grounds for the discrimination and that it has significance in the way the person is treated. (Government Proposal HE 94/1993, 36.)

Incitement to hatred, aggravated incitement to hatred and discrimination are hate crimes in which the hate motive is included in the statutory definition of the offence. Other such offences include work discrimination and extortionate work discrimination, genocide, preparation for genocide, crime against humanity, torture and Participation in the activity of an organized criminal group with the aim of committing one or more of the offences provided for in Chapter 11, section 10 of the Criminal Code. (National Police Board 13 December 2011.)

From the criminal law perspective, other hate crimes are offences in which the court has used the grounds for more severe punishment on the basis of a hate motive, hate motive being one of the grounds for increasing the severity of the punishment provided for under chapter 6, section 5 of the Criminal Code. Hate motive is a specific motive based on "race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds". In the Government Proposal of 2021, it was proposed that a gender-based motive (Government Proposal to the Parliament 7/2021) should also attract an increased punishment.

The use of the grounds for increased punishment does not require that the victim of the offence belong to any particular group. It is sufficient that the motive of the offence is based on it. Moreover, the use of the grounds for increased punishment does not require that the hate motive is the only motive for the offence. (Government Proposal 317/2010.) In its current form, the hate motive as grounds for increasing the punishment was introduced in the Criminal Code in 2011. The racist motive had been added as grounds for increasing the punishment in 2002. It applied to offences committed "on the basis of belonging to a national, racial, ethnic or other group of people" (Government Proposal 44/2002, 285).

A BRIEF HISTORY OF LEGISLATION

1948 UN Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

1965 International Convention on the Elimination of All Forms of Racial Discrimination (Treaties 37/1970). In this Convention, racial discrimination means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.

1970 Incitement to hatred and discrimination were included in the Finnish Criminal Code in 1970, in concurrence with the ratification of the above Convention.

2002 Racist motives were determined as grounds for increasing the severity of the punishment, as part of the reform of the general provisions of the Criminal Code. The grounds for increased punishment were the commissions of an offence "on the basis of belonging to a national, racial, ethnic or other group of people" (Government Proposal 44/2002, 285).

2003 Additional Protocol to the Convention on Cybercrime (Treaties 60/2007).

2008 Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA).

2010 Under the provisions on increasing the punishment introduced as part of the reform of the Criminal Code, a racist or other similar motive would result in increased punishment regardless of whom or what the offence is targeted at (Government Proposal 317/2010, 1). In the same juncture, provisions on incitement to hatred (Criminal Code 11:10) were reformed.

2021 Government Proposal on including gender in the grounds for increasing the punishment (Government Proposal to the Parliament 7/2021).

1.3 Data

The data on which this report is based consists of three parts: hate offences recorded by the police in Finland in 2017, prosecutors' decisions on suspected hate crimes that have been forwarded for prosecution, and court rulings on charges brought at a district court. Jenita Rauta has collected the data on suspected hate offences as part of the Police University College's annual hate crime monitoring.

For the purposes of the present report, pre-trial investigation records of 1,160 hate crime reported were also collected. A pre-trial investigation record includes at minimum a cover page, a criminal complaint, a narrative (description of the act and a report on the pre-trial investigation and its results), interview records and a record of actions taken. A total of 543 decisions were received from the prosecution services on various criminal complaints (including decisions to restrict an investigation, dismiss charges and bring charges). Decisions on 249 criminal complaints were requested from District Courts; 18 of these cases were still pending in March 2021.

The 2017 data on suspected hate crimes was selected as the most recent material available that has, for the most part, been through the district court process (Rauta 2018). That year, special attention was also paid by the police to the prevention of hate crime. For example, a nationwide team based in Helsinki focused on combating punishable hate speech.

In 2017, the police received 1,165 reports of hate crimes. For the purposes of this report, 1,160 of these reports were followed up from the police to the prosecution service and thereon to the district court. Only five hate crime reports were excluded from the data, which makes the material comprehensive. However, the total number of reported hate crimes is unlikely to be representative, as hate crimes are underreported. (Rauta 2018.)

The scale of the possible underreporting is indicated by the Ministry of Justice report on hate speech and harassment and their impact on different minority groups: only 21% of people who experience harassment or hate speech report it. In most cases, the low reporting rate is assumed to stem from the belief that reporting the incident will not result in any action or that nothing can be done about it. The Ministry of Justice report was carried out as a survey among minority groups and 1,475 persons responded to it. (Ministry of Justice 2016, 25, 37, 145.)

A Swedish survey produced similar results, showing that only a small proportion of crimes are reported to the police. A study completed at the University of Malmö in 2013 involved 2,585 students, constituting a representative sample of the university

demographic. Of these students, 158 said they had been the victim of a hate crime in the previous year. However, only 12% of them had reported the offence, compared to a report rate of 20% for other types of offences. (Andersson and Mellgren 2015, 292, 295.) A large number of offences are excluded from crime statistics in general, and this is particularly the case with hate crimes.

1.3.1 Hate crimes recorded by the police

Separate statistics on hate crimes have been recorded by the police since 1997, and the Police Department of the Ministry of the Interior published the first statistical report on hate crimes in 1998. The Police University College has been responsible for this reporting since 2005 (Ministry of the Interior 1998; Keränen 2005.)

For the purposes of the present report, suspected hate crimes refer to offences that have been retrieved with a specific method from all offences recorded by the police. The purpose of the method is to identify among all offences those that could be associated with a hate motive. Jenita Rauta (2018; 17, 18), a Police University College researcher specialising in hate crime, has been in charge of reporting since 2017 and describes the two-step method as follows:

The first stage involves identifying and selecting the following types of criminal complaints from the Police Information System:

1. those that include one of the offences listed in Appendix 1 and one key word listed in Appendix 2 (271 key words in total);
2. criminal complaints on discrimination, work discrimination, extortionate work discrimination, incitement to hatred, aggravated incitement to hatred, genocide, preparation of genocide, crime against humanity, aggravated crime against humanity or torture;
3. criminal complaints including the terms “racist” or “racism” in the report narrative;
4. criminal complaints assigned with a hate crime code by the police; and
5. criminal complaints assigned a code referring to asylum seekers.

The criminal complaints identified with this method provide the body of cases defined as hate crimes. A criminal complaint recorded by the police is interpreted in accordance with written guidance issued separately for the purpose of this enquiry. As Jenita Rauta (2018, 17) writes:

A case is defined as a hate crime if any of the parties to the case (police, victim, witness, etc.) suspects that one of the motives for the offence was mistrust or hostility towards one of the victim's (assumed) reference groups. These reference groups may be based on 1) ethnicity or nationality, 2) religion or belief, 3) sexual orientation, gender identity or gender expression, or 4) disability. The case is also defined as a hate crime if the police report narrative includes indications of a possible hate crime, such as racist language.

In addition to the examples above, a case is defined as a hate crime if the criminal complaint is assigned a hate crime code by the police, despite the report itself not indicating the perpetrator's motive. According to the guidelines issued by the National Police Board (National Police Board Instruction 13/12/2011), the police should assign a hate crime code to any case in which a person involved in the events (police, suspect, plaintiff, witness, informant or other)

- considers the act to have been motivated in part or in full by prejudice or hatred against a particular group of people;
- considers the offence to have been partly or fully motivated by "race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds.

In 2017, a total of 1,165 hate crime reports were recorded by the police. The pre-trial investigation records of these cases were requested, with 1,160 reports received.

In law, an offence is a punishable act perpetrated by a human that, with each offence having at least one perpetrator (Tapani and Tolvanen 2013, 3). However, suspected hate crimes are not always investigated from the perpetrator perspective. This can be problematic because, at the pre-trial investigation stage, the perpetrators of many crimes are still unknown. There is, therefore, justification for examining suspected offences from the perspective of the injured parties. Accordingly, the number of the units of observation may vary, depending on whether the offences are examined from the perspective of the injured party, the suspects or the offence itself.

In Finland, hate crimes are recorded according to the principal offence. The principal offence refers to the offence against the injured party referred to in the criminal complaint that would attract the severest punishment (the most aggravated offence that would attract the severest type of punishment). If a criminal complaint refers to multiple offences with the same injured parties, the principal offence refers to only one of these, i.e., the gravest offence, and is included in the statistics the same number of times as it has injured parties. Similarly, even if there were several perpetrators but only one injured party to an offence, this would be acknowledged in the statistics only once. (Rauta 2018, 18; Peutere 2008, 40). In Chapter 2, which discusses the pre-trial investigation stage, suspected hate crimes have been examined by principal offence.

1.3.2 Prosecutor's decisions

From a total of 1,165 hate crimes recorded by the police, 379 criminal complaints on hate crime were referred to the prosecution service for consideration of charges. The decisions made by the prosecution service were requested for the purpose of this study. One of the pre-trial investigation records submitted for consideration of charges was withheld because the case was still pending. In addition, the prosecution service was also requested to share 165 decisions to restrict criminal investigations. The material collected from the prosecution service thus covers decisions on 543 criminal complaints.

A total of 547 suspects were named in the 379 hate crimes referred for consideration of charges. The prosecutor requested for an increased punishment on the grounds of a hate motive for 38 suspects, and in 92 cases the hate motive was included in the statutory definition of the offence. When combined, these cases account for 35% of all prosecution charges, with a total of 368 being charges brought.

In Chapter 2, which focuses on pre-trial investigation statistics, hate crimes are recorded in accordance to the principal offence. In Chapters 3 and 4, statistics are mainly analysed according to the suspects, as this gives a more accurate picture of the number of offences. Although a single offence may involve multiple offenders, the hate crimes referred to in the present study that have resulted in conviction at a district court, were nearly always committed by a single offender. According to the author, this approach ensures that the statistics give an accurate picture of the number of hate crimes leading to a conviction.

1.3.3 Court decisions

In 2017, the prosecutor brought charges against 368 people on suspicion of hate crime. They were named as suspects in a total of 249 criminal complaints on hate crimes. District court decisions in all these cases were obtained. In the majority of cases, the district court had given its ruling by 2021. Decisions were missing for a total of 18 criminal complaints.

Convictions passed by the district court were handed down to 92 people prosecuted for a hate crime. An increased punishment was imposed on 12 defendants. By March 2021, 80 convictions had been passed for offences in which the hate motive had been included in the statutory definition of the offence.

District courts examine the defendant's guilt and give a reasoned judgment as to whether or not the guilt has been proved. The grounds for the judgment must indicate the grounds and legal reasoning on which the decision is based. The judgments also indicate factors determining the sentence.

The charges are dismissed if the defendant's guilt cannot be established. In addition, punishment may be waived despite the proven guilt of the defendant. Under Chapter 6, section 12 of the Criminal Code, a court may waive punishment if the offence is to be deemed of minor significance, the offender has committed the offence below the age of 18 years, and the act is deemed to be the result of imprudence. Moreover, a judgment may be waived if the offence is comparable to forgivable act, sentencing would be considered disproportionate (e.g. due to an agreement reached between the parties), or if the offence would not affect the overall sentence due to it being treated as a joint sentence.

The increasing of punishment ordered by the district court was implemented in four ways. First, day-fines may have been imposed on the defendant in addition to conditional imprisonment. Second, an increased punishment was implemented in one judgment as a specifically quantified compensation. Third, a conditional prison sentence could have been imposed as unconditional imprisonment. Finally, the duration of the sentence could have been extended. In as many as half of the offences attracting increased punishment owing to a hate motive, the district court did not justify how the increasing of the punishment affected the sentence.

2 Hate crime in pre-trial investigations

This chapter examines hate crime recorded by the police in 2017 from the perspective of the investigation (see Chapter 1.3.1). The aim is to highlight the methods that the police use to identify a possible hate motive and how successful the police are in reporting it. The findings are reported according to the principal offence.

Table 1 shows the division of hate crimes into ten offences. The classification follows the terminology and current practices adopted in the compilation of annual statistics on hate crime (see Rauta 2017, 12; 2018, 23). The most common suspected hate crime is assault. The next most common types of hate crime, in descending order, are defamation, menace, incitement to hatred, damage to property and discrimination.

Table 1. The most common types of offences in the principal offences

	N=1,566	100%
Assault	586	37
Defamation	329	21
Menace	180	12
Incitement to hatred	157	10
Criminal damage	130	8
Discrimination	78	5
Invasion of domestic premises	46	3
Other	42	3
Attempted homicide	15	1
Homicide	3	0

Each offence category contains at least two offences. In this material, for example, assault offences are divided into assault and petty assault, attempted assault, aggravated assault and attempted aggravated assault. The majority of assault offences (65%) are treated as assaults. Petty assaults comprise 28% of all assaults. All told,

there are 64 different offences, with 52 of them appearing fewer than ten times in the data.

The findings are divided into ten different offences for the purpose of reader-friendliness. The selection criteria for these specific offences are their prevalence in the data and the seriousness of the offence. The most common types of individual offences are, in descending order, defamation, menace, incitement to hatred, damage to property and discrimination. Table 2 shows the most common principal offences that appear at least five times in the data. There are 43 other offences, but since they account for less than 4% of all principal offences, they have either been counted as part of the principal offences or grouped under the category 'other offences'.

Table 2. The most common principal offences

	N=1,566	100%
Assault	371	23.7
Defamation	310	19.8
Menace	178	11.4
Petty assault	159	10.2
Incitement to hatred	156	10.0
Criminal damage	75	4.8
Discrimination	64	4.1
Petty criminal damage	41	2.6
Invasion of domestic premises	34	2.2
Aggravated assault	22	1.4
Attempted assault	17	1.1
Dissemination of information violating personal privacy	13	0.8
Extortionate work discrimination	9	0.6
Criminal mischief	9	0.6
Stalking	9	0.6
Attempted murder with terrorist intent	8	0.5
Discrimination at work	7	0.4

	N=1,566	100%
Aggravated defamation	7	0.4
Aggravated invasion of domestic premises	5	0.3
Attempted aggravated assault	5	0.3
Petty fraud	5	0.3
Other	62	3.9

2.1 Hate crime code

Offences with racist aspects have been officially recorded in Finland since 1997. At that time, the police were instructed to classify all suspected crimes with racist aspects under a separate code for racist offences. However, the use of the code was voluntary, and criminal complaints could be recorded without it. The police only used the classification in approximately half of all criminal complaints that clearly involved racist characteristics. (Peutere 2008, 15.)

In 2011, the National Police Board issued new guidance for recording suspected hate crimes in the Police Information System (PATJA). According to the guidance, a hate crime code should be assigned if the injured party, another party or the police considers the act to be a hate crime, even partially. The guidance states that a hate crime should be considered if:

- the partial or only motive for the act could be prejudice or hatred against a particular group of people;
- it is committed partially or wholly for motives qualifying as grounds for increased punishment under Chapter 6, section 5 of the Criminal Code;
- the offence charged would be incitement to hatred, discrimination or any other offence in which a hate motive is included in the definition of the offence. (National Police Board 13 December 2011.)

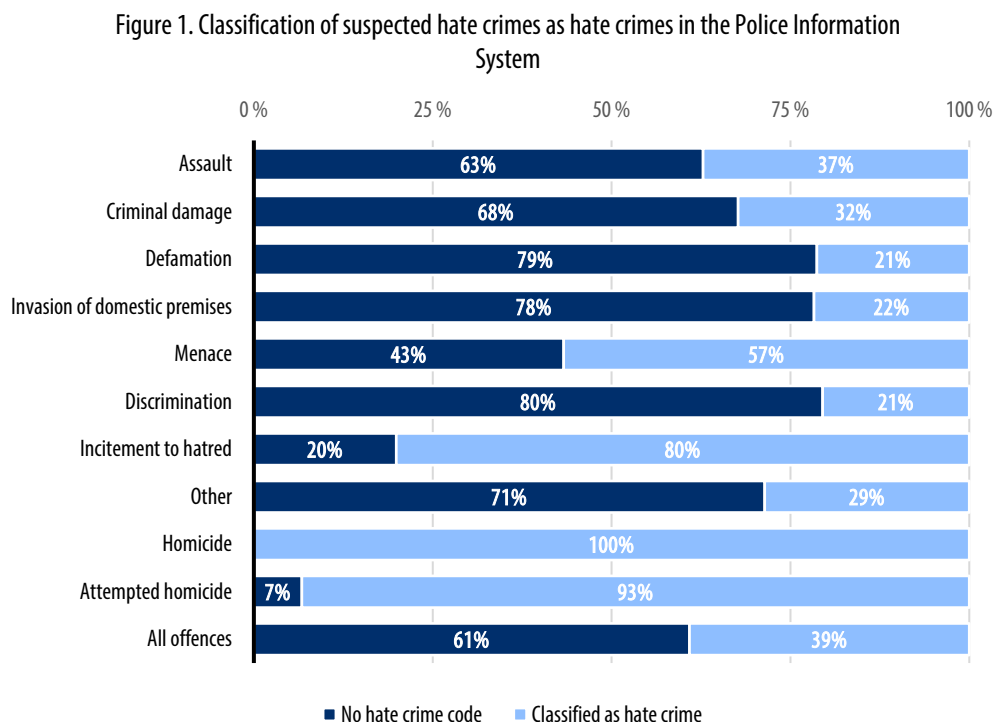
Under the new guidance, the police are still not obliged to assign hate crime codes to offences. A criminal complaint can be entered and closed without a code. According to the European Union Agency for Fundamental Rights, it should be mandatory for the recording officer to decide whether the reported offence is a potential hate crime (FRA 2018, 11).

Table 3 illustrates the use of the hate crime code by principal offence. The hate crime code is rarely used in discrimination offences. This could be partly explained by the scope of discrimination offences, which also include work discrimination and extortion-ate work discrimination. In these cases, meeting the criteria of the offence does not require actual hatred of a member of a specific group, and there may be other grounds for discrimination as well.

Table 3. Use of the hate crime code by principal offence

Have the police used a hate crime code?			
	No	Yes	TOTAL
Assault	368	218	586
Criminal damage	88	42	130
Defamation	259	70	329
Invasion of domestic premises	36	10	46
Menace	78	102	180
Discrimination	62	16	78
Incitement to hatred	31	126	157
Other	30	12	42
Homicide	0	3	3
Attempted homicide	1	14	15
TOTAL	953	613	1566

Figure 1 examines the relative proportions of offences assigned and not assigned a hate crime code by principal offence.



The police have only used the hate crime code in approximately 40% of all suspected principal offences. It has been later discovered that offences that the district court has eventually judged as hate crimes have not initially been assigned a hate crime code.

2.2 Criminal pre-trial investigation

The criminal process begins with a criminal complaint recorded by the police. The complaint is received either by the police department or by a police patrol assigned to the incident. The police process crime reports in two stages, the first of which is the preliminary investigation of the offences. The actual pre-trial investigation is only the second stage. During the preliminary investigation, the police investigate whether there is reason to suspect an offence has taken place and, if so, initiate a pre-trial investigation.

The police are among the pre-trial investigation authorities whose duties and powers are laid down in the Criminal Investigation Act. Although the preliminary investigation

is not, as such, provided for in the Act, the provisions of the Act do cover all stages of the investigation. According to the National Police Board Instructions (2 January 2020, 3), the term preliminary investigation refers to “proceedings by which the police determine the most appropriate process for a matter referred to the police.” According to Petri Burmoi (2017, 55, 56), preliminary proceedings include five areas relevant to the quality assurance of the pre-trial investigation, clearance of cases, preliminary investigation, serialisation of crimes and criminal intelligence and analysis work, and fifthly, work management.

The role of preliminary investigation in the whole criminal complaint process is significant and the volume of cases to be processed is vast. According to a study of Tampere Central Police Station, the preliminary investigation team dealt with up to 70% of all cases in the year of data collection (Burmoi 2017, 58). Simple and straightforward cases are distinguished from more serious criminal cases during the preliminary investigation. This has the advantage of freeing up resources from basic investigation to more complex cases.

In addition, preliminary investigations support crime prevention and analytics by, for example, serialising criminal complaints. Serialisation is an essential investigative tool in minor offences, which on their own would not exceed the threshold for investigation. Sometimes, the cost of clearing an individual offence may be disproportionate to the significance of the offence and further investigation may not necessarily be sufficient to solve it. In this case, it is more likely that the investigation will be suspended or terminated. However, if the perpetrator of such an offence has committed several offences of the same type, with most of which having been reported, they could be combined under one process. This increases the likelihood of solving the crime and emphasises the importance of preliminary investigation.

The role of the preliminary investigation in hate crimes can, however, be problematic. Previous research has shown the recognition of hate crimes at the preliminary investigation stage to be challenging. Identifying and establishing hate motives may require more investigation resources than other similar crimes. If the recording officers does not assign the case with a hate crime code, or if the motive is not indicated in the criminal complaint and the case is in other respects a typical case handled by the preliminary investigation team, further investigations may not be carried out to identify and investigate the hate motive. Assigning a hate crime code could be used as a way of referring a hate crime complaint directly to the pre-trial investigation, and for this practice to be successful, the use of the hate crime code should be widely adopted (see Image 1).

2.3 Investigation of motives during interviews

The actual pre-trial investigation begins after the preliminary investigation. Under the Criminal Investigation Act (Chapter 1:2), it is the duty of the police to clarify:

- 1) in the manner required by the nature of the matter, the suspected offence, the circumstances in which it was committed, the damage caused by it and the benefit obtained from it, the parties as well as the other circumstances necessary for the consideration of prosecution and of the sanction to be imposed as a consequence of the offence;
- 2) the possibilities for the return of property obtained through the offence and for enforcement of forfeiture to be ordered as a consequence of the offence or for compensation to be paid to an injured party;
- 3) the private law claim of the injured party if, on the basis of Chapter 3, section 9 of the Criminal Procedure Act (689/1997), he or she has requested that the prosecutor present his or her claim; and
- 4) whether the injured party consents, and whether the person suspected of the offence intends to consent, to having the matter considered in district court in the written procedure referred to in Chapter 5(a) of the Criminal Procedure Act.

As provided in Chapter 1, section 2 of the Criminal Investigation Act, it is the duty of the police to clarify the relevant factors on the basis of which a suitable sanction may be imposed for an offence. These factors include the criteria that merit the increasing of the punishment. Table 4 indicates the frequency in which the police have asked or failed to ask the parties concerned about the motives of the suspected hate crime during interviews.

Table 4. Were the motives investigated during the pre-trial investigation?

	N=632	100%
Yes	331	52.4
No	301	47.6

Table 5 illustrates the correlation between the police raising the motive during interviews and the use of the hate crime code. While only approximately one half of the persons interviewed during the pre-trial investigation were asked about the specific motive for their acts, the motives had been more frequently examined in the cases in which a hate crime code had been assigned. Similarly, in cases for which the police had not assigned a hate crime code, the motives were clearly less frequently asked about during interviews.

Table 5. Were the motives investigated during the pre-trial investigation and was a hate crime code assigned?

	Hate crime code not assigned	Hate crime code assigned
The motives were examined	42%	58%
The motives were not examined	66%	34%

Clarifying the motives is an integral part of the investigation of serious offences. Establishing the motives is also a necessary part of criminal investigations if, for example, the hate motive is included in the statutory definition of the offence, such as discrimination. However, while in the case of petty assault or assault, defamation, criminal damage or menace, determining the motives is not relevant from the perspective of the statutory definition of the offence, it is necessary for establishing grounds for increasing the punishment.

Table 6 shows how the investigation of motives was structured by offence. The table shows that the police had asked at least one of the parties to the offence about the motive if the hate motive was included in the statutory definition of the offence suspected. However, if the hate motive was not included in the statutory definition of the suspected offence, in most cases of assault and criminal damage, no questions regarding the motive had been asked. If the offence concerned defamation or menace, the motive was examined relatively regularly.

Table 6. Investigation of motives during interviews by principal offence

	Not examined	Examined
Assault	68%	32%
Criminal damage	63%	38%
Defamation	24%	77%
Invasion of domestic premises	100%	0%
Menace	33%	67%
Discrimination	0%	100%
Incitement to hatred	0%	100%
Other	52%	48%
Homicide	0%	100%
Attempted homicide	0%	100%
Were the motives examined in the pre-trial investigation?	48%	52%

Table 7 shows a comparison between the pre-trial investigation records with and without a hate crime code, according to whether or not the motives were raised during the pre-trial investigation. On the basis of this comparison, a slight correlation can be detected between the assigning of a hate crime code and the investigation of motives.

Table 7. Correlation between the use of a hate crime code and a slightly more intensive investigation

	The proportion of offences classified as hate crimes for which motives were examined	The proportion of offences not classified as hate crimes for which motives were examined
Assault	36%	27%
Criminal damage	50%	33%
Defamation	100%	52%

	The proportion of offences classified as hate crimes for which motives were examined	The proportion of offences not classified as hate crimes for which motives were examined
Invasion of domestic premises		
Menace	83%	67%
Discrimination	100%	100%
Incitement to hatred	100%	100%
Other	100%	75%
Homicide	100%	
Attempted homicide	100%	100%
TOTAL	74%	41%

The police do not ask suspects about their motives in all hearings. The police aim to ensure that persons being interviewed reports the offence as accurately as possible in their own words and ask more specific questions only to the extent necessary for the investigation of the offence and other issues as provided for in Chapter 1, section 2 of Criminal Investigation Act. More specific questions are necessary, for example, to clarify contradictory information or, indeed, the motives.

The interviewing instructions issued by the National Police Board (National Police Board, 16.06.2016) stipulate that the account given of the injured party being interviewed must be recorded in writing as accurately as can be expected to be necessary. The instructions further state (p. 5) that attention should be paid to the statutory definition of the suspected offence. Obviously, such consideration must be the guiding thought behind the investigation. However, it should not override the need to clarify the motives of the offence, as they are relevant to the determination of the scale of sanctions. While the instructions make no reference to examining motives, they do provide fairly detailed guidance on certain other aspects of imposing sanctions, the recovery of the proceeds of a crime and possible damages and factors affecting their amount. For example, damage caused by crime against property must be investigated even if the injured party does not claim compensation for the damage, because the extent of the damage is essential in determining the punishment for the offence and the possible forfeiture. At the same time, the extent of the damage is also integral to the statutory definition of the offence. In matters of criminal damage to property and

assault, for example, this factor helps determine between the basic and aggravated form of the offence. The question of whether the grounds for increased punishment can be used in the judicial assessment of an offence is similarly important from an investigative point of view: the factors affecting the punishment must be examined at the pre-trial investigation stage, as required by the case. It would, therefore, also be necessary to cover the examination of the motives in police interview instructions.

2.4 The outcome of the investigation

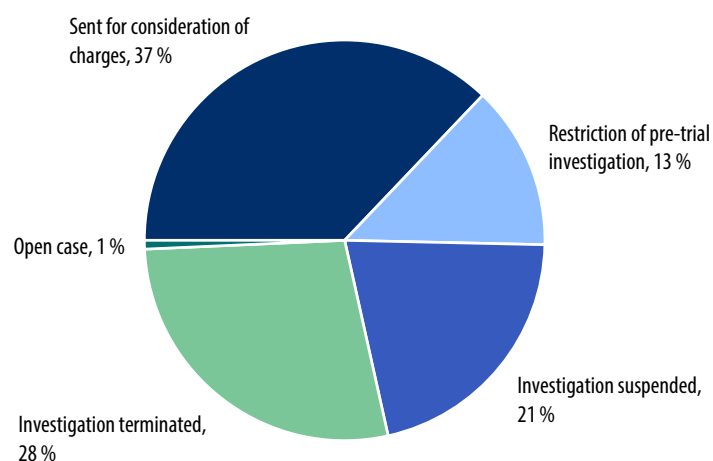
The police make three types of decisions when processing criminal complaints: they can either decide to terminate or suspend the investigation or to refer it to the prosecution services. The police may also propose to the prosecutor that the investigation be restricted, in which case the prosecutor will decide whether or not to proceed with the investigation (restriction of the pre-trial investigation). The police refer the offences they have cleared to the prosecutor for consideration of charges. Table 8 shows the numbers of the types of decisions taken on different principal offences at the pre-trial investigation stage.

Table 8. Decisions on principal offences at the pre-trial investigation stage

	N=1,566
Sent for consideration of charges	580
Restriction of pre-trial investigation	206
Investigation suspended	330
Investigation terminated	433
Open case	11
Not included in the data	6

Figure 2 shows the relative proportions of decisions. Approximately 37% of offences recorded by the police (by principal offence) were referred for the consideration of charges. The police decided to suspend the investigation in approximately 21% of the cases. The police terminated the investigation in 28% of the cases, and the prosecutors restricted the pre-trial investigation in 13% of the cases.

Figure 2. Suspected hate crimes during pre-trial investigations



Offences that have been resolved by the police to a sufficient detail for the purpose of bringing charges are referred for consideration of charges. A successful process requires that the police not only establish the nature of the act in relation to the statutory definition of the suspected offence but also to the damage caused by the offence, the compensation claims of the injured parties and other factors relevant for the consideration of sanctions.

Table 9 examines the three main outcomes of investigations by offence. Criminal damage involving a suspected hate motive are the only type of offence in which the decision to suspend is clearly the most common outcome in the investigation.

Table 9. Outcome of pre-trial investigation by offence

	Consider ation of charges	Restriction of the pre-trial investigation	Suspended	Termi- nated	Open	N/A	TOTAL
Assault	254	50	102	170	7	3	586
Criminal damage	16	7	86	20	0	1	130
Defamation	65	90	67	104	3	0	329
Invasion of domestic premises	15	9	6	16	0	0	46
Menace	58	30	38	52	1	1	180
Discrimination	38	14	3	23	0	0	78
Incitement to hatred	108	2	19	27	0	1	157
Other	8	4	9	21	0	0	42
Homicide	3	0	0	0	0	0	3
Attempted homicide	15	0	0	0	0	0	15
TOTAL	580	206	330	433	11	6	1,566

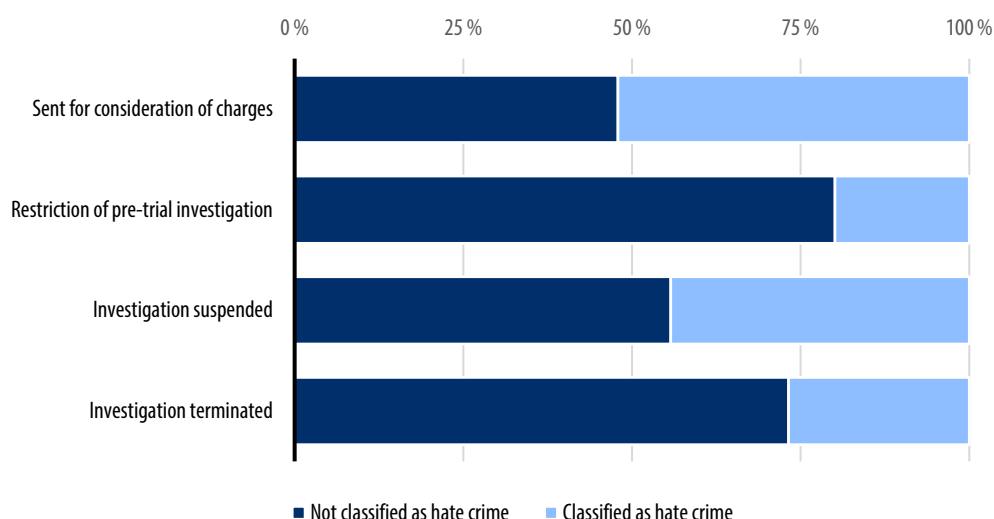
Table 10 illustrates the question of how often the police assign the hate crime code to cases. The table shows that the majority of cases, the investigation of which the police had decided to terminate, were not classified as hate crimes. In contrast, the number of cases in which the investigation had been suspended and a hate crime code had been used was nearly the same as in the suspended cases in which the hate crime code had not been used. One possible reason for this phenomenon could be that the hate crime code is more likely to have been assigned more frequently to offences in which the evidence is clearer and which are, therefore, also more likely to be solved.

Table 10. Use of the hate crime code and terminated pre-trial investigations

Have the police used a hate crime code?			
	No	Yes	TOTAL
Sent for consideration of charges	278	302	580
Restriction of pre-trial investigation	165	41	206
Investigation suspended	184	146	330
Investigation terminated	317	116	433
Open case	4	7	11
Not included in the data	5	1	6
TOTAL	953	613	1,566

Figure 3 illustrates the relative proportions of the use of hate crime codes by investigation outcome. A hate crime code was most common in cases that were referred for consideration of charges, with approximately half of these cases classified as hate crimes. The hate crime code was most commonly missing in cases that were restricted by the prosecutor and terminated by the police. This can be seen as an indication of an attempt to investigate suspected hate crimes more thoroughly, as required by the nature of the case, than other similar offences that do not involve a hate motive.

Figure 3. Hate crime codes and terminated pre-trial investigations



In decisions to terminate an investigation, the presence of a hate crime code seems to be more or less as common as its absence. From the point of view of the emphasis on the investigation, this finding is probably irrelevant. In fact, the decisions to suspend an investigation are most commonly due to the identity of the offender remaining unknown.

2.4.1 The grounds applied by the police for the termination or suspension of pre-trial investigations

The threshold for a pre-trial investigation is exceeded whenever there is reason to suspect an offence. Under certain circumstances, the police may, at their discretion, decide not to open an investigation or to terminate a pre-trial investigation already started. In this case, the evidence must be clear. The Criminal Investigation Act lays down the criteria for terminating or waiving a pre-trial investigation.

The decision not to open a pre-trial investigation is taken when there is no reason to suspect an offence. A decision not to open a pre-trial investigation may also be taken if the offence is to be considered manifestly minor and the injured party has made no claims. The aim is to make these decisions early in the process, during the preliminary investigation. Even if a pre-trial investigation has already been opened and the

above conditions have been met, the police may terminate the investigation if it turns out that the suspected offender is under 15 years of age, if the statute of limitation has expired or if the suspect has died. The investigation may also be terminated if the injured party of a complainant offence withdraws their complaint, if the case is handled in accordance with the fine procedure or if a criminal complaint on the matter has already been filed. (Rantaeskola 2019, 350, 351; National Police Board 02/01/2020; Criminal Investigation Act 3:3; 3:4, 3:9).

In addition, the reason for the closing of the pre-trial investigation may be the suspension or restriction of the investigation. The decision to restrict a pre-trial investigation is always made by the prosecutor. An investigation may be suspended if the identity of the suspect remains unknown and cannot be established. In such cases, the investigation may be reopened within the limitation period of the offence if new information is obtained. (Rantaeskola 2019, Criminal Investigation Act 3:3.) Of all the hate crimes recorded and investigated as principal offences in 2017, 330 were suspended.

Table 11 lists all decisions concerning hate crimes recorded in the pre-trial investigations of 2017 (by principal offence). This table differs from Table 8 by providing more detailed reasons for the decisions that the police took to suspend or terminate investigations. Of these reasons, the most important were the offender remaining unknown, the injured party refraining from demanding punishment and the absence of an offence. In the case of two suspected principal offences, the police did not have the powers to carry out the investigation.

Table 11. The grounds applied by the police for the termination or waiving of pre-trial investigations

	N=1,566	100%
Sent for consideration of charges	580	37
Restriction of pre-trial investigation	206	13.2
Perpetrator unknown	311	19.9
Punishment not requested by the injured party	193	12.3
No offence	114	7.3
Suspect under 15 years old	52	3.3
Insignificance	40	2.5
Criminal complaint already filed	22	1.4

	N=1,566	100%
Unclear case	19	1.2
Open case	11	0.7
Statute of limitations expired	9	0.6
Not included in the data	6	0.4
The police have no jurisdiction in the matter	2	0.1
Suspect has died	1	0.1

2.4.2 Restriction of pre-trial investigation by decision of the prosecutor

The police do not carry out the legal consideration of charges. If the criteria for closing the investigation are met but the evidence is inconclusive, the head of the investigation may propose to the prosecutor that the pre-trial investigation be restricted. In this case, the matter will be considered by the prosecutor, who then has the powers to decide whether to close or continue the investigation. Such decisions to terminate or not to initiate a pre-trial investigation are referred to as restriction decisions. The prosecutor must familiarise themselves independently with the matter on the basis of the pre-trial investigation material and the restriction proposal submitted by the police.

The prosecutor may decide to restrict the pre-trial investigation for various reasons. Procedural reasons refer to reasons relevant to the criminal process, such as the expiry of the statute of limitation or questions related to proof. The pre-trial investigation may also be restricted if the cost of investigating the offence considerably exceeds the significance of the offence under investigation. (Rantaeskola 2019, 356, 357; Criminal Investigation Act 3:10.)

Discretionary or sanctions-based reasons include those related to the significance and consequences of and the sanctions for the offence. The prosecutor may decide to restrict the pre-trial investigation if, for example, the offence is of such minor importance that it would not lead to prosecution or if the punishment resulting from the offence would not in any way affect the overall sentence imposed on the offender due to other offences (concurrency). Restriction may also be appropriate when the investigation and punishment of a criminal offence may lead to unreasonable consequences

compared to a settlement that could be reached between the parties involved. In such cases, the requirement is that no important public or private interest would require the bringing of charges. (Rantaeskola 2019, 356; Criminal Investigation Act 3:10.)

Table 12 shows the reasons for the prosecutor's restriction decisions in hate crimes recorded in 2017. The most common grounds for the restriction of a pre-trial investigation were the discretionary decision that the offence was minor and would probably not lead to prosecution at a later stage. More than 40% of the prosecutor's decisions to restrict the pre-trial investigation were based on the insignificance of the offence. The second most common criterion was the lack of evidence of an offence, i.e. there were no probable causes to suspect an offence. Agreement, i.e., the reasonableness criterion, was the third most commonly cited reason. Cost-based decisions equated to approximately 10%, while the proportion of sanctions-based decisions was approximately 58%. The proportion of restriction decisions based on procedural reasons was approximately 30%.

Table 12. Restriction of pre-trial investigation by decision of the prosecutor

	N=206	100%
No evidence	58	28.2
Minor offence	85	41.3
Reasonableness standard	24	11.7
Cost-based	21	10.2
Joint punishment (concurrence)	10	4.9
No offence	4	1.9
Other grounds	4	2

RESTRICTION OF PRE-TRIAL INVESTIGATION (CRIMINAL INVESTIGATION ACT 3: 10)

The public prosecutor may, on the request of the head investigator, decide that no criminal investigation is to be conducted or that the criminal investigation shall be restricted, if he or she, on the basis of Chapter 1, section 7 or 8 of the Code of Criminal Procedure or on the basis of another corresponding provision, should waive prosecution and if there is no important public or private interest that would require the bringing of charges.

The public prosecutor may, on the request of the lead investigator, also decide that the criminal investigation shall be restricted if the expenses of continuing the investigation would be clearly disproportionate to the nature of the matter under investigation and the possible sanction or if on the basis of the criminal investigation measures already performed it is very probable that the public prosecutor should waive prosecution on grounds other than those referred to in subsection 1. Discontinuation of the criminal investigation also requires that there is no important public or private interest that would require continuation of the investigation.

In the cases referred to in subsections 1 and 2, the criminal investigation shall be recommenced if there is justified reason for this due to new factors that have become evident in the matter.

2.5 Solved hate crimes

If the pre-trial investigation is not terminated, suspended or restricted, it is carried out and the solved offence will be referred for consideration of charges. According to Statistics Finland, an offence known to the police is regarded as solved when the circumstances in which the offence was committed, the parties involved as well as other factors necessary for making the decision on bringing charges and for the trial have been clarified" (Statistics Finland 2021a).

In 2017, 1,566 suspected principal offences with a hate motive were recorded by the police. Of these, 580 suspected principal offences were investigated to the extent required for the consideration of charges. This means the percentage of offences solved, or clearance rate, for hate crimes recorded by the police was 37%. The clearance rate usually refers to the proportion of offences sent for consideration of charges of all the offences recorded by the authorities. In Table 13, the clearance rate for suspected hate crimes has been calculated as the proportion of all suspected principal offences (hate crimes reported to the police in 2017).

Table 13. Clearance rate of suspected hate crimes by principal offence

	Cleared (N=580)	Detected (N=1,566)	Clearance rate
Attempted homicide	15	15	100%
Homicide	3	3	100%
Incitement to hatred	108	157	69%
Discrimination	38	78	49%
Assault	254	586	43%
Invasion of domestic premises	15	46	33%
Menace	58	180	32%
Defamation	65	329	20%
Other	8	42	19%
Criminal damage	16	130	12%

The number of principal cleared offences by hate motive and offence is discussed below. The tables also indicate if the police have classified the suspected offences as hate crimes.

2.5.1 Hate motives and the use of the hate crime code

Table 14 indicates a hate motive in the principal offences referred for consideration of charges. The most common motive for hate crimes cleared in the pre-trial investigation appears to have been hatred of a person's ethnic or national background. This accounts for approximately 75% of the motives for the cases referred for consideration of charges. Religion is the next most common motive. Sexual orientation, disability or gender identity were also at the root of several suspected offences.

Table 14. Motives of solved crimes

	N=580	100%
Ethnic or national origin	433	75
Religion or beliefs	105	18
Sexual orientation	18	3
Disability	15	3
Gender identity	3	1
Other	6	1

The data also included criminal complaints in which no indication of hate motive could be found. There were two types of such cases: in three cases, the hate motive was not evident in the pre-trial investigation records. This may be explained by the fact that criminal complaints can be updated as the investigation progresses. In the other three cases, while the offence did involve a hate motive, the motive was that of the victim and not of the offender. For example, the victim of an offence may have provoked the offender by using racist or offensive language to commit the offence – typically an assault.

Table 15 examines the number of offences cleared by principal offence. The most common offences cleared were assault and incitement offences. When compared with Table 1, which describes the offences for which the majority of criminal complaints have been filed, it can be noted that the proportion of defamation offences, in particular, has dropped significantly. Only approximately 10% of the offences cleared were defamation offences, while, at the reporting stage, approximately one fifth of all principal offences were defamation offences. In the case of incitement offences, the opposite observation can be made: the proportion of incitement offences cleared was double the number reported.

Table 15. Offences cleared by principal offence

	N=580	100%
Assault	254	44
Incitement to hatred	108	19

	N=580	100%
Defamation	65	11
Menace	58	10
Discrimination	38	7
Criminal damage	16	3
Invasion of domestic premises	15	3
Attempted homicide	15	3
Other	8	1
Homicide	3	1

Table 16 examines the motives for cleared suspected hate crimes, according to whether the police assigned them a hate crime code. According to the table, the police did not assign a hate crime code to a single cleared suspected offence that potentially involved a hate motive related to a person's sexual identity or disability. A hate crime code was also more rarely assigned when the motive was possibly linked with a person's sexual orientation.

Table 16. Use of the hate crime code by hate motive

Have the police used a hate crime code?			
	No	Yes	TOTAL
Ethnic or national origin	207	226	433
Religion or beliefs	36	69	105
Sexual orientation	11	7	18
Gender identity	3	0	3
Disability	15	0	15
Other	6	0	6
TOTAL	278	302	580

Table 17 shows the distribution of the principal offences cleared by type of offence and the use of a hate crime code. A hate crime code was most commonly used in incitement to hatred, in which case the hate motive is an obvious and integral element of the offence. Defamation was the type of offence in which hate crime code was most commonly omitted.

Table 17. Use of the hate crime code for solved offences by principal offence

Have the police used a hate crime code?			
	No	Yes	TOTAL
Assault	156	98	254
Criminal damage	10	6	16
Defamation	54	11	65
Invasion of domestic premises	8	7	15
Menace	9	49	58
Discrimination	26	12	38
Incitement to hatred	10	98	108
Other	4	4	8
Homicide	0	3	3
Attempted homicide	1	14	15
TOTAL	278	302	580

2.5.2 Comparative observations

The findings made in this section were, first of all, compared to previous research, which focused on racist crimes and, secondly, to crime statistics in general. Exceptionally, observations are reported in this study by principal offence, and the focus is on the most common offences only found in the data.

Peutere's study discussed suspected racist crimes recorded by the police in Helsinki in 2006. When calculated on the basis of the principal offence, a total of 192 offences were associated with racist motives. Of these, the police referred 88 suspected principal offences for consideration of charges (Peutere 2008, 47). According to the 2017 data, the Helsinki Police District recorded more than 300 hate crimes. Of these, 286

were linked to a suspected racist motive, i.e. a motive possibly linked to a person's ethnic or national background. Of these, 106 were referred for consideration of charges. Incitement offences were excluded from these figures because they were not included in Peutere's analysis.

In the following comparison, the clearance rate has been calculated as the proportion of offences with specifically racist motives detected within the Helsinki Police District (excluding incitement offences). Based on this, the clearance rate was 46% in 2006 and 37% in 2017. The figures are not fully comparable because the statistical method applied on hate crimes has changed between 2006 and 2017. Furthermore, there is no certainty as to whether the boundaries of the Helsinki Police District have been changed.

Table 18 compares the clearance rates of certain suspected offences involving racist aspects within the Helsinki Police District in Peutere's investigation and the 2017 data. Only those offences that Peutere also used in her study have been included in the comparison.

Despite these reservations, Table 18 highlights certain key findings regarding the prevalence and clearance rates of specific racist crimes. It is perhaps a relief to note that the number of racist assaults may have even slightly decreased during the period under review. On the other hand, the number of defamation and menace offences has more than doubled.

Table 18. Clearance rates of principal offences with racist aspects in 2006 and 2017

	Number of principal offences		Clearance rates for principal offences	
	2006 (N=180)	2017 (N=233)	2006	2017
Assault	75	76	56%	61%
Petty assault	32	17	16%	6%
Defamation	33	75	52%	17%
Discrimination	13	8	62%	50%
Criminal damage	11	12	27%	17%
Menace	12	40	58%	48%
Invasion of domestic premises	4	5	0%	0%

* Data for 2006 are from Peutere's study (2008, 43)

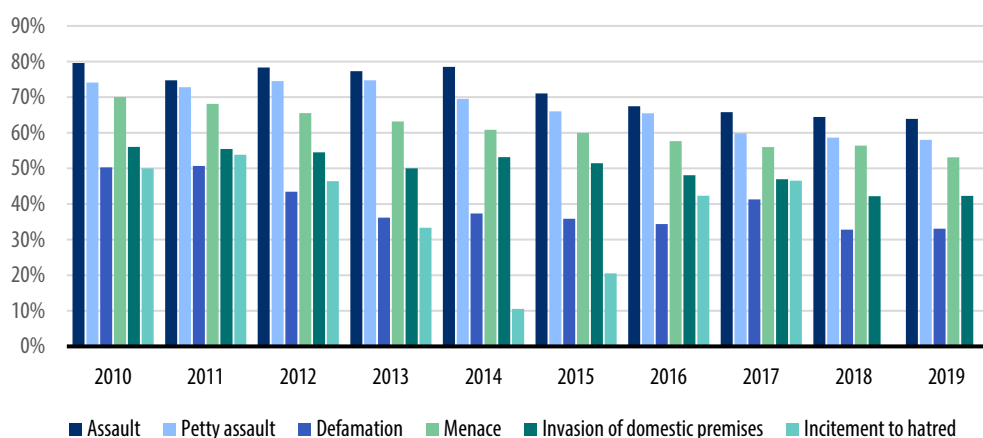
Based on Table 18, it can also be seen that the clearance rate for racist and basic assaults reported in the Helsinki Police District has remained largely consistent, or has even slightly improved. By contrast, the clearance rate for assaults in general, as recorded by the police nationwide, has decreased in recent years, as shown in Figure 4. However, the statistics on Helsinki and the whole country are not comparable.

The table also shows that the clearance rate for petty racist offences has fallen sharply during the period under review. The clearance rate for petty racist assaults and defamation seems to have dropped from 16% and 52% to 6% and 17%, respectively.

Figure 4 shows the national clearance rates for offences between 2010 and 2019. The data have been retrieved from Statistics Finland's database (Statistics Finland 2021b). The clearance rates have been calculated according to the proportion of the offences cleared in relation to the offences recorded by the police, Customs and Border Guard. The national clearance rate of these offences has decreased during the period under review.

In addition, Figure 4 shows that clearance rates vary considerably between different offences. The same applies to hate crimes (cf. Table 13). In defamation offences, the clearance rate is below 40%, while in assault offences the figure has settled at around 60% in recent years. This figure does not include data on incitement to hatred in 2018 and 2019. The data for 2019 were not available, and the clearance rate for 2018 turned out to be so high that its inclusion would have obscured the current downward trend.

Figure 4. Clearance rate of specific offences 2010–2019



This report is not able to give a definitive answer to the question of whether a greater proportion of hate crimes than other offences remain unsolved. This is because the national clearance rates are not comparable with the clearance rates for hate crimes. The reason for this is two-fold.

Firstly, Statistics Finland uses an offence as its statistical unit, i.e. a matter recorded as an offence in the Police Information System. While a single offence can involve several offenders and victims, the offence is recorded only once. Hate crimes, on the other hand, are recorded according to the most serious principal offence against the injured party. Therefore, if an offence involves more than one injured party, it may appear in the statistics multiple times.

The clearance rates derived from the material for the present study refer to the proportion of principal offences sent for the consideration of charges of all principal offences recorded by the police in 2017. In Statistics Finland's data, the clearance rates are presented as the proportion of cleared offences from those reported in the same year. In other words, the number of cleared offences may be higher in one year than the number of offences reported.

In 2018, 244% of incitement offences were solved; the number of recorded incitement offences had been much higher in the previous year than in 2018. In 2017, the Helsinki Police Department had an investigation team focused solely on combating punishable hate speech, the effectiveness of which is manifest in the spike in the statistics.

2.6 Conclusions

This chapter looked at suspected hate crimes during the pre-trial investigation phase. In 2017, the police recorded 1,566 suspected principal offences with a hate motive (see Chapter 1.3.1). Police suspended the investigation in approximately 21% of these cases. The most common reason for suspending the investigation was that the offender could not be identified. The police terminated the investigation in approximately one third of the cases. The most common reason for the termination of the investigation was that the injured party did not make any claims or that no offence could be identified. The prosecutor made a decision to restrict the pre-trial investigation in approximately 13% of the cases. Approximately 580 principal offences recorded by the police, i.e., around 37%, were referred for the consideration of charges.

As a result of the discussion in this chapter, the following eight conclusions about the handling of hate crimes in the pre-trial stage can be established:

1. Assigning hate crime code can be seen as a tool to refer hate crime reports at a lower threshold from the preliminary investigation to the pre-trial investigation (for the responding patrol to communicate the possible motive to the investigators). For this tool to be effective, however, the use of hate crime codes should be an established practice. Investigations are placed at risk if the hate crime code is not sufficiently used.
2. The use of the hate crime code is currently voluntary within the police. This may explain the code's current use rate. The police can document a criminal complaint without taking a position on the hate crime classification.
3. The use of hate crime codes in 2017: Approximately 40% of suspected hate crimes were classified as hate crimes by the police.
4. An indication of a possible hate motive is usually evident in the narrative of the pre-trial investigation record. In most cases, the narrative refers, for example, to racist slurs being used.
5. The material included isolated cases in which the possible hate motive was only revealed during the interview but was not acknowledged or followed up on at that stage. Consequently, the reference remained an isolated, random sentence in a pre-trial investigation record including dozens of pages and, possibly for this reason, the prosecutor had not sought increased punishment.
6. Motives: The motives were thoroughly investigated in cases in which they form a part of the statutory definition of the offence. In interviews concerning discrimination and incitement offences, the motives of the suspected offender were always investigated. If the investigation involved an injured party, they were usually also asked about the motives.
7. In other offences, the police investigated the motives to a varying degree. In the second most common principal offence, defamation, the motives were always examined if the criminal complaint had been classified as a hate crime. The motives had been examined in only half of the investigations into unclassified defamation offences.
8. The specialisation of investigations has had a direct, positive impact on crime prevention. This is evident in the effectiveness of the investigation team focused exclusively on combating punishable hate speech.

3 Prosecution services

This chapter looks at hate crimes that have been referred to the prosecution services for consideration of charges. In this and the following chapter, the findings are presented by the suspects of the offence. The police referred 379 pre-trial investigation records for consideration of charges; the prosecutor brought charges in 249 cases.

The pre-trial investigation records submitted for consideration of charges dealt with 580 principal offences and 547 suspects. The prosecutor decided to waive prosecution in the case of 179 suspects (of a total of 198 by principal offence). The prosecutor brought charges against 368 suspects (381 by principal offence).

3.1 Applications for a summons by the prosecutor

Table 19 shows the relative proportions of decisions taken by the prosecutor by principal offence. Of all the offences recorded by the police and the pre-trial investigation records submitted by the police for consideration of charges, the prosecutor brought charges in 381 cases. This accounts for 66% of the cases referred by the police for consideration of charges.

Table 19. Charges brought for hate crimes by principal offence

	N=580	100%
Non-prosecution	198	34
Charges brought	381	66
Under consideration of charges	1	0

In table 20, the charges have been examined by suspect. Therefore, the number of charges brought and the number of decisions to waive prosecution indicates how many defendants have been prosecuted and how many suspects were not prosecuted following the consideration for charges. Since the principal offence is recorded

according to the injured party, it no longer serves as a suitable statistical unit. The figures provided in Table 20 do not exactly correspond to the number of offences, as one charge may concern several offenders.

Table 20. Charges for hate crimes by suspect

	N=547	100%
Non-prosecution	178	33
Charges brought	368	67
Under consideration of charges	1	0

The distribution of charges by offence is shown in Table 21. The most commonly prosecuted charges concerned assault offences, which account for approximately 54% of all charges. The next most common type of offence was incitement to hatred, accounting for approximately 19% of the charges.

Table 21. Charges brought against suspects by offence

	N=368	100%
Assault	198	53.8
Criminal damage	5	1.4
Defamation	26	7.1
Invasion of domestic premises	6	1.6
Menace	25	6.8
Discrimination	17	4.6
Incitement to hatred	74	20.1
Other	11	3.0
Homicide	2	0.5
Attempted homicide	4	1.1

Table 22 shows the prevalence of suspected hate motives held by the defendants, as detected during the compilation of annual hate crime reports. Examining the charges brought, ethnic or national background appears to be by far the most significant motive. The table shows that racist motive accounts for 72.8% of the suspected motives. Religion or beliefs was the second most important category of motives identified during the pre-trial investigation stage. Sexual orientation and disability was the motive in 3.5% and approximately 1.5% of the cases, respectively. In five cases, the pre-trial investigation revealed no indication of a hate motive (two cases concerned an offence committed by an offender provoked by hate speech).

Table 22. Charges grouped by motives cited in the criminal complaint

	N=368	100%
Ethnic or national origin	268	72.8
Religion or beliefs	75	20.4
Sexual orientation	13	3.5
Gender identity	2	0.5
Disability	5	1.4
Other	5	1.4

3.2 Prosecutor's request for increased punishment

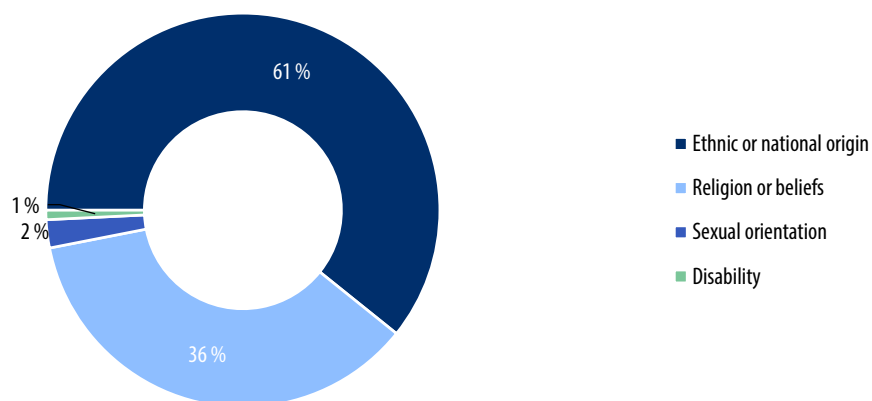
The figures in Table 23 show the number of charges in which the prosecution expressed a request for increased punishment and, on the other hand, the number of cases in which the motive was included in the statutory definition of the offence. Here, hate crimes the motive of which is included in the statutory definition of the offence, form their own category, since the punishment for these offences cannot be increased (Government Proposal 44/2002, p. 193). While the prosecutor requested increased punishment on the grounds of a hate motive in approximately one in ten applications for summons, no such request was made in more than half of the cases. In the cases in which a request for increased punishment was made, the prosecutor usually referred to the provisions under Chapter 6, section 5, subsection 4. The prosecutor did not usually identify the motive in more detail, but it was reflected in the description of the act.

Table 23. Application of the grounds for increased punishment in charges

	N=368	100%
No grounds for increased punishment	238	65
Ethnic or national origin	34	9
Religion or beliefs	4	1
Included in the statutory definition of the offence	92	25

Figure 5 shows the division of hate crime charges under different motives. Hate crime charges refer to cases in which the prosecution has either requested for increased punishment (based on Criminal Code 6:5.4) or in which the hate motive is included in the statutory definition of the offence. There were a total of 130 such hate crime charges, accounting for 35% of all charges.

Figure 5. Hate motives in hate crime charges



With a 61% share, this figure shows that a racist motive was by far the most common motive cited in charges for hate crimes. This percentage is lower than in cleared offences: as many as three-quarters of the hate crimes cleared were racist.

Table 24 takes a deeper look at the division of hate crime charges by motive cited in the criminal complaints. Unlike in Figure 5, the hate crime charges shown in Table 24

are broken down according to whether the hate motive is included in the statutory definition of the crime or cited specifically as grounds for increasing the punishment. The respective proportions of hate crime charges citing ethnic background and religion as motives are essentially equal. The racist motive is clearly most prevalent in charges in which the prosecutor has requested increased punishment. In this category, there were no charges with requests for increased punishment on the grounds of a hate motive linked with sexual orientation or disability.

Table 24. Division of hate crime charges by hate motives identified in criminal complaints

	Increased punishment	Statutory definition of offence	TOTAL
Ethnic or national origin	34	45	79
Religion or beliefs	4	43	47
Sexual orientation	0	3	3
Disability	0	1	1
TOTAL	38	92	130

The distribution of the requirement for increased punishment by type of offence is shown in Table 25. The most common cases in which the prosecutor requested increased punishment were assaults. The next most common type of offence was menace. Among defamation offences, the request for increased punishment was rare, made in only three of the 26 charges (see Table 21). Of the requests for increased punishment, 89% were based on the defendant's racist motive.

Table 25. Prosecutor's requests for increased punishment (by offence)

	Ethnic or national origin	Religion or beliefs	Included in the statutory definition of the offence	TOTAL
Assault	20	2	0	22
Criminal damage	0	1	0	1
Defamation	3	0	0	3
Menace	7	1	0	8

	Ethnic or national origin	Religion or beliefs	Included in the statutory definition of the offence	TOTAL
Discrimination	0	0	17	17
Incitement to hatred	0	0	74	74
Other	1	0	0	1
Homicide	0	0	1	1
Attempted homicide	3	0	0	3
TOTAL	34	4	92	130

Table 24 shows that types of hate crime cannot be divided into hate crime categories in the same way. Among the offences in which the hate motive is not part of the definition of the offence, most of which are assault offences in this material, the racist motive is by far the most common. In contrast, hate crimes with an intrinsic hate motive are fairly evenly distributed into two main groups on the basis of the motive, although they in all likelihood also include offences committed on the basis of sexual orientation and disability.

Table 26 examines hate crime charges of this latter type. They are grouped by type of offence, according to the motive indicated in the crime report. On the basis of the figures presented in the table, it can be calculated that religion is the largest motive category, accounting for 58% of incitement offences, while more than 90% of discrimination offences were motivated by racism. Disability was the suspected main motive in one probable discrimination offence. Similarly, all hate crimes likely to have been committed due to sexual orientation are categorised under incitement offences.

Table 26. Hate motives of specific hate crimes as identified during the pre-trial investigation

	Ethnic or national origin	Religion or beliefs	Sexual orientation	Disability	TOTAL
Discrimination	16	0	0	1	17
Incitement to hatred	28	43	3	0	74
Homicide	1	0	0	0	1
TOTAL	45	43	3	1	92

Even if the charges did not include a request for increased punishment under Criminal Code 6:5.4, the offence may have involved a hate motive. The request for increased sentence can only be raised at a district court hearing. The decision to treat an offence as a hate crime is made by the court on the basis of the evidence submitted to it. If the criminal process functions properly, the court's decision reflects the actual course of the criminal case; in other words, it reflects 'the material truth'. From the point of view of hate crimes, this requires that information about a possible hate motive is passed on from the recording office to the investigators and thereon to the prosecutor and to the court.

3.3 How is the motive communicated to the prosecutor by the police?

Information about possible hate motives is communicated to the prosecutor through at least one of the following channels: 1) as a mandatory notification of a hate crime as part of cooperation during criminal investigation, 2) the pre-trial investigation record if the suspected offence is referred for consideration of charges, or 3) a hate crime code assigned by the police, which is transmitted electronically from the police information system to the prosecutor. None of these channels are utilised if the police fail to identify a possible hate motive.

3.3.1 Cooperation during the criminal investigation and notifying the prosecutor

The authority in charge of the pre-trial investigation in Finland is the police. In addition, the prosecutor has the right to issue orders concerning pre-trial investigations. Under Chapter 5, section 2 of the Criminal Investigation Act, the police “on the request of the public prosecutor shall conduct a criminal investigation or perform a criminal investigation measure. Also otherwise the criminal investigation authority shall comply with orders given by the public prosecutor intended to ensure clarification of the matter.” This means that the police alone do not decide when there is reason to suspect an offence, and instead these decisions are taken in cooperation with the prosecutor.

The Criminal Investigation Act provides for this cooperation. According to the Act, the police must notify the prosecutor of offences that on the joint decision of the police and the prosecutor fall under the notification obligation. (Criminal Investigation Act 5:1; 5:3.) The notification obligation applies to all offences the minimum punishment for which is four months of imprisonment. It also applies to all types of new or rare offences or offences that involve discretionary judicial questions. The notification obligation also applies to offences falling within the scope of the Prosecutor General's right to prosecute, as well as to all hate crimes. The offences subject to the notification obligation are listed in the National Police Board Instructions (National Police Board, 19.12.2018). The notification is transmitted to the prosecutor through the police information system. If the need for notification is not evident, the police may ask the prosecutor for advice before submitting a formal notification (Instructions of the Prosecutor General 2013, 12).

Under the now repealed section 15 of the Criminal Investigation Act, the police were not under obligation to notify the prosecutor of straightforward criminal cases (Criminal Investigation Act 30/04/1987/449). According to the Government Proposal, straightforward criminal cases that could be excluded from the notification obligation included theft, criminal damage, driving while intoxicated and assault (Government Proposal to the Parliament 82/1995; Kolehmainen 2009, 134). This provision has been removed from the current legislation.

The absence of the provision does not, however, mean that the police and prosecutors should handle all criminal cases in cooperation. A report on the cooperation between the criminal investigation authority and the prosecutor prescribed by the Criminal Investigation Act notes that a majority of ‘routine’ offences are excluded from the reporting obligation. These cases are straightforward and simple enough not to merit case-specific cooperation. According to the report, these straightforward cases may

include such offences as theft, petty theft, unauthorised use of a vehicle, criminal damage and assault. (Instructions of the Prosecutor General 2013, 12.) On the other hand, it is with precisely such commonplace offences, in the investigation of which co-operation is rare, that the standard of investigation varies, which, in turns, undermines the economy of the criminal process (Tolvanen 2020, 40).

Assaults are the most common type of hate crime. From this it follows that if the police do not recognise the hate motive behind an assault or another routine offence, it is unlikely that the prosecutor will be notified of this offence at all. With hate crimes, co-operation in pre-trial investigations could probably improve the standard of criminal investigations in terms of the evidence required for increased punishment. This will not be possible if an offence is not identified as a possible hate crime before the investigation is opened. According to the instructions of the National Police Board, the prosecutor must be notified of hate crimes as soon as possible after the pre-trial investigation has been opened. The responsibility for the integrity of the notification process rests with both the criminal investigation authority and the prosecution service.

From the point of view of prior notification, certain free speech offences form a distinct group, as identifying them as an offence subject to the notification obligation is not as problematic as in some other hate crimes. The criminal investigation authority must report all offences related to freedom of expression in the media to the Prosecutor General. Under section 24, subsection 1 of the Act on the Exercise of Freedom of Expression in Mass Media, the Prosecutor General shall decide on the bringing of charges for an offence arising from the contents of a published message, where this is subject to public prosecution.

The mass media referred to in the Act means communication via television, radio, the Internet or printed matter for an audience of freely determined message recipients. Personal messages, as well as communication that takes place without communication devices, such as a lecture, are not governed by the Act. A free speech offence is, by definition, a criminal offence subject to public prosecution based on the content of a published message. Free speech offences may include, for example, incitement to hatred and defamation. (Kolehmainen 2009, 67–69, 81.)

The aim of the cooperation between the police and the prosecutor is to ensure that the material that the prosecutor relies on in court has been carefully prepared during the pre-trial investigation. Cooperation during the pre-trial investigation cooperation is a way of sharing a type of gatekeeping power and responsibility between the police and the prosecution service. Moreover, the cooperation during the pre-trial investigation strengthens the judicial standard of the criminal investigation. Provided that the cooperation works, this also adds an additional layer of quality control between the prosecutor and the police. (Instructions of the Prosecutor General 2013.)

The scope of the present report is not sufficient to allow an investigation of the frequency at which the police have notified the prosecutor of suspected hate crimes or criminality classified as hate crime. The question is also relevant in the case of other types of offences subject to the notification obligation. The specific problem with notifications of hate crimes resides in the identification of hate crimes.

The same problem does not apply to the offence of incitement. According to the data collected for this study, incitement to hatred generally appears to be investigated to a high standard. In all of the criminal complaints concerning incitement to hatred, the criminal investigators had asked the suspects about their motives and what they were trying to achieve by their actions. According to a leading criminal investigator, the investigators would refer to a checklist of model questions, which had been modified and updated as necessary on the basis of observations shared between investigators and in discussions with the prosecutor.

The standard of the pre-trial investigation records and the criminal investigator's report show that special attention has been paid to the planning and conducting of the interviews in incitement offences. This gives rise to the question of the extent to which the standard of the investigation is due to the criminal process adopted in these specific cases: the consideration of charges led by the Prosecutor General and the concentration of the investigations to investigators specialising in incitement offences. This question was briefly addressed in the report of the Ministry of Justice's LEAN project. According to the LEAN project report, the smoothness of the criminal process could be improved by increasing cooperation between the police and the prosecution service and by making better use of the special expertise of the police, prosecution services and judges (Tolvanen 2020, 52, 54).

3.3.2 The “summary” of the pre-trial investigation record indicating suspected hate motive

It would be advisable that the suspected hate motive identified by the police be expressed in the narrative of the investigation report, either as an observation made by the police or in the transcription of the interview. Failures by the police to assign the appropriate hate crime code to a case will be discussed later in this study. Table 27 aims to answer the question of how the motives were indicated in the pre-trial investigation in cases in which the prosecutor has brought charges.

The motive is most commonly provided in the narrative. Normally, however, the indication of the motive is not formulated as an explicit suspicion of a possible hate motive but is mentioned instead in the description of the offence as, for example, racist name-calling. The fact that the majority of criminal reports included in the material for the present study refer to a possible hate motive does not entail that the majority of them would also have been identified as possible hate crimes.

An assessment of how clearly the evidence on the motive has also been constructed during the collection of the data. In cases in which the pre-trial investigation record does not explicitly mention that investigations have been carried out at least to establish or confirm the suspicion, the case was coded as 'not examined' for this study. A case would also be similarly coded if one of the parties interviewed had raised a possible hate motive but this information had in some way been overlooked or unmentioned in the report as evidence of a possible hate motive for the offence.

Table 27 shows that in more than one third of the applications for summons submitted to a district court, the hate motive was evident both in the narrative of the pre-trial investigation record and in at least one of the interview records. The motive had not been further clarified in these cases, and this was indeed not always necessary, if it had come to light during the interview without separate examination. When a possible hate motive is evident from the narrative itself, the prosecutor need not look for it separately in the interview records themselves, which may be dozens of pages long. If, however, the hate motive is only referred to in passing at some point during the narrative or interview and has not been examined in more detail, the prosecutor may not have enough evidence to warrant an increased punishment. This type of case appears to account for approximately one fifth of all applications for summons submitted to district courts.

Table 27. Hate motive cited in the pre-trial investigation records of defendants in hate crimes

	N=368	100%
Referred to in the report narrative AND at least in one interview but not examined.	141	38
Referred to in the report narrative OR at least in one interview but not examined.	68	19
Hate motive not evident.	31	8
Referred to in the narrative and the motive has been further examined.	17	5

	N=368	100%
No apparent hate motive but the suspect has been provoked by name-calling.	14	4
No interview records available.	9	2
Motive included in the definition of the offence.	88	24

Table 28 looks at how the hate motive is manifest specifically in hate crime charges. The two salient categories are formed by charges in which the motive is included in the statutory definition of the offence and those in which the reference to the hate motive is indicated both in the narrative of the pre-trial investigation record and in at least one interview record. The proportion of cases in which a hate motive is referred to only in the narrative or the interview protocol and has not been examined has dropped to 2%. These cases accounted for one fifth of all the charges sent to district courts.

Table 28. Hate motive cited in the pre-trial investigation records in charges for hate crimes

	N=130	100%
Referred to in the narrative AND at least one interview record but was not further examined.	30	23
Referred to in the narrative and the motive has been further examined.	7	5
Referred to in the narrative OR at least in one interview record but was not further examined.	3	2
No interview records were available.	2	2
Motive included in the definition of the offence.	88	68

Reviewing the data by type of offence does not alter the pattern: the request for increased punishment has usually been made in cases in which the hate motive has been indicated as clearly as possible in the pre-trial investigation record. The analysis by type of offence is presented in Table 29.

Table 29. Reference to a hate motive in the pre-trial investigation records in charges of hate crimes (by offence)

	Assault	Criminal damage	Defamation	Menace	Other	Attempted homicide	TOTAL
Referred to in the report narrative and at least in one interview but not examined.	20	0	2	6	1	0	29
Referred to in the narrative and the motive has been further examined.	1	1	1	1	0	1	5
Referred to during several interviews, but not examined.	0	0	0	0	0	2	2
Referred to during an interview with a witness, but not examined.	1	0	0	0	0	0	1
No interview records available.	0	0	0	1	0	0	1
TOTAL	22	1	3	8	1	3	38

Even if the suspicion of a hate motive is not evident in the pre-trial investigation record, the prosecutor can still be informed about it through the police information system if the police have assigned a hate crime code to the case.

3.3.3 Hate crime code indicating suspected hate motive

Table 30 shows the cases in which the police used the hate crime code. The hate crime code had not been used in the majority of cases in which the prosecutor did not request increased punishment on the grounds of a hate motive. On the other hand, the police had not always assigned a hate crime code to cases in which the hate motive is included in the statutory definition of the offence.

Table 30. Hate crime code used by the police in all charges

Have the police used a hate crime code?			
	No	Yes	TOTAL
No grounds for increased punishment	154	84	238
Ethnic or national origin	11	23	34
Religion or beliefs	3	1	4
Included in the statutory definition of the offence	21	71	92
TOTAL	189	179	368

Table 31 shows the number of hate crime charges in which the police had used a hate crime code. Only approximately 63% of cases in which the prosecutor requested an increased punishment were assigned a hate crime code by the police.

Table 31. Hate crime code used by the police in hate crime charges

Have the police used a hate crime code?			
	No	Yes	TOTAL
Ethnic or national origin	11	23	34
Religion or beliefs	3	1	4
Included in the statutory definition of the offence	21	71	92
TOTAL	35	95	130

In the following, the use of the hate crime code by type of offence is discussed. Table 32 includes all charges. A hate crime code had been used in approximately one third of the assault and defamation offences, and in up to two thirds of the charges brought for menace. In discrimination offences, a hate crime code had been assigned to only

a quarter of the cases, and even some of the incitement offences had remained unclassified. Charges for hate crimes alone are examined in Table 33.

Table 32. Hate crime code used by the police in all charges (by offence)

Have the police used a hate crime code?			
	No	Yes	TOTAL
Assault	131	67	198
Criminal damage	4	1	5
Defamation	18	8	26
Invasion of domestic premises	2	4	6
Menace	8	17	25
Discrimination	13	4	17
Incitement to hatred	8	66	74
Other	5	6	11
Homicide	0	2	2
Attempted homicide	0	4	4
TOTAL	189	179	368

Table 33 shows that, in the case of menace, the police had used a hate crime code in almost every case in which the prosecution had subsequently requested an increased punishment. However, there is significant variation between different types of offence, as the number of assault offences in which a hate crime code was and was not used is nearly even.

Table 33. Hate crime code used by the police in hate crime charges (by offence)

Have the police used a hate crime code?			
	No	Yes	TOTAL
Assault	10	12	22

Have the police used a hate crime code?

	No	Yes	TOTAL
Criminal damage	1	0	1
Defamation	2	1	3
Menace	1	7	8
Discrimination	13	4	17
Incitement to hatred	8	66	74
Other	0	1	1
Homicide	0	1	1
Attempted homicide	0	3	3
TOTAL	35	95	130

The absence of a hate crime code in the majority of discrimination offences is surprising. According to the National Police Board instructions (13/12/2011), all discrimination offences should be coded. This finding can be explained by the fact that, in discrimination offences, the offence does not necessarily have a hate motive. The preliminary work for the Act states that fulfilling the statutory definition of the offence requires awareness of the existence of the grounds for discrimination and the significance of these grounds in the treatment of a person including in cases in which the actual motive is economic gain and not, for example, racism. Punishable discrimination does not require a specific intent to discriminate as a result of the grounds referred to in the Act. (Government Proposal 94/1993, 36.)

3.4 Waiving of prosecution

The police and prosecutors act as gatekeepers with powers to decide which of the cases proceed to a court hearing. The prosecutor is responsible for investigating whether a crime has been committed in the case described in the pre-trial investigation record and whether the suspect is likely to be guilty of the offence. Decisions to waive prosecution are governed by the Criminal Procedure Act.

Table 34 shows the grounds for waiving prosecution. The most common grounds are insufficient evidence. The rather large proportion (20%) of decisions without specified

grounds may raise questions. This can be explained by the categorisation method. All cases in which charges have not been brought against one or several persons suspected by the police as part of a larger criminal case, are coded “no justification”. In all cases in which charges against some of the persons named as suspects in the pre-trial investigation records were waived, these persons were also omitted from the application for summons. No decisions concerning them were collected for the data, nor was this information obtained through requests for information on each criminal complaint.

Table 34. Grounds for waiving prosecution

	N=179	100%
No evidence	93	52.0
Minor offence	19	10.6
Reasonableness standard	12	6.7
No offence	5	2.8
No right to bring charges	6	3.4
Joint punishment (concurrence)	2	1.1
Statute of limitations expired	1	0.6
Suspect has died	1	0.6
Not justified	38	21.2
Missing decisions	2	1.1

Under the law, (Criminal Procedure Act 1:6 and 1:6a, Criminal Code 8:1), the procedural grounds for waiving charges are: 1) No offence has taken place; 2) there is insufficient evidence of an offence and 3) the statute of limitations has expired or the prosecutor has not legal right to bring charges.

The latter possibility is relevant in complainant offences in which the injured party has withdrawn their claim and no public or private interest requires a court hearing. The injured party may withdraw their claim at any stage until the judgment has been passed. Discretionary grounds for waiving prosecution are the insignificance of the

act, the young age of the offender, reasonableness, concurrence or confession (Criminal Procedure Act 7:1 and 2; 1:8). In practice, the application of the reasonableness principle is often the result of an out of court settlement reached between the parties.

It is the responsibility of the court to examine whether there remains reasonable doubt of the guilt of the defendant. If no reasonable doubt remains, the district court will assess the crime in accordance with the scale of punishment defined in the Criminal Code. The provisions on determining the punishment are laid down in Chapter 6 of the Criminal Code. This chapter also defines the criteria for increasing the sentence. These are the methodical nature of the act, commission of the offence as part of the activity of an organised criminal group, commission of the offence for remuneration, commission of the offence for a hate motive and the criminal history of the offender (Criminal Code 6:5). It is, therefore, necessary to establish the possible grounds for increased punishment in order to determine the punishment. The presence of the grounds for increased punishment may, in other words, be interpreted as the necessary circumstances, as referred to in the Criminal Investigation Act, which allow the offence to be punished accordingly (Criminal Investigation Act 1:2,1).

RIGHT OF THE PROSECUTOR TO BRING A CHARGE (CRIMINAL PROCEDURE ACT 1:7; 1:8)

The prosecutor may waive prosecution (1:7)

- 1) if no sentence more severe than a fine is to be anticipated for the offence and the offence, with consideration to its detrimental effects or the degree of culpability of the offender manifested in it, is to be deemed petty as a whole; and
- 2) if the suspect had not reached the age of eighteen at the time of the commission of the suspected offence and no sentence more severe than a fine or imprisonment for at most six months is to be anticipated for this offence and it is to be deemed to be more the result of lack of understanding or thoughtlessness than of heedlessness of the prohibitions and commands of the law.

Unless an important public or private interest requires otherwise, the prosecutor may, in addition to what is provided for in section 7, waive prosecution (1:8)

- 1) if criminal proceedings and punishment are to be deemed unreasonable or inappropriate in view of a settlement reached by the suspect in the offence and the injured party, the other action of the suspect in the offence to prevent or remove the effects of the offence, the personal circumstances of the suspect in the offence, the other consequences of the act to him or her, the welfare and health care measures undertaken and the other circumstances;
- 2) under the provisions on joint punishment or on the consideration of previous punishments in sentencing, the suspected offence would not have an essential effect on the total punishment; or

3) the expenses in continuing to consider the case would be in manifest disproportion to the nature of the case and to the sanction possibly to be expected in it.

3.5 Conclusions

Of the 580 suspected principal offences that proceeded to the consideration of charges, the prosecutor made a decision to waive prosecution in 198 cases, which accounts for 34%. Of the hate crimes recorded in the same year, the prosecutor brought 368 charges, of which 130 were for hate crimes (i.e. the prosecutor requested increased punishment on the grounds of a hate motive or the motive was included in the statutory definition of the offence). For the purpose of this study, hate crime reported to the police refers to hate crime identified by the Police University College's hate crime researcher in the Police Information System using the methods described in Chapter 1.3.1. The most common reason for waiving prosecution was insufficient evidence.

The following nine observations can be made regarding the ways in which the hate motive was communicated throughout the criminal process:

1. The police had assigned the hate crime code to approximately half of all charges brought by the prosecutor. Approximately 75% of hate crime charges had been classified by the police as a hate crime.
2. The prosecutor can obtain information of a possible hate motive through at least three channels: an advance notification by the police, the crime code assigned to the case by the police or, ultimately, the pre-trial investigation record (or its narrative section).
3. Information about a possible hate motive is essential information in the cooperation during a pre-trial investigation. Cooperation between the police and prosecutors during a pre-trial investigation is a tool for improving the standard of criminal investigations and for ensuring that the prosecutor has sufficient material at their disposal to bring charges. In addition, the cooperation divides between the two authorities the powers and responsibility to interpret at the pre-trial investigation stage the ways on which the criteria for suspending, terminating or restricting the criminal investigation, as referred to in the law, are applied in practice.

Cooperation between the police and prosecution service during the pre-trial investigation is all the more crucial, as the resources of the two authorities are proving insufficient to clear all crimes.

4. Attempts have been made to support cooperation during pre-trial investigation by issuing a directive that lists all cases when police are obliged to notify the prosecutor. The responsibility for the functioning of the notification system lies jointly with the police and the prosecution service. The successful carrying out of the responsibility requires monitoring and, in particular, revision of decisions for which no notifications have been filed.
5. The effectiveness of the notification system in the fight against hate crime is undermined by difficulties in identifying hate crimes and by issues related to the preliminary investigation.
6. While most of the pre-trial investigation records composed by the police showed an indication of a hate motive, the hate motive had been further examined in only a small proportion of the cases. The indication of a hate motive may have been, for example, the use of a racist slur.
7. In cases of incitement to hatred, the hate motive was examined during the interview without exception. In 2017, one investigation team specialising in incitement offences was primarily responsible for investigating all incitement offences.
8. The specialisation of prosecutors could enhance the cooperation between the police and the prosecutor. In incitement offences, the right to bring charges rests with the Prosecutor General.
9. There would seem to be a need for further research into the impact of the notification system on the standard of criminal investigations and whether it has contributed to the investigation of difficult or rare cases and cases that are subject to interpretation.

4 Hate crimes before the district court

The police referred 547 suspected hate crimes for the consideration of charges. The prosecutor brought charges against 368 suspects. Of these, 130 were hate crime charges (i.e. cases in which the prosecutor requested increased punishment on the grounds of a hate motive or a hate motive being included in the statutory definition of the offence), 92 of these cases led to a conviction specifically for a hate crime. The same pattern emerges when analysing the data by criminal complaint: The police referred the pre-trial investigation records of 379 criminal complaints for the consideration of charges, of which 249 were taken by the prosecutor to district court. Of these, 85 cases resulted in a conviction for a hate crime.

This chapter focuses on the decisions made by the district courts. The decisions are grouped on the basis of whether the hate motive was included in the statutory definition of the crime, whether or not the punishment was increased on the grounds of a hate motive, whether the charges were dropped or the punishment waived, or whether the case is still pending. For the purposes of this chapter, all dismissed charges and waived punishments have been grouped together.

This chapter has seven sections. Following the overview in the introduction, the chapter goes on to discuss the success rate of the request for increased punishment, the distribution of decisions by offence, the distribution of hate motives, the use of a hate crime code by the police in cases attracting a conviction, the grounds cited by district courts for dismissing charges or waiving punishment, or for rejecting the prosecutor's request for an increased punishment. Finally, there is a brief examination of the twelve increased punishments imposed, looking at the ways in which the increased punishment was justified and the impact of the hate motive on sentences.

Table 35 depicts the decisions made by district courts on hate crime charges brought by the prosecutor (in which the prosecutor either requested an increased punishment on the grounds of a hate motive or in which the motive was included in the statutory definition of the offence). The table shows that the punishment was increased in 9.2% of the cases on the grounds of a hate motive, while in 61.5% of the cases the hate motive was included in the statutory definition of the offence. The charges were dismissed in 7% of the cases. A district court decision was still pending in a notably large proportion of cases in March 2021.

Table 35. District court rulings in cases in which the prosecutor requested increased punishment or in which the motive was included in the statutory definition of the offence

	N=130	100%
Conviction for a hate crime in which the motive is included in the statutory definition of the offence	80	61.5
Increased punishment because of a hate motive	12	9.2
Pending	15	11.5
Charge dismissed or punishment waived	9	6.9
Convictions in which the grounds for increased punishment were not applied	14	10.8

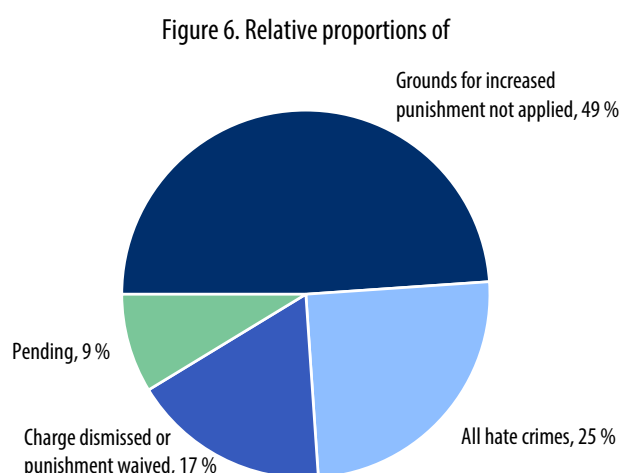
Table 36 shows the district court decisions on all charges brought by the prosecutor. The grounds for increasing the punishment were not applied in approximately half of the charges. A sentence was imposed specifically for a hate crime in 25% of all charges brought to a district court. The hate motive was included in the statutory definition of the offence in most of the hate crimes. The grounds for increasing the punishment were applied in 3.3% of all charges. District courts did not increase the punishment for any of the offences in which the prosecutor had not requested an increased punishment on the grounds of a hate motive.

Table 36. District Court rulings on all charges

	N=368	100%
Conviction for a hate crime in which the motive is included in the statutory definition of the offence	80	21.7
Increased punishment because of a hate motive	12	3.3
Pending	32	8.7
Charge dismissed or punishment waived	64	17.4
Convictions in which the grounds for increased punishment have not been applied	180	48.9

Table 36 shows that district courts dismissed over 17% of all charges. However, the charges for hate crime were dismissed or the punishment was waived in approximately 7% of the cases. In other words, hate crime charges were less likely to be dismissed by a district court than other charges brought by the prosecutor.

Figure 6 illustrates the relative proportions of district court decisions.



4.1 Success rate of requested increased punishment at district courts

In the following, the discussion will be limited to the examination of the application of the grounds for increased punishment by district courts. Therefore, charges for offences in which the hate motive is part of the statutory definition of the offence will remain outside the scope of the analysis.

Table 37 shows that district courts imposed an increased punishment on the grounds of a hate motive in a total of 12 cases in which the prosecutor had requested an increased punishment. Despite the prosecutor's request, district courts elected not to increase the punishment in 14 cases. District courts dismissed the charges in approximately 5% of cases in which the prosecutor had requested increased punishment on the grounds of a hate motive. Decisions were pending in ten cases, and these were not included in the present data. These cases account for approximately 26% of the charges in which the prosecutor had requested an increased punishment.

Table 37. Proportion of increased punishments in charges in which the prosecutor has requested increased punishment on the grounds of a hate motive

	N=38	100%
Grounds for increased punishment not applied	14	36.8
Grounds for increased punishment applied	12	31.6
Charge dismissed or punishment waived	2	5.3
Pending	10	26.3

Table 38 examines the proportion of increased punishment among all district court decisions, excluding those in which a hate motive is included in the statutory definition of the offence. The table also shows that district courts dismissed over 21% of all charges brought. This figure is four times higher than that of the charges including a request for increased sentence. In other words, district courts were more likely to convict the defendant for a hate crime than for other offences. While the request for increased punishment was often rejected, the prosecutions including a request for increased punishment were otherwise more successful: only approximately 5% of the cases were dismissed.

Table 38. Proportion of increased punishments of all charges (excluding hate crimes in which the motive is included in the statutory definition of the offence)

	N=276	100%
Grounds for increased punishment not applied	180	65.3
Increased punishment because of a hate motive	12	4.3
Charge dismissed or punishment waived	57	20.7
Pending	27	9.8

Although the proportion of dismissals is small in crimes in which the prosecution has requested an increased punishment on the grounds of a hate motive, the sample is too small to indicate a general pattern. However, the observation serves as valid basis for a hypothesis that may be confirmed on the basis of the following justifications: cases in which the prosecution requested increased punishment are more serious

than other similar offences in which no increased punishment was requested. Applying the grounds for increased punishment also requires a more meticulous consideration of the impact of the motives on the nature of the crime, as well as a broader investigation into the subject.

In this light, it would appear obvious that it is precisely the crimes in which the prosecution has requested increased punishment that are more thoroughly investigated. That being said, such cases could also be expected to be successful in court. Moreover, given the nature of the offence, it is also plausible to think that the threshold for the injured party to agree to mediation would be higher in hate crimes than in other similar offences. On the other hand, in all of the cases covered by the present study, the decisions reached through mediation accounted for approximately one half of the decisions to waive the punishment.

The prosecutor's request for increased punishment led to the desired result in a total of 12 cases. In a total of 16 cases, the district court either dismissed the charges or the request for increased punishment. When the pending cases are excluded, the proportion of convictions with increased punishment is 43% of all the decision in which the prosecutor had requested increased punishment on the grounds of a hate motive.

We will next examine the distribution of district court decisions by offence.

4.2 District court decisions by type of offence

As in other years, the majority of suspected hate crimes in 2017 were assaults, accounting for 37% of all hate crimes recorded by the police. The proportion of incitement offences among suspected hate crimes was only 10%, despite the fact that many more of them were recorded by the police in 2017 than in previous years. In 2016, for example, only 35 cases of incitement were recorded, which is approximately 2% of hate crime recorded by the police at the time (Rauta 2017, 13).

Among hate crimes resulting in a conviction, the proportion of assaults is radically lower compared to the proportion of criminal complaints. Figure 7 shows the breakdown of district court convictions for hate crimes (92). Assaults accounted for only 6% of these cases. In contrast, incitement to hatred alone accounted for 74% of all hate crimes that brought a conviction.

Figure 7. Relative proportions of the types of hate crime

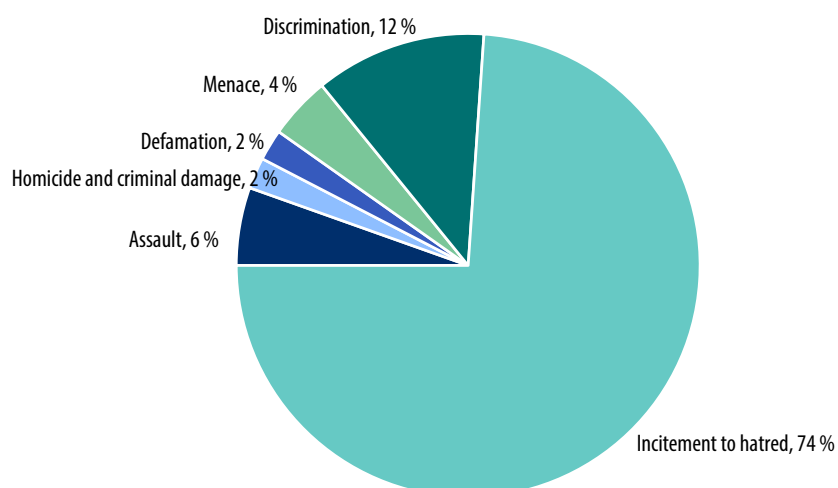


Table 39 examines district court decisions by offence. The table shows that five of the hate crimes resulting in conviction were for assaults and four were for menace. The majority of hate crimes are ones in which the hate motive is included in the statutory definition of the offence. In practice, this category is divided into two types of crime: incitement to hatred and discrimination offences. In the material used for the present study, this category also includes one murder with terrorist intent.

The proportion of dismissed charges appears to have been lowest in cases of incitement to hatred. Only one of them was dismissed. In relative terms, the highest proportion of dismissed charges appears to be in discrimination offences.

Table 39. District court decisions by type of offence

	Grounds for increased punishment not applied	Hate crimes	Charge dismissed or punishment waived	Pending	TOTAL
Assault	126	5	45	22	198
Criminal damage	4	1	0	0	5
Defamation	19	2	4	1	26

	Grounds for increased punishment not applied	Hate crimes	Charge dismissed or punishment waived	Pending	TOTAL
Invasion of domestic premises	5	0	1	0	6
Menace	13	4	5	3	25
Discrimination	0	11	6	0	17
Incitement to hatred	0	68	1	5	74
Other	8	0	2	1	11
Homicide	1	1	0	0	2
Attempted homicide	4	0	0	0	4
TOTAL	180	92	64	32	368

Table 40 shows charges in which the prosecution has requested increased punishment. The table suggests that the application of the grounds for increased punishment at a district court may vary significantly, depending on the type of offence. For example, in assaults, district courts only increased the punishment five times on the grounds of a hate motive, despite the total number of decisions on this type of offence being 15. In contrast, four out of five sentences for menace were increased. However, the number of cases is so small that these observations cannot be generalised.

Table 40. District court rulings in cases in which the prosecutor has requested increased punishment on the grounds of a hate motive

Application of the grounds for increased punishment in judgments

	No increased punishment	Increased punishment	Charge dismissed or punishment waived	Pending	TOTAL
Assault	9	5	1	7	22
Criminal damage	0	1	0	0	1
Defamation	1	2	0	0	3
Menace	1	4	0	3	8

Application of the grounds for increased punishment in judgments

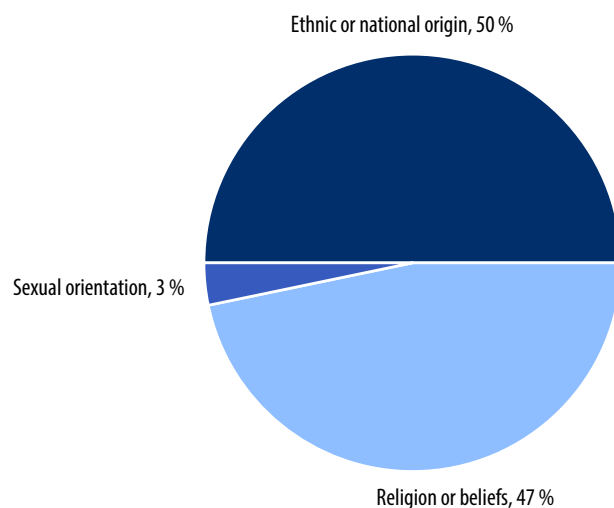
	No increased punishment	Increased punishment	Charge dismissed or punishment waived	Pending	TOTAL
Other	0	0	1	0	1
Attempted homicide	3	0	0	0	3
TOTAL	14	12	2	10	38

4.3 Motives for hate crimes

Among the motives for suspected hate crimes recorded by the police, the racist motive is the most common. It is also the most commonly cited motive in suspected offences referred for the consideration of charges, in hate crime charges and, ultimately, in hate crimes leading to a conviction at a district court. The proportion of racist motives among hate crimes leading to a conviction differs greatly from the proportion among suspected hate crimes referred for consideration of charges. Racism was cited as the motive in 72.8% of the 368 suspected hate crimes referred for consideration of charges. Respectively, a motive based on religion or beliefs accounted for 22% (Table 22).

There were 92 convictions for hate crimes (i.e. cases in which the prosecution had requested increased punishment on the grounds of a hate motive or the hate motive is included in the statutory definition of the offence). Half of these had a racist motive. Religion or beliefs were a motive in 47% of hate crimes resulting in conviction. Sexual orientation was the motive in three cases. This motive accounts for approximately 3% of all hate crimes. The distribution of hate crimes by hate motive can be seen in Figure 8.

Figure 8. Motives for hate crimes



In Table 41, district court decisions on hate crime charges are grouped by motive. These are cases in which the prosecutor has requested increased punishment or in which the hate motive is included in the statutory definition of the offence. All cases in which district courts elected not to increase the sentence, regardless of the prosecutors' requests, involved suspicion of a racist motive. Among the cases in which the hate crime charges were completely dismissed, the motive was racism in eight cases and disability in one.

In charges in which the prosecutor had requested increased punishment, the racist motive is clearly the most common. There is more variance in the motives in offences in which motive is included in the statutory definition of the offence: here, religion and racism are more or less equally common.

Since the majority of hate crimes resulting in conviction are offences motivated by racism, Figure 8 specifically emphasises the distribution of motives for these crimes. Of the convictions with increased punishment, 75% had a racist motive. In cases in which the motive was part of the statutory definition of the offence, the proportion of racist crimes was 46%.

Table 41. District court rulings on hate crime charges (by motive)

	Grounds for increased punishment not applied	Increased punishment	Motive included in the statutory definition of the offence	Charge dismissed or punishment waived	Pending	TOTAL
Ethnic or national origin	14	9	37	7	12	79
Religion or beliefs	0	3	40	1	3	47
Sexual orientation	0	0	3	0	0	3
Disability	0	0	0	1	0	1
TOTAL	14	12	80	9	15	130

Table 42 compares the motives of all cases submitted by prosecutors to district courts. A suspected racist motive was by far the most common in cases in which the prosecutor did not request increased punishment on the grounds of a hate motive.

Table 42. District court decisions on all charges (by motive)

	Grounds for increased punishment not applied	Grounds for increased punishment applied	Motive included in the statutory definition of the offence	Charge dismissed or punishment waived	Pending	TOTAL
Ethnic or national origin	147	9	37	50	25	268
Religion or beliefs	24	3	40	3	5	75
Sexual orientation	4	0	3	4	2	13
Gender identity	0	0	0	2	0	2
Disability	3	0	0	2	0	5
Other	2	0	0	3	0	5
TOTAL	180	12	80	64	32	368

Table 43 shows the motives for hate crimes by offence. Assaults were invariably motivated by ethnic or national background. These were also motives for all discrimination offences. Religion is the most common motive in incitement offences only. The hate motive associated with sexual orientation was at the root of three crimes, all of which were incitement offences. Among the hate crimes, the only homicide was a murder committed with terrorist intent, which, according to the court ruling, was targeted at the Finnish population. That is why it was classified as a racist hate crime.

Table 43. Motives for hate crimes by offence

	Ethnic or national origin	Religion or beliefs	Sexual orientation	TOTAL
Assault	5	0	0	5
Criminal damage	0	1	0	1
Defamation	1	1	0	2
Menace	3	1	0	4
Discrimination	11	0	0	11
Incitement to hatred	25	40	3	68
Homicide	1	0	0	1
TOTAL	46	43	3	92

4.4 Classification and interviews in hate crimes resulting in conviction

The previous chapters in this report have focused on the use of a hate crime code in cases referred for consideration of charges and in charges brought by the prosecutor. The police had assigned a hate crime code to just over half of the cases referred for consideration of charges (Table 4). Of the cases in which the prosecution brought charges, the proportion of those assigned with a hate crime code by the police was significantly higher, at more than 70%. Table 44 shows that nearly 80% of hate crimes resulting in a conviction at a district court were assigned with a hate crime code at the pre-trial investigation stage. However, the police had not always assigned a hate crime code to cases in which the hate motive was included in the statutory definition of the offence.

Table 44. Use of the hate crime code in hate crimes leading to a conviction

	Increased punishment due to hate motive	Motive included in the statutory definition of the offence	TOTAL
No code	5	16	21
Classified as hate crime	7	64	71
TOTAL	12	80	92

Table 45 shows the use of a hate crime code by offence. Most of the discrimination offences leading to a conviction were not assigned a hate crime code by the police. The most common offence was discrimination, with six of the eight unclassified cases belonging to that category. A similar finding was made in the earlier chapter on the pre-trial investigation, in which it was discovered that approximately 80% of suspected discrimination offences were not assigned a hate crime code (Figure 1). At the same time, the motives for all discrimination offences had been extensively examined (Table 6).

Table 45. Use of the hate crime code in hate crimes leading to a conviction (by offence)

	No code	Classified as hate crime	TOTAL
Assault	2	3	5
Criminal damage	1	0	1
Defamation	1	1	2
Menace	1	3	4
Discrimination	8	3	11
Incitement to hatred	8	60	68
Homicide	0	1	1
TOTAL	21	71	92

Table 46 shows that the motives had been examined during interviews in almost all cases resulting in a conviction as a hate crime. In only three cases had the motives not been asked about during the interview. The table shows separate figures for increased punishments and hate crimes in which the motive is included in the statutory definition of the offence. In practice, questions were always asked about the motives in the latter category.

Table 46. Investigation of motives in hate crimes leading to a conviction

	Increased punishment due to hate motive	Motive included in the statutory definition of the offence	TOTAL
Motives examined during the interviews	8	79	87
No indication of motives being examined during interviews	3	0	3
No interview records available	1	1	2
TOTAL	12	80	92

Table 47 examines the prevalence of the hate crime code according to the nature of the investigation. The table shows that in cases of hate crimes resulting in conviction, the motives had been examined almost without exception, but the hate crime code had nonetheless been often omitted. The table supports the intuitive assumption that the success of a hate crime charge depends, above all, on the standard of the investigation (here, the identification of motives is being reviewed) rather than on the use or omission of the hate crime code. However, the use of the hate crime code plays a key role in the preliminary investigation.

Table 47. Investigation of motives by hate crime code in hate crimes leading to a conviction

	No code	Classified as hate crime	TOTAL
Motives examined during the interviews	18	69	87
No indication of motives being examined during interviews	2	1	3
No interview records available	1	1	2
TOTAL	21	71	92

4.5 Why were the charges dismissed, the punishment waived, or the grounds for increased punishment not applied?

In the following, we will look at why district courts have decided to dismiss charges or have waived the punishment or have elected not to apply the grounds for increased punishment despite the prosecutor's request. This latter question is addressed by analysing the grounds for the judgment regarding the evidence of a hate motive in the pre-trial investigation materials.

4.5.1 Grounds for dismissal or the waiving of a punishment

District courts dismissed or acquitted the defendant in nine cases in which the prosecutor had requested increased punishment on the grounds of a hate motive or in which the motive is included in the statutory definition of the offence. The most common reason cited by district courts waiving the punishment of a defendant guilty of a hate crime was a settlement reached between the parties. This took place in five of the cases. Under Chapter 6, section 12 of the Criminal Code, the court may, as a result of a settlement reached, impose a reduced punishment or waive the punishment altogether.

In two cases, there remained a reasonable doubt about the defendant's guilt, in which case the charges were dismissed. The charges were also dismissed in one case because the act, which in itself fulfils the definition of an offence, was not against the law because it had been committed in self-defence. The reasons for acquittal or the waiving of the punishment in hate crimes are set out in Table 48.

Table 48. Grounds for dismissal or waiving of the punishment in cases in which the prosecution requested an increased punishment or the motive was included in the statutory definition of the offence

	N=9	100%
Agreement through settlement	5	56
Guilt not proved beyond reasonable doubt	2	22
Defendant has died	1	11
Act committed in self-defence or for another acceptable reason	1	11

Table 49 shows the breakdown of these decision by offence.

Table 49. Grounds for the dismissal or the waiving of the punishment by offence in cases in which the prosecution requested an increased punishment or in which the motive was included in the statutory definition of the offence

	Guilt not proved beyond reasonable doubt	Defendant has died	Act committed in self-defence or for another acceptable reason	Agreement through settlement	TOTAL
Assault	1	0	0	0	1
Discrimination	1	0	1	4	6
Incitement to hatred	0	1	0	0	1
Other	0	0	0	1	1
TOTAL	2	1	1	5	9

The prosecutor brought charges in 368 of all the cases included in the research material, of which the charges were then dismissed or the punishment waived in a total of 64 cases. Settlement was the most common reason for the waiving of the punishment in this category, too. In addition, the prosecution withdrew the charges in four cases. The prosecutor may withdraw the charges on the basis of a settlement reached between the parties if the settlement has only come to the prosecutor's attention after the charges were brought, and the charges could have been waived on that basis (Criminal Procedure Act 1:12). As a result, the proportion of criminal processes that ended up in mediation was approximately one half (48%), whereas guilt could not be proven in approximately one fifth of the cases.

Table 50 shows the grounds for the dismissal or waiving of the punishment in all cases of dismissals or waived punishment.

Table 50. Grounds for the dismissal or waiving of the punishment in all charges

	N=64	100%
Agreement through settlement	27	42
Guilt not proved beyond reasonable doubt	19	30
Act committed in self-defence or for another acceptable reason	8	13
Prosecutor withdrew charges	4	6
The defendant has left the country and cannot be summoned	2	3
Defendant has died	2	3
The summons had not been served to the suspect before limitation of the right to prosecute or the offence had expired	1	2
District court decision does not indicate the grounds for the dismissal of the charges	1	2

Table 51 shows the breakdown of these decisions by offence. Five of the rarest cases have been excluded to improve the readability of the table. This means that only 59 cases are shown in the table although the actual total number of cases is 64.

Table 51. Grounds for the dismissal of the charges or waiving of the punishment in all charges (by offence)

	Guilt not proved beyond reasonable doubt	Self-defence or similar cause	Agreement through settlement	The defendant has left the country and cannot be summoned	Prosecutor withdrew charges	TOTAL
Assault	11	7	21	2	4	45
Defamation	2	0	1	0	0	3
Menace	5	0	0	0	0	5
Discrimination	1	1	4	0	0	6
TOTAL	19	8	26	2	4	59

4.5.2 Rejection of the request for increased punishment

Next, we will examine the decisions to reject the prosecutor's request for increased punishment and assess how the district courts have justified these rejection decisions. Six cases are examined: the first concerns an attempted manslaughter, the next four are assaults, and the last one concerns menace. In all these cases, the offender was convicted but without increased punishment imposed on the grounds of a hate motive.

Case 1

In the case of attempted manslaughter, a man of foreign background was the subject of an offence in which several persons, including one of foreign background themselves, were treated as suspects in the pre-trial investigation. The man had been lured into a restaurant and assaulted. Convictions were passed for assisting an assault as well as for attempted manslaughter and menace. On the basis of the pre-trial investigation, it appeared that the offence was motivated by retaliation for an offence against one of the offenders (Investigation 1, 80, 97). During the interview, the main offender used offensive language about immigrants, calling the victim, among other things, a "darkie" and a "negro." At the time of his apprehension, the perpetrator defended his act by saying he had "come to deal justice" and saying that "we'll have no darkies raping here" (Investigation 1, 81).

The background of the crime and the relationships between the suspects and their motives were examined during the pre-trial investigation. Indications of a hate motive were only discerned for the main perpetrator.

The prosecutor consequently requested increased punishment for the main perpetrator. In its decision, the district court noted that the perpetrator had used racist and derogatory expressions both during the pre-trial investigation and at the scene of the crime. The ruling also stated that the victim had not been selected as a target for the crime because of his or her background. Instead, the district court found it had been sufficiently proven that the victim had been selected as the target of the crime precisely because of the suspected offence he or she had committed. Therefore, the language, which as such was unacceptable and derogatory, did not serve as evidence of a racist motive in this specific case. As a result, none of the defendants received increased punishment. (Judgment 1, 21–25.)

The method and motives of the offence were thoroughly investigated during the pre-trial investigation of this case. Suspicion of a hate motive was raised and was investigated along with other motives. The cleared suspected offence was sent for consideration of charges, the prosecutor brought charges accordingly, requesting increased punishment on the grounds of a hate motive. The district court did increase the punishment because, in its view, the subject of the crime was selected not because of the person's background but because of revenge.

Case 2

In the assault case, the prosecutor concurred with the injured party's request for increased punishment. It had transpired during pre-trial investigation that the assault had been motivated by an argument between the perpetrator's young family member and another young person who was not a family member. According to the offender, the altercation was caused by suspected harassment. A criminal complaint had been filed in the matter, in which the offender acted as the complainant. According to the offender, the purpose of the offence had been to stop the ongoing harassment against his young family member. However, the assaulted youngster was not a suspect in said criminal case. He had been selected as a victim because he belonged to the same ethnic minority as the suspect in the other criminal case. The prosecutor requested increased punishment on the grounds of a hate motive. The investigation also revealed that the offender had participated in the patrolling activities of the Odin Group (Investigation 2, 4, 22).

The district court sentenced the offender to a fine but did not increase the punishment on the ground of a hate motive. The reasons behind the rejection of the request for increased punishment were explained in the judgment. The district court found that while the victim had been selected as a target because of his ethnicity, this was not the main cause of the crime against him. He had not been randomly selected as the victim, but because the offender's family member had given him a description of a person over the phone, on the basis of which the offender had selected the victim. (Judgment 2, 4, 5.)

The district court did not consider what the significance of belonging to the Odin Group might be, nor had this aspect been examined during the pre-trial investigation. The offender's membership of the group in question was raised during the pre-trial investigation, but its significance to offence or its motive was not clarified and the question was not dealt with in court.

However, it can be concluded that membership of said group increases the likelihood of a person's reliance on unlawful self-help and also undermines trust in the effectiveness of the police in law enforcement. During the investigation, the offender had stated that he had found the police to be incapable of maintaining order and security and that the police had taken no action to solve the suspected offence against his family member (Investigation 2, 4). The judicial significance of these factors is unclear and would require judicial consideration. No such consideration is evident in the district court's decision.

Secondly, membership in said group increases the likelihood of crimes committed specifically against people from different backgrounds and immigrants, in particular. The organisation's website refers, for example, to "harmful immigration" and defines people other than those representing "Finnish culture" or "Western ideology" as incompatible with Finnish culture. In addition, the website states that Islam is a "fascist ideology". (Soldiers of Odin of Finland 2021.) These definitions create an image of Muslim immigrants representing otherness and evil, and imagery that both reflects and generates hatred (cf. Sternberg and Sternberg 2008).

The Government Proposal laying down the rationale for the 2010 reform of the Criminal Code states that committing a crime on the grounds of ideology may constitute grounds for increased punishment.. Consequently, after the reform, the selection of the target of an offence is not the only condition for the application of increased punishment. It could, therefore, be noted that, in the above case, the offender's activities in the Odin Group should have been considered as a criterion for increasing the punishment. As it stands, the hate motive was examined exclusively from the point of view of selecting the victim.

Case 3

A request for increased punishment may also be rejected despite clear indications of a racist motive. This was the case in an assault involving an altercation between several parties. According to A, the situation escalated after B had spat at A's child and called them racist slurs. B gave a somewhat similar account. During the interview, B was recorded as stating that "the darkie boy walked right in front of me and I almost tripped and I said fucking nigger look where you're going and I spat in his direction." (Investigation 3, 15, 21.) The charges against B included a request for increased punishment on the grounds of a hate motive (Judgment 3, 2).

The district court found that it had been sufficiently proven that a fight had started when A, angered by the racist name-calling and the other person spitting on their child, had hit B for this reason. The court found that, although B's actions were highly reprehensible, the grounds for increased assault could not be applied because B had not initiated the assault. The racist motive could, therefore, not be considered to be the cause of the assault committed by B. (Judgment 3, 9, 10, 13–15.)

Case 4

In the third assault case, the victim of the assault was a restaurant employee. The prosecutor requested increased punishment on the grounds of a racist motive but, according to the district court, there was insufficient evidence of this (Judgment 4). The pre-trial record shows that the customers had initially made hand gestures at the victim, who served as a security guard at the restaurant, from outside the restaurant. They had then entered the restaurant and used racial slurs against the victim. After this, one of them had committed unlawful violence against the victim. (Investigation 4, 5, 11.) In other words, the investigation did not reveal any evidence of the victim having been selected because of, for example, their job at the restaurant. Instead, the investigation revealed that the perpetrator had seen the victim from outside the restaurant and had already made offensive gestures against him. Therefore, the criteria for increased punishment had been met, even if the police had not assigned a hate crime code to the case.

Moreover, the application of the grounds for increased punishment were supported in this case by the fact that the parties to the case were unknown to each other and the investigation or court did not offer any alternative reasons for the selection of the victim (Judgment 4). Against this background, the court's decision not to toughen the sentence because of insufficient evidence could have benefited from stronger arguments. The court decision focused mainly on the aspect of racial slurs, which, as such, are not usually accepted as sufficient proof of a hate motive. (Judgment 4, 10, 11.) The other evidence that led to the judgment presented here was not discussed at

the district court, although it was presented in the pre-trial investigation record. However, the evidence had not been specifically raised as evidence of a possible hate motive in the narrative of the pre-trial investigation record.

Case 5

Assaults are quite often associated with substance use. According to crime statistics, approximately 40% of all investigated assaults have been committed under the influence of alcohol (Näsi and Danielsson 2020, 56). Alcohol-fuelled brawls at the hot dog stand often have no particular purpose, although they frequently involve mutual name-calling and offensive language. However, there may sometimes be more to a drunken brawl than that. In connection with a bar fight, the police had recorded a suspected hate crime. Indications of a possible hate motive were found in the testimony of a witness who reported racist name-calling. This was also the manner in which the victims of the assault described the situation, one of whom mentioned that, despite the name-calling, they did not believe there was a racist motive for the offence. (Investigation 5, 8, 13, 63, 64.)

The prosecutor brought charges for assault committed for a hate motive. According to the district court, however, the case did not show that the motive for the crime was racism. This was demonstrated, on the one hand, by the complainant's own view that, despite racist name-calling, this was not a racist crime. Secondly, the district court also referred to the skin colour of the victims in its grounds for the judgment, noting that one of the victims was dark-skinned but the other was not. In the same junction, however, it is stated that "the district court has not been presented with information about the ethnic origin the complainants." (Judgment 5, 27.) Consequently, the application of grounds for increased punishment appear to have been considered primarily in terms of whether the ethnic origin of the victims corresponds to the derogatory names used for them, of which the district court mentions 'negro' in its decision. This is also referred to by the district court's reference to the 2002 Government Proposal on the criteria for increased punishment:

"The grounds for increasing the punishment as cited in the preparatory works for Chapter 6, section 5, subsection 4 of the Criminal Code (Government Proposal 44/2002 pp. 192–193) are intended to govern only those offences which are motivated by the victim belonging to a group of people within the meaning of the provision, i.e., the root cause of the offence, and the offender's motive are linked with the characteristic of the victim as a member of a particular group of people. Racist crimes are also often carefully planned, compared to, for example, assaults caused by a conflict situation or criminal damage offences committed on a whim." (Judgment 5, 27).

The court's decision raises the question as to why it did not refer to the 2010 reform, according to which the use of the criteria for increased punishment no longer depends on the victim actually or supposedly belonging to a group. Secondly, the injured parties' contradictory views have been overlooked. After all, they had experienced racist name-calling, on the one hand but did not, on the other hand, consider the assault itself to be racist. Thirdly, little weight was given to witness statements that give rise to the suspicion of a racist motive and to the second injured party's statement, according to which in the situation in question "it was nothing but racism once inside that restaurant. There were a lot of Finns there, but he chose to attack me and called me a negro. I didn't know him or any of the other assailants." (Investigation 5, 13.)

Case 6

Finally, let us look at a case of menace. In this case, the prosecutor requested increased punishment on the grounds that the offender had sought out a reception centre for no particular reason and had threatened some of the residents there. The district court did increase the punishment on the grounds of a hate motive. The reason for this decision was that the offence had been committed only after the offender had first spoken to the asylum seekers. According to the district court, the offender had been provoked by this conversation and, after being provoked, had retrieved a knife and had committed the punishable offence only after returning to the scene of the crime. (Judgment 6, 3, 4.)

This incident is open to alternative interpretations. After all, the offender randomly targeted any asylum seeker, and he himself went to the reception centre with the intention to "raise hell and take the piss" (Investigation 6, 5). In addition, he was carrying an instrument suitable for causing harm to another person, with which he threatened the residents. The reason that the offender carried the instrument was never established during the investigation, nor was the matter discussed during the court hearing.

On the basis of our review, it can be suggested that district courts and the prosecutor pay more attention to the grounds for increased punishment, both at the prosecution stage and in the grounds for the judgment.

4.6 Sanctions for hate crimes and grounds for increased punishment

This section focuses on the sanctions for two types of hate crimes. First, the hate crimes in which the hate motive is included in the statutory definition of the offence

are discussed. The present research material included 80 hate crimes of this category, of which 68 were incitement offences, 11 were discrimination offences and 1 (one) was a murder with terrorist intent. As the latter was an isolated case, it has been excluded from the scope of this review. The second part of the section examines the punishments that have been increased due to a hate motive; in other words, how the grounds for increased punishment have been reflected grounds for the judgment and, also, how the increased punishment affected the overall sentence.

4.6.1 Incitement and discrimination offences

There were a total of 68 incitement offences, all of which were of the basic, non-aggravated form. The material contained only one suspected aggravated incitement to hatred, but it, too, attracted only a basic sentence. Table 52 shows the breakdown of punishment for incitement offences into day-fines and conditional and unconditional imprisonment. In some cases, punishment was imposed for multiple offences. Among the incitement offences, the only case attracting unconditional imprisonment involved a total of 16 separate offences, two of which were incitement offences.

Table 52. Sanctions for incitement offences

	Number of convictions when the sentence is passed for only one offence	Number of joint punishments	Number of convictions
1–10 day-fines	1	0	1
11–20 day-fines	2	1	3
21–30 day-fines	5	2	7
31–40 day-fines	20	1	21
41–50 day-fines	14	5	19
51–60 day-fines	2	2	4
61–70 day-fines	1	1	2
71–80 day-fines	3	3	6
81–90 day-fines	0	1	1
30 days conditional imprisonment	2	0	2

	Number of convictions when the sentence is passed for only one offence	Number of joint punishments	Number of convictions
180 days conditional imprisonment	0	1	1
660 days unconditional imprisonment	0	1	1
TOTAL	50	18	68

Figure 9 shows the breakdown of individual incitement s into sanction categories. The most common sanction for an incitement offence was 31–40 day-fines. In 18 cases, the defendant was ordered to pay 40 day-fines. The next most common sanction was 41–50 day-fines, which was imposed for a total of 14 defendants. Of them, 12 were ordered to pay 50 day-fines. Under Chapter 11, section 11 of the Criminal Code, incitement to hatred attracts a fine or a maximum period of imprisonment of two years.

In two cases, the defendant was sentenced to 30 days of conditional imprisonment. In both cases, the offence was considered more serious than usual on the grounds of being particularly offensive and threatening. The scene of both crimes was Facebook. The seriousness of the offence was also emphasised by the fact that the offenders' Facebook accounts were public and they had numerous followers.

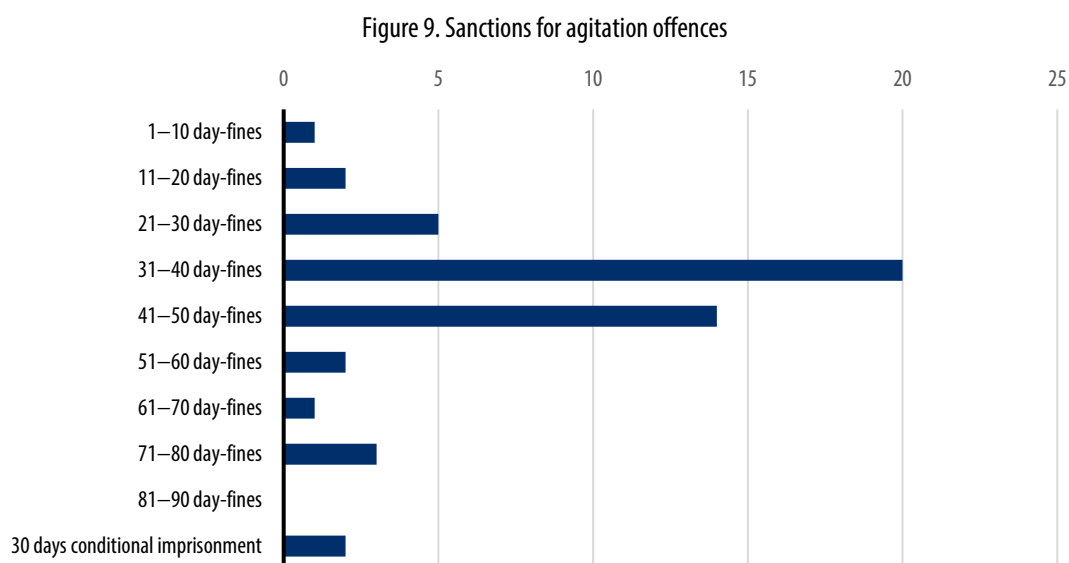


Table 53 describes the sanctions for discrimination offences. If there has only been one offence, a discrimination offence attracts 20 to 40 day-fines. Under Chapter 11, section 11 of the Criminal Code, discrimination attracts a fine or a maximum period of imprisonment of six months.

Table 53. Sanctions for discrimination offences

	Is the sanction for multiple offences or criminal complaint?		TOTAL
	No	Yes	
20 day-fines	2	0	2
30 day-fines	3	0	3
40 day-fines	2	0	2
50 day-fines	0	1	1
55 day-fines	0	3	3
TOTAL	7	4	11

4.6.2 Punishments increased on the basis of a hate motive and the grounds for this

Finally, we will examine hate crime convictions and the impact of the increased punishment on the sanction. Twelve punishments were increased on the grounds of a hate motive. Five of these provide no information on the impact of the increased punishment on the sanction. In these cases, the inadequate justification for the sanction leaves doubts as to whether the punishment was in fact increased despite there being a paragraph on the increasing of the punishment in the statement of judgment. In two judgments, both the grounds for increased punishment and the impact of the increase on the sanction were inadequate.

In five judgments, both the criteria for increasing the punishment and the increased punishment itself were exhaustively justified.

One such case concerned menace and criminal damage, for which the defendant was jointly punished. The sanction was increased by 50 day-fines, as the conditional imprisonment that the defendant was sentenced to was deemed insufficient given the

hate motive of the offence. It was stated in the grounds for the judgment that the defendant had revealed their hate motive during the pre-trial investigation and that the pre-trial investigation record showed images of him performing Nazi salutes while committing the offences. (Judgment 7, 6, 7; Investigation 7, 14.)

Another extensively justified conviction concerned an attempted aggravated assault. The grounds for increased punishment included the use of racist slurs against the injured party, disorderly behaviour towards immigrants, in particular, in contexts other than during the commission of the offence, and racist language used by the defendant at the district court. The defendant was sentenced to conditional imprisonment for multiple offences, and the sentence was increased by 50 day-fines on the grounds of a hate motive. (Judgment 8, 25–27.)

The third case involved an assault that took place late at night in a queue at a street food kiosk. All the parties to the fight were convicted of assault, but only one of them was given increased punishment on the grounds of a hate motive. The same person had instigated the fight at the kiosk by using racial slurs against people previously unknown to the person and by questioning their right to be in Finland. After starting an unprovoked verbal altercation, the person had become violent, according to the district court. The person was sentenced to imprisonment. The punishment was increased by 60 day-fines on the grounds of a hate motive. (Judgment 9, 10.)

In the fourth case, again an assault, the defendant was given increased punishment owing to suffering caused by a racist motive. The compensation for suffering caused by a racist motive was set at EUR 1,000. The injured party was a pregnant woman previously unknown to the offender, who had been sitting at a bus stop. The defendant who had been waiting at the same stop had approached the woman and started hitting her. The offence had not been preceded by any interaction between the offender and the victim. The district court was convinced of the racist motive for the offence on the basis of a witness statement. Following the assault, the defendant was reported to have told the witness that without his intervention, the woman would have blown the place up. (Judgment 10, 5–7.)

The fifth case involved criminal damage that, according to the district court, was motivated by religion. The evidence of the hate motive consisted of the defendant's testimony. According to the defendant, a Christian congregation was heretical, which is why he had smeared the walls of the community building of the congregation with graffiti. The punishment was increased by converting the fine into a short prison sentence. (Judgment 11, 3, 5.)

In the other five judgments, the application of the increased punishments was justified on various grounds, but the way in which the punishment had been increased was not

specified. The application of the increased punishment resulted from the following reasons: the content of the messages and threats sent by the defendant, the defendant's confession, and name-calling or insults. In addition to offensive language and shouting, the hate motive was also supported by another additional factor. In one assault case, a person who worked as a police officer had called the injured party "antifa bitch" and hit her. The injured party had been targeted in a taxi queue late at night having defended some people with immigrant background against the defendant's slurs. In another case, in addition to racist slurs, the evidence of a hate motive included a witness account and a Nazi flag. (Judgments 12–16.)

In the two judgments, the application of the increased punishment was not justified nor was its impact on the sanction specified. The grounds for one of the judgments said "referring to the description of the act" with said description of the act being no longer than a couple of sentences. The grounds for increased punishment were not specified in any manner. (Judgment 17.)

In the second judgment, the only reference to the grounds was in the description of the act, which was practically the same as the prosecutor's request. According to that, the defendant had first called the injured party names by referring to his ethnic origin in a derogatory manner and then punched the injured party. The defendant was sentenced to five months of conditional imprisonment for five separate offences. According to the district court, the fair punishment for the most serious offence of the five offences would have been four months of imprisonment, with the other two offences increasing the sentence by a total of one month and the remaining two offences having no further impact on it. The way in which the punishment was increased was not justified in the judgment. (Judgment 18.)

4.7 Conclusions

The prosecution service brought 368 charges to district courts, of which 130 were for hate crimes (i.e. the prosecutor requested increased punishment on the grounds of a hate motive or the motive was included in the statutory definition of the offence). District courts passed convictions for 92 hate crimes; in 80 of which a hate motive is included in the statutory definition of the offence, and in 12 of which increased punishments were passed.

The present analysis produced 12 key findings regarding the progress of hate crime investigations:

1. There were a total of 92 hate crimes. In some cases, the prosecutor's decision or the district court's decision was still pending in March 2021.
2. On the basis of the data presented in Table 44, it can be calculated that 77% of the hate crimes resulting in conviction were classified as a suspected hate crime by the police at the pre-trial investigation stage. In 88% of these cases, the police had taken steps to examine the motives. Of all suspected hate crimes recorded by the police (covering all suspected offences identified by the Police University College's hate crime researcher in the Police Information System using the methods described in Chapter 1.3.1.), the police had classified approximately 40% as possible hate crimes.
3. Assigning a hate crime code and examining the motives increases the likelihood of suspected hate crimes going to trial and leading to a conviction for hate crime.
4. Of all hate crimes, 68 cases (74%) involved incitement to hatred. The second most common type of offence was discrimination, of which there were 11 cases in the data. In these cases, the grounds for increased punishment are included in the statutory definition of the offence. However, the police had not classified or identified them as hate crimes in the majority of cases. This may be related to the fact that, in the case of discrimination, the statutory definition of the offence is met even if the offence had other than a hate motive but the offender was aware of the existence of the grounds for discrimination and this had been relevant in the treatment of the person.
5. The prosecution requested increased punishment in 38 charges. District courts increased the punishment at the prosecutor's request in 12 judgments. Approximately 32% and 36% of the requests for increased punishment were successful and unsuccessful in court, respectively.
6. The rest of the cases were either pending, the charges were dismissed or the punishment was waived (see Table 37). The application of the grounds for increased punishment was generally examined from two perspectives: the motive and the victim of the crime. In their rulings, the courts, on the one hand, assessed the evidence of motives: was there sufficient evidence to prove beyond reasonable doubt that the main motive was specifically hate? On the other hand, the courts also considered whether the act had been randomly targeted at a member of a particular group on the basis of them belonging to that group.

In some cases, it would have been possible for the district court to approach the case from both angles at the same time, but this was not done. In one case, a district court appeared to have emphasised the old Criminal Code in its decision (see Chapter 4.5.2, case 5). Yet, in some cases, the decision did not refer to all the evidence produced during the pre-trial investigation and, therefore, the arguments seemed partly inadequate.

7. In the light of this (limited) material, the success of the request for increased punishment would seem to vary quite significantly, depending on the type of offence.
8. The offences in which the prosecutor had requested increased punishment were more likely to result in a conviction by the district court, albeit without increased punishment. The charges were more likely to be dismissed in cases in which the motive was something other than a hate motive.
9. Only half of district court decisions provided exhaustive reasons for increasing the punishment or explanations of its impact of the sanction. Consequently, in approximately half of the hate crimes that attracted increased punishment it is not known whether or not the sentence was in reality increased. Furthermore, in two hate crimes, the grounds for the increased punishment were lacking in detail.
10. Punishment for hate motives were increased by imposing day-fines as an ancillary sentence, by converting day-fines into conditional imprisonment, or by ordering a separate compensation to be paid for the suffering caused by a hate motive. In addition to these recourses, the punishment could be increased, for example, by extending the length of a prison sentence or the number of day-fines.
11. A typical sanction for incitement offences was 40–50 day-fines. The most common sanction for discrimination offences was 20–40 day-fines. In two cases, an incitement offence attracted conditional imprisonment. In these cases, the method of committing the offence was more harmful than usual.
12. The most common reason for dismissing the charges was a lack of sufficient evidence. The most common reason for waiving the punishment was a settlement between the parties.

5 Offenders and places of commission

This chapter briefly examines the offenders who commit hate crimes and the places where these crimes are committed. The perpetrators of hate crimes are examined on the basis of three variables: gender, age group, and origin, as reported in the criminal complaint. First, incitement offences are discussed, followed by discrimination offences and, finally, offences that have resulted in convictions with increased punishments.

5.1 Incitement offences

The typical perpetrator of an incitement offence in Finland is a Finnish-born male of at least 45 years of age, and the offence is most commonly committed on Facebook. Table 54 shows the gender distribution of perpetrators of hate crimes as it has been recorded in the criminal complaint.

Table 54. Perpetrators of incitement offences by reported gender

	n=68	100%
Male	51	75
Female	13	19.1
Data not available	4	5.9

Table 55 shows the division of offenders convicted for incitement offences into five age groups.

Table 55. Perpetrators of incitement offences by age

	n=68	100%
15–24	1	1.5
25–34	8	11.8
35–44	15	22.1
45–55	17	25
55+	20	29.4
Data not available	7	10.3

The origin of offenders convicted of incitement offences is shown in Table 56.

Table 56. Origin of perpetrators of incitement offences

	N=68	100%
Born in Finland	60	88.2
Born outside Finland	2	2.9
Country of birth unknown	5	7.4
Data not available	1	1.5

The places of commission in incitement offences are presented in table 57.

Table 57. Place of commission in incitement offences

	N=68	100%
Internet	65	95.6
Other locality/locality not known	3	4.4

Table 58 shows that the majority of incitement offences were committed on Facebook.

Table 58. Table 58. The more accurate place of commission of incitement offences is on the Internet

	N=68	100%
Facebook	50	73.5
Twitter	4	5.9
Website or chat forum	5	7.4
Blog	1	1.5
YouTube	5	7.4
Data not available	3	4.4

5.2 Discrimination offences

In discrimination offences, the gender of the offenders and, in particular, their origin, is much more evenly distributed than in incitement offences. Table 59 shows the gender distribution.

Table 59. Perpetrators of discrimination offences by reported gender

	N=11	100%
Male	7	63.6
Female	4	36.4

Table 60 shows the distribution of discrimination offences by age. By far the most common age group in discrimination offences was the 45–55 age group. This group accounted for approximately 55% of all discrimination offences.

Table 60. Perpetrators of discrimination offences by age

	N=11	100%
25–34	1	9.1
35–44	1	9.1
45–55	6	54.5
55+	2	18.2
Data not available	1	9.1

Table 61 shows the distribution of discrimination offences by origin.

Table 61. Origin of perpetrators of discrimination offences

	N=11	100%
Born in Finland	6	54.5
Born outside Finland	5	45.5

Table 62 shows the place where discrimination offences were committed.

Table 62. Place of commission of discrimination offences

	N=11	100%
Bar, restaurant, dance venue	3	27.3
Other public building	5	45.5
Other locality/locality not known	3	27.3

5.3 Punishments increased on the grounds of a hate motive

Punishment was increased on the grounds of a hate crime in 12 cases. An increased punishment was received by 10 men and 2 women, all of whom were born in Finland.

Table 63. Offenders sentenced to increased punishment on the grounds of a hate motive (by gender)

	N=12	100%
Male	10	83.3
Female	2	16.7

Table 64 shows that all of the defendants convicted with increased punishment were born in Finland.

Table 64. Offenders sentenced to increased punishment on the grounds of a hate motive (by country of origin)

	N=12	Percentage
Born in Finland	12	100
Born outside Finland	0	0

Table 65 shows the age distribution. The largest groups are those aged 25–34 and over 55s.

Table 65. Offenders sentenced to increased punishment on the grounds of a hate motive (by age)

	N=12	100%
15-24	1	8.3
25-34	4	33.3
35-44	3	25
45-55	1	8.3
55+	3	25

Table 66 shows that the Internet was a rarely used place of commission in hate crimes of this type. The most common place of commission was at a bar, restaurant or dance venue.

Table 66. Place of commission of offences leading to increased punishment on the grounds of a hate motive

	N=12	100%
The garden, yard or stairwell of the victim's place of residence	2	16.7
Bar, restaurant, dance venue	4	33.3
Road, street, square	3	25
Internet	1	8.3
Other locality/locality not known	1	8.3
Place of worship	1	8.3

Table 67 shows the distribution of places of commission by offence.

Table 67. Place of commission of offences leading to increased punishment on the grounds of a hate motive (by offence)

	Assault	Criminal damage	Defamation	Menace	TOTAL
The garden, yard or stairwell of the victim's place of residence	1	0	0	1	2
Bar, restaurant, dance venue	1	0	0	3	4
Road, street, square	3	0	0	0	3
Internet	0	0	1	0	1
Other locality/locality not known	0	0	1	0	1
Place of worship	0	1	0	0	1
TOTAL	5	1	2	4	12

6 Conclusion on the findings and recommendations

This study is part of the Facts Against Hate project. The aim of the project is to improve the effectiveness of the work against hate crime. In this report, the progress of hate crimes through the criminal process was examined. It has shown how the police, prosecutors and district courts identify and process crimes that involve a possible hate motive. The data for the study was obtained from criminal complaints on hate crimes recorded by the police in 2017 (the method of data collection was described in Section 1.3.1), prosecutors' decisions and district court decisions.

Chapter 1 dealt with the definition and statistics of hate crimes. Chapter 2 looked at hate crimes at the pre-trial investigation stage. Chapter 3 focused on the role of the prosecution services and the communication of the hate motive from the police to the prosecutor. District court decisions and hate crimes that have attracted conviction as a hate crime were examined in Chapter 4. Chapter 5 provided a brief overview of the offenders and places of commission in hate crimes.

This sixth and final chapter has two parts. The first part presented the most important conclusive findings relevant to the fight against hate crime. At the end of sections 2, 3 and 4, more detailed conclusions have also been presented. Secondly, this chapter discusses certain recommendations to support the efforts to fight hate crime. The recommendations are primarily aimed at creating a more robust criminal investigation process, enhancing cooperation between authorities during the pre-trial investigation, utilising specialised expertise throughout the criminal process and harmonising district court rulings.

6.1 Observations

A hate crime can be any crime that is motivated, for example, by hatred or prejudice towards a particular group of people. It has been stated in previous literature that what makes hate crimes challenging to solve is the difficulty in identifying motives. This, in turn, is explained by the fact that the hate motive is an intrinsic part of the statutory definition of the offence in only some offences, such as in incitement and discrimination cases. With other types of offences, the statutory definition of the crime may be fulfilled even if the motives are not examined or no hate motive can be detected. Hate crimes are not defined by certain, common characteristics. Any crime can be a hate crime.

Since all hate crimes have a motive, it is logical to identify hate crimes on the basis of the motive. From the point of view of the investigation, this means that the motives should always be examined as an integral part of the criminal investigation. According to the internal guidelines of the police on the classification of hate crimes, a hate crime code should be assigned to each case in which an interested party or the police considers the act to be even partially motivated by hate. The word "considers" may not be the most accurate one in this context, as it suggests the presence of certainty more than uncertainty but, then again, there can be no certainty without enquiry. The wording could be taken to suggest that in order to classify a crime as a hate crime, the police should at least be somewhat convinced of a possible hate motive.

For the purpose of hate crime prevention, it would be important to flag a potential hate crime as a hate crime even before it has been confirmed as one or before it can be considered partly or wholly a hate crime. In order to improve the effectiveness of hate crime prevention, hate crime codes should be assigned to cases at a low threshold, when there is a suspicion of a possible hate motive. The question of whether a crime involves a hate motive requires not only awareness of possible motives but also an interpretation of what constitutes sufficient evidence to suspect a hate motive.

In order to solve such demanding questions, which require judicial consideration, the practice of cooperation between the police and the prosecution services during pre-trial investigations has been adopted in Finland. Cooperation between the two authorities during pre-trial investigation prescribed by the Criminal Investigation Act, and separate instructions on its implementation have been issued among the police and the prosecution services. Hate crimes are offences about which the prosecutor should always receive an advance notification from the police. In hate crime prevention, the powers to decide when a hate motive can be suspected in a given case is, in other words, shared between the prosecutor and the police.

This distribution of powers of interpretation and responsibility and the implementation of cooperation during pre-trial investigations, as required by the Criminal Investigation Act, depends on the police. This cooperation cannot be successful if the police fail to indicate hate crimes to the prosecutor. The police are not, however, in any way obliged to take an active position in cases other than incitement offences, which must be reported to the Prosecutor General without exception. Therefore, in a large proportion of possible hate crimes, cooperation in crime prevention cannot begin until the police take an active decision to support it. The same requirement for active decision-making concerns the use of a hate crime codes to flag possible hate crimes. In neither case are the police obliged to make a decision, and it is perfectly possible to investigate or waive the investigation of an offence without examining the motives.

The present study has shown that the police have not assigned the hate crime code even to all crimes in which the motive is actually included in the statutory definition of the offence. The police had classified seven of a total of 12 offences as hate crimes that eventually attracted increased punishment in court. This means that the police had recorded a significant number of hate crimes leading to a conviction without a hate crime code.

The lack of the hate crime code may increase the likelihood that the crime will remain unsolved. This conclusion is based on the current preliminary investigation practices. The preliminary investigation of criminal offences is one of the tools used by the police to address the imbalance between the number of offences reported and the resources allocated to investigate them. In the preliminary investigation, high-frequency and straightforward criminal cases are screened from the cases leading to full investigation. The police can also prioritise the use of their limited resources by suspending and terminating the investigation of minor offences to save resources for the investigation of more serious crimes. The *Helsingin Sanomat* newspaper cited Tomi Vuori, Deputy National Police Commissioner: "In this mismatch of tasks and resources, it is like when you end up in cold water: the blood circulation focuses on protecting the most vital organs. The heart stays safe but eventually the limbs will feel the cold." (Jokinen 2018; 2019; cf. Valvonta- ja hälytystoiminnan selvityshanke (2019).

A large proportion of suspected hate crimes are comparatively minor offences. In 2017, half of the suspected hate crimes recorded by the police were assaults, defamation, menace and criminal damage. Making a hate crime code mandatory information would prevent the investigation of suspected criminal offences committed for a possible hate motive from being aborted prematurely at the preliminary investigation stage and help to ensure that these offences would be directly referred for joint investigation by the prosecutor and the police.

In a total of 130 hate crime charges, either the prosecutor requested increased punishment or the hate motive was included in the statutory definition of the offence. Of these offences, 92 resulted in a conviction as a hate crime. Of these convictions, 80 were related to offences in which the hate motive is an element of the statutory definition of the offence. Most of these were incitement offences. The other 12 convictions concerned crimes that attracted an increased punishment on the grounds of a hate motive.

The prosecutor requested increased punishment in 38 cases charged; 12 of these requests were successful and 14 were rejected. In the remaining cases, either the process was pending, the charges had been dismissed or the punishment had been waived. District court rulings did not always fully acknowledge the evidence related to

the identification of a hate motive. In some cases, the rejection of the request for increased punishment was justified by obsolete legislation, when the application of the current legislation in force could, in fact, have led to a different outcome. The grounds for rejecting the prosecutor's request for increased punishment as examined in this report give the impression that the decisions of the district courts are not entirely consistent with the law or evidence.

Similarly, the grounds for applying increased punishment provided by the court in their judgment were also sometimes inadequate. In half of the judgments in which the punishment was increased on the basis of a hate motive, the impact of the increased punishment on the sentence was not specified. If the sanctions are not explicitly specified, it is difficult to assess whether or not the sentence was in reality increased. The legislative process should aim at harmonisation and transparency. Therefore, failure to provide adequate grounds for decisions is unproductive. Less than satisfactory justification for sanctions can also result in a lack of trust in the victims of crimes in the effectiveness of the justice system. This allows the system to retain structures leading to underreporting and makes it more difficult for the victims to recover from the offence.

The same is partly also true regarding the grounds for increased punishments, which were completely missing from two hate crime convictions.

The grounds were appropriately presented in five convictions: it was clearly indicated that the increased punishment meant additional day-fines in addition to conditional imprisonment, a separate compensation paid to the victim for suffering, the conversion of a conditional imprisonment into unconditional imprisonment, or an extension of the duration of the sentence. The most common type of hate crime leading to conviction (74%) was incitement to hatred. Incitement offences are typically commissioned on Facebook and a typical perpetrator is a Finnish-born male aged 45 or over. Incitement to hatred typically attracted a sanction of 40–50 day-fines.

6.2 Recommendations

The findings described above have given rise to the following recommendations in order to step up the fight against hate crime:

1. The application of the hate crime code should be made mandatory for the police.

This would obligate the police to always take a position on whether or not a crime could involve a hate motive. Since all hate crimes must be reported to the prosecutor, the use of the hate crime code would also help enforce the reporting where appropriate. In this case, interpretations of the presence of a hate motive could be made in cooperation between the prosecutor and the police, as required by the Criminal Investigation Act.

The adoption of this obligation is supported by the European Union Agency for Fundamental Rights, which is responsible for European hate crime monitoring.

2. Updating the National Police Board's instructions on police interviews to include the examination of motives.

As it stands, the motive is one of the factors determining the severity of an offence, possible compensation for suffering and the penal sanction. However, the examination of the motives is not specifically mentioned in the police interviewing instructions. The guidelines do, however, specify certain matters that should be clarified during interviews for the purpose of determining claims and sanctions.

It was discovered when compiling this study that, in those cases that attracted a conviction as a hate crime, the motives had been examined and some attempts had been made to establish them during the interviews. This was evident in almost 90% of the interview records.

3. Strengthening the cooperation between authorities during the pre-trial investigation to promote hate crime prevention.

Under the current guidelines, the police and the prosecution services are obliged to engage in cooperation during the pre-trial investigation in criminal cases, but shortcomings in the practices for identifying hate crimes are likely to undermine this cooperation. The reason is that the initiation of the cooperation depends solely on the police.

There is only limited scientific data on the implementation of the notification obligation, which is an element of the statutory cooperation between authorities during pre-trial investigations. More research on this subject is necessary. There is a need for further research into the impact of the notification system on the standard of criminal investigations and whether it has contributed to the investigation of difficult or rare cases and cases that are subject to interpretation.

4. Increasing specialisation and expertise in hate crime

The identification of hate crimes has proved problematic throughout the criminal process. Even the district courts do not seem to form an exception. In section 4.5.2, we examined the grounds applied by district courts in passing convictions while foregoing the increased punishment required by the prosecutor. The criteria for applying an increased punishment were not always adequately addressed and not always properly specified.

Therefore, creating specialised teams for hate crime investigation within the police, the prosecution service and possibly among judges would improve the effectiveness and outcomes of hate crime prevention.

Some highly positive experiences have already been gained by a team specialising in incitement offences.

5. The impact of the increased punishment on the sanction: harmonisation of practices

On the basis of this limited material, it would appear that the district courts do not, on a very regular basis, specify how the increased punishment has actually affected the sentence. In this regard, the grounds were lacking in seven judgments in which a paragraph on increased punishment was nonetheless included. In two of these judgments, the grounds as to why the punishment had been increased were vaguely presented.

The practices adopted by district courts should be justified and explicitly documented, especially since the impact of the hate motive on the sanction is in need of harmonisation.

6. Statistical development

Hate crimes recorded by the police are often done so on the basis of the principal offence. This was also the method followed in the first two chapters of this report. The definition of the principal offence used in hate crime monitoring does not appear to be comparable to those used by Statistics Finland or Polstat (national statistical information system of the police). For this reason, a statistical unit consistently used by other statistical organisations should be added to future reports.

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