



General Counsel report on 8th European Regional Conference The Hague 12-14 March 2008

During the Course of the event we heard a number of interesting and thought provoking presentations.

Han Moraal member of the Dutch Council of Procurators General gave the opening speech and told the audience that The Netherlands had no such offence as 'Hate Crime' but had a number of common crimes with discriminatory aspects. He told us that new guidelines were being introduced to deal with such cases and that they had introduced a team specialist prosecutors for these cases. He told us that in 2006 there were 446 arrests for such crimes.

Michel Whine, Director of the Government and International Affairs at the Community Security Trust and also Director of the Defence and Group Relations Division of the Board of Deputies of British Jews spoke about the growing problem of Hate Crime in Europe and stressed the fact that there was insufficient collection of data within Europe on the prevalence and response to such crimes.

Frits van Straelen, Deputy Chief Prosecutor Amsterdam gave a fascinating insight into the Theo Van Gogh murder and the Prosecution of Mohammed Bouyeri.

Ales Butala, Supreme State Prosecutor of Slovenia gave us a case history of a Roma family who had been forcibly displaced from their home by antagonistic local residents and described how the Prosecuting authorities had responded.

Nasrin Khan, legal adviser at the Office of Democratic Institutions and Human Rights [ODIHR] which is part of the Organisation for Security and Cooperation in Europe and beyond [OSCE], described her role and that of ODIHR and gave us an overview of how Hate Crime is seen in Europe and examined some recent ECHR cases.

Debbie Carroll, Principal Depute Procurator Fiscal from the Crown Office and Procurator Fiscal Office in Scotland described the robust stance that had been adopted towards Hate Crime within that jurisdiction.

In our final presentation Andriy Ianov, Deputy Prosecutor Novomoskovsk in the Ukraine told us about the Ukrainian legislative response to discriminatory crimes. We were interested to learn that despite the growing number of incidents of criminal damage to gravestones in the region, these are attributed to random vandalism and not to religious or racial tension.

During the course of the event we split into 3 groups and examined 4 case studies and reported back.

Case study 1 concerned the repeated burglary of a profoundly deaf young man.

Was this a 'disability hate crime' or was he being targeted because he was perceived as 'vulnerable' and an 'easy win'? Did the persistence of the crime mean that it changed character?. Was the fact he was deaf an aggravating factor? Probably yes, but should the sentence therefore be harsher? What about 'victim' issues and interests such as the use of deaf interpreters and victim impact statements.

Case study 2 concerned a serious, possibly homophobic attack on a local public figure who was reluctant to support a prosecution.

What accommodation could be made for witnesses? E.g. anonymity. Practices varied significantly between countries owing to the need to balance public justice and transparency considerations against victims' interests. Certain countries allowed some limitation on publicity or closed courts whereas in other jurisdictions the process had to be in public. Could victims be compelled to give evidence? This was possible in some countries whilst in others it was unnecessary as a statement sufficed and the Judge ruled on weight to be attached to the evidence/statement even if withdrawn. Was there an overarching duty to give evidence which outweighed self interest?

Case study 3 concerned racist remarks but not said within the hearing of those to whom the remarks were directed.. Was this a crime? Generally thought not, with the exception of Scotland. Is there a victim? Does it conflict with the right to free expression? If said in the presence of person to whom they were directed it was generally considered this would be a crime.

Case study 4 concerned an offensive remark about Australians directed towards an Australian at the time of a minor assault. This was generally thought to be a 'hate crime', but much would depend upon context and background and impact on the community. If this were an aggravating factor it would be a matter for the Judge to determine.

At the end of the event the 3 groups met again to consider common principles of good practice.

There was some concern expressed about labelling 'hate crimes'. It was thought it might not always be useful albeit it was helpful to identify motive, something normally irrelevant to a prosecution. There was a wide diversity of practice between countries. In some countries such as Norway and Greece the concept seemed quite alien. There were some common factors but often the targeted groups would differ between countries and cultures. There was a generally held view that the label 'hate crime' should be reserved for more obvious and overt cases, to do otherwise might dilute the concept.

Regarding 'disability' what definition should be used? The need to draw a distinction between disability and perceived vulnerability was recognised. Who were we trying to protect?

A role for NGOs as scrutineers was identified. Interest was expressed in the Scrutiny Panels being introduced in England and Wales.

The need for training and raising awareness was emphasised, for Judges and Police as well as Prosecutors, e.g. what is 'Hate Crime? Why investigate and prosecute?

In some jurisdictions these crimes need the authority of senior Prosecutors to proceed. Shared approach to monitoring and tracking was needed to assess prevalence.

The need for formal rules was queried. Generally, it appeared that in most jurisdictions if not all, crimes with discriminatory aspects received harsher sentences albeit some countries e.g. England and Wales had specific rules and offences.

Query, if too regulated this may be a handicap, but having specific laws was symbolic to society and promoted application and understanding and also forced Judges to consider the issue. Further specifically categorising such a crime could be seen on a criminal record.

What were the advantages of flexibility as opposed to rigid rules?

It was apparent that some countries were blind to the problem. Little doubt that it is a growing phenomenon given issue of immigration and Prosecutors need to be aware of

the wider issues. In 2005 the EU Crime Survey published in 2007 found 25-30 million instances of hate crimes throughout the EU.

The need to record problems and responses including specific cases was emphasised. Data collection and monitoring is essential but had to be transparent so that groups affected could see the results.

Specialist Prosecution Units may be valuable depending on the jurisdiction, population and size.

Anonymity for victim considerations were important.

Community engagement clearly encourages reporting and public confidence and should be pursued.

One way forward might be to examine and develop the concept of 'discriminatory selection' [USA model] being a 'rights based approach' as opposed to an assumption of inherent vulnerability.

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