



Hate Crime Investigation and Sentencing in Sweden: What Have We Learned in the Past 20 Years?

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Abstract

Twenty years ago, the Swedish National Council for Crime Prevention presented a report that highlighted serious problems with regard to identifying, investigating, and sentencing offenders for hate crimes. The same problems have also been described in international research from several other countries. Since then, several measures have been taken to remedy these problems, but it remains unknown whether these measures have been successful. The aim of the present study is therefore to trace developments over time, using Sweden as a case study, and to evaluate the extent to which the problems identified earlier have been remedied. The results show that the problems identified by the Swedish National Council for Crime Prevention still remain despite a continuous process of reform. Theoretical links and parallels to international research are discussed throughout the article.

Keywords Hate crime · Investigation · Hate crime law · Hate crime policy

Introduction

The introduction of hate crime legislation in Sweden, as in many other countries, was inspired by a hope of producing an effective tool for counteracting extremism, protecting vulnerable and marginalized groups, and safeguarding democratic values (Polismyndigheten, 2022; Tiby, 1999). However, severe problems with regard to hate crime screening, investigation, and sentencing were quickly highlighted. Twenty years ago, the Swedish National Council for Crime Prevention (BRÅ) presented a report on measures against hate crimes taken by the justice system since the mid-1990s (BRÅ, 2002). In the report, the BRÅ concluded that there was a need for more knowledge about hate crimes, especially within the Police Authority. According to the BRÅ report, there was also a need across the whole of the justice system to discuss attitudes and values related to hate crime issues. Additionally, the report identified a lack of praxis

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concerning the way the penalty enhancement provision had been used. This related to both the courts' reasoning regarding the use of the penalty enhancement and the effects of the enhancement on sentencing. In conclusion, the BRÅ study showed that all parts of the justice system had strategic documents focused on how hate crimes should be handled, but what was lacking was an operationalization and implementation of these documents in their day-to-day work.

Since then, the question of how hate crimes should be criminalized and sentenced and also that of how the perpetrators and victims of these crimes should be handled have been discussed in various legal proposals, in committee investigations, and within the different parts of the judicial system (SOU, 2015; Polismyndigheten, 2022; Åklagarmyndigheten, 2022). Police and prosecutors have organized their work with these crimes so that a form of specialization has been achieved. The legislation has been amended to include more forms of vulnerabilities. It could be said that the issue of hate crime victimization has been firmly placed on the political and legal agenda. At the same time, it is unclear whether and to what extent the problems regarding operationalization and implementation have been remedied.

In the Swedish context, the hate crime label was introduced in a dissertation on homophobic hate crime by Eva Tiby in 1999. The label quickly gained traction among academics, politicians, and practitioners (SOU, 2000). As such, the label was applied to already existing frameworks that had been developed in a context that preceded the hate crime discourse in the Swedish political and legal arenas. There is no specific hate crime offense in the Swedish Criminal Code, and as a result, there is no specific crime code that can be used to trace hate crime offenses. It could be said that hate crime is used as an umbrella term for crimes such as hate speech (or agitation against a national or ethnic group, which is the term used to define hate speech in the Swedish legislation, Swedish Criminal Code, Chapter 16, Section 8) or unlawful discrimination, crimes that encompasses some sort of bias motive. However, a hate motive is seen as an aggravating circumstance when assessing the penalty value of a crime. This form of penalty enhancement was introduced to counter the rise of the neo-Nazi movement in the 1990s and to strengthen the implementation of the principles set forth in the UN Convention on the Elimination of all forms of Racial Discrimination (Prop., 1993/94:101). It was extended in 2002 to cover sexual orientation, and in 2018 to cover transgender identity or expression (Prop., 2001/02:59; Prop., 2017/18:59). It is formulated in the Swedish Criminal Code as follows:

As aggravating circumstances when assessing penalty value, in addition to what applies for each specific type of offense, particular consideration is given to:

7. whether a motive for the offense was to insult a person or a population group on grounds of race, color, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression, or another similar circumstance. (Swedish Criminal Code, Chapter 29, Section 2, p. 7).

This means that a hate crime in the Swedish legal context is any crime for which the prosecutor can prove that besides the intent to commit a crime, the perpetrator also had a hate motive when committing the crime. The way that the Swedish variant of penalty enhancement is used can be explained in terms of Swedish criminal law adhering to the *animus* model with its focus on the motivation of the perpetrator of the offense (Walters, 2022). For a hate-motivated crime to be defined as such, and result in a penalty enhancement at sentencing, the hate motive does not have to be the only or even the main motive for the crime, it can be one of several motivating factors (Åklagarmyndigheten, 2022). But the motive must be proven, alongside the intent to commit the crime, and what

this entails, in terms of challenges for the investigation, prosecution, and sentencing of hate crimes constitutes the focus of this study.

Objectives

In the present study, we trace developments in Sweden over the 20 years that have passed since the BRÅ presented its initial report. The aim of the study is to evaluate the extent to which the problems identified in the BRÅ report have been remedied.

Central questions are:

1. What are the central problems that practitioners encounter when working with hate crime cases?
2. Which of these problems have been remedied and how?
3. What can be done to alleviate the remaining problems?

Literature Review

Since hate crime is an umbrella term and not a crime code, the police organization needs to develop an alternative screening system. Yet, challenges with implementing such screening systems have been noted in several international studies (Nolan & Akiyama, 1999; Stoltzer, 2010; Hall, 2010; Byers et al., 2012). The problems involve both false negatives, i.e., unidentified hate crime cases, and false positives, i.e., non-bias crimes falsely categorized as hate related (Cronin et al., 2007; Hall, 2010; Nolan et al., 2004; Schweppe et al., 2018).

A study that examined methods for identifying hate crimes in more detail has found that screening appears to be most effective when it is conducted using a multi-step process (Cronin et al., 2007). To begin with, police officers who receive reports need to have a broad definition of hate crime to work with. According to the researchers, these officers should only decide on whether there is a potential hate motive and should not be responsible for making a definitive classification of the case in question. A definite classification should be made in a second step, which involves the case being screened by an investigator with specialist hate crime training. In addition, special investigative measures should be taken to gather additional information or evidence that can substantiate the hate motive (Cronin et al., 2007). Cases identified via a screening and identification process of this kind are often allocated more resources (Cronin et al., 2007; Martin, 1995, 1999; Schweppe et al., 2018).

Aside from screening procedures, there are additional organizational factors that contribute to successful hate crime identification (Nolan & Akiyama, 1999; Cronin, et al., 2007; Stoltzer, 2010; Byers et al., 2012). For example, a comparison between different police districts in the USA showed that hate crimes are identified to a greater extent if (1) the investigators perceive them as a priority for the organization, (2) they are perceived as important for the police organization in its role in relation to the local community, (3) they are considered an important means for the police organization to improve its relationship with minority groups, (4) the investigation of hate crimes is allocated special resources, and (5) compulsory hate crime training is provided (Nolan & Akiyama, 1999; Stoltzer, 2010; Byers et al., 2012). Police districts in which such measures have been introduced also prosecute hate crimes to a greater extent than those in which the police do not provide these organizational prerequisites (Stoltzer, 2010; Byers et al., 2012). No similar research on organizational factors has been conducted in the Swedish context.

When it comes to investigating hate crime and sentencing hate crime offenders, national and international research alike shows that hate crimes are dealt with inconsistently in the context of both criminal investigations and court proceedings (Atak, 2019; Bell, 2015; BRÅ, 2002; Byers et al., 2012; Cronin et al., 2007; Granström & Åström, 2017; Peutere & Kääriäinen, 2010; Phillips & Grattet, 2000; Schoultz, 2015; Schweppe et al., 2018; Tiby & Sörberg, 2006; Walters, 2014). For example, both the decisions taken as to whether to initiate an investigation and the investigative methods employed in such investigations vary in cases that are similar to one another (Byers et al., 2012; Lantz et al., 2019; Schoultz, 2015; Tiby, 2007). One aspect that might be meaningful to an understanding of these discrepancies involves preconceptions among professionals about what hate crimes are and a tendency to focus more resources on so-called stereotypical hate crime. For example, research from the USA has found that racial hate crimes are more likely to be investigated if the offender is white and the victim is African American than if both victim and offender belong to a racial minority (Lantz et al., 2019; Lyons & Roberts, 2014). Another study has shown that antisemitic hate crimes are more likely to be investigated and to lead to an arrest than other forms of anti-religious hate crime (Walfield et al., 2017).

Additionally, collecting evidence to substantiate both the crime and the motive has been framed as a “double burden” in hate crime investigation (Atak, 2019; Byers et al., 2012; Gadd, 2010; Hardy et al., 2020; Schweppe et al., 2018; Walfield et al., 2017). For example, a recent interview study with Swedish hate crime investigators found that officers themselves described the main challenge in hate crime investigation as being that of establishing a link between the motive and the crime (Atak, 2019). According to the officers interviewed, the presence of a hate motive is not always considered proven if the offender has used racial slurs. Instead, such derogatory terms can be seen as having been used in affect rather than as indicating a motive when the case comes to court. Atak (2019) argues that there is a broader tendency to interpret bigoted expressions as being part of an individual having general problems with externalized aggression, rather than as a reflection of an underlying racism that is expressed through aggression. In these cases, there may be a substantial gap between the way the victim perceives the incident and the way the police choose to categorize it (Atak, 2019).

Similar tendencies among practitioners have also been observed when hate crime cases reach court (Peutere & Kääriäinen, 2010; Phillips & Grattet, 2000; Walters, 2014). In a study of court documents from the UK, for example, Walters (2014) noted that “... it remains unclear how many offenders escape criminal liability as ‘hate crime’ offenders as a direct result of trial judges refusing to interpret racist or anti-religious slurs as amounting to a demonstration of hostility” (p. 62). The same tendency has been observed in the USA (Phillips & Grattet, 2000) and Finland (Peutere & Kääriäinen, 2010). In the Swedish context, the same problem was recently described in a small study of racial hate crime targeting the Sami and Roma minorities (Enarsson & Åström, 2022).

Theoretical Frameworks

The developments in the Swedish case are discussed and assessed using Bornemark’s (2020) recent theoretical work on professional judgment in interpersonal professions and Goldstein’s (1979) classical framework of problem-oriented policing. Both of these frameworks are critical of organizational cultures that place manualization and administrative control in the forefront rather than providing an organizational infrastructure that supports professionals in their work.

Goldstein (1979) holds that there is a broad misconception about the nature of police work, namely that police work is about enforcing the law. While this might be true from a theoretical point of view, Goldstein argues that the pragmatic reality of police work is instead about dealing with diverse behavioral and social problems that arise in specific contexts, such as citizens' fear of crime, gang-related violence, or domestic violence. In consequence, Goldstein argues, legal categories are unsuited to functioning as a guide to the investigation of crime. The legal categorization might capture part of a problem, but it provides no information about the circumstances, driving forces, or possibilities of collecting evidence in a given case. For example, different offenses within the same legal category might be committed for different reasons and in different ways, and may thus require different investigative strategies (Goldstein, 1979). In the case of hate crime, there are not only a number of different specified hate motives, but these might also be combined with other motivations and still qualify as hate crimes. In addition, the penalty enhancement provision does not apply to a specific category of crimes, but to all offenses listed in the Swedish Criminal Code. In short, there is immense variation in hate crime cases, making any standardization of "best practice" a challenging task. While Goldstein (1979) focuses on contextual problems that arise from viewing crime types as distinct and discrete legal categories, Bornemark (2020) elucidates situational challenges that arise when professionals come to use such categories in their day-to-day professions.

For Bornemark (2020), the problem of implementing abstract categories stems from the innate difference between theoretical knowledge (episteme) and practical knowledge (techne). In organizations characterized by new public management, such as the Swedish police organization, epistemic knowledge is often translated to the techne level in the form of professional work manuals and guidelines (Bornemark, 2020). This is broadly true for hate crime investigation, where theoretical education covering legal categories and definitions is combined with manuals for the identification and investigation of hate crime (Hardy et al., 2020). Bornemark's conceptualization of interpersonal professions and the professional problems that arise in these are reminiscent of Lipsky's (1969) classic work on "street level bureaucrats." In this work, Lipsky highlights the complex and sometimes contradictory professional role of government employees, which is characterized by a relatively high degree of independence in their decision-making at the same time as this decision-making has a profound impact on peoples' lives. Since the development of Lipsky's theory, these professional groups have seen their relative independence in decision-making become increasingly restricted by new organizational models. For example, new public management emphasizes top-down control via careful manualization. However, Bornemark (2020) argues that despite these efforts at manualization, the knowledge forms provided tend to be too broad and unspecific to be situationally useful. When an abstract concept, such as hate crime, is transformed into manuals for screening and detection, the conceptualization of the concept usually remains at a very high level of abstraction in order to be applicable to the countless scenarios that fall under this conceptual umbrella. Contrary to the intentions of such manuals, practitioners in interpersonal professions often find that the concrete situations they encounter are infused with a greater degree of complexity than can be directly inferred from generic categories. As a result, she argues, practitioners tend towards overly restrictive interpretations and applications (Bornemark, 2020).

In the discussion following the results presentation, these frameworks provide possible explanations for the problems identified in relation to hate crime screening, investigation, and sentencing. In addition, they offer plausible explanations of why some of these problems have not been successfully remedied despite continual reforms and are used to suggest possible policy developments.

Methods

Material

For this study, developments in Sweden are used as a case study. To trace developments in Sweden, the authors have collected policies, governmental reports, and evaluations focused on the investigation and prosecution of hate crime covering the period 2002–2022 from the Police Authority, the Prosecution Authority, and the BRÅ. The material consists of a total of 26 documents and an inventory is available as a supplementary material to this study.

The content of the documents from the different authorities mirrors their respective role in the justice system. The BRÅ documents primarily consist of descriptive reports on hate crime reported to the police. The descriptive information includes case flow information from initial report to prosecution and crime distribution for hate crimes with different motives, along with age, gender, and the relationship between victims and offenders at an aggregated level. Sometimes, these reports contain additional information, such as a description of self-reported hate crime victimization from the Swedish Crime Survey or other victimization surveys. The documents from the Police Authority primarily comprise evaluations focused on the implementation of hate crime policies and descriptions of educational interventions, working methods, and organizational challenges. Finally, the documents from the Prosecution Authority primarily consist of guidelines for hate crime investigation and summaries of legal praxis, although they also include one evaluation focused on prosecutors' investigations of hate crime cases.

Analysis

For the purpose of the present study, the authors use qualitative policy process analysis (Sutton, 1999; Yanov, 2017). Policy process analysis has been described as a method for understanding the “processes through which policies are developed and implemented” (Springate-Baginski & Soussan, 2002, p. 3). As such, it is a method that focuses on policy development and implementation, as well as policy outcomes (Springate-Baginski & Soussan, 2002; Sutton, 1999; Yanov, 2017). For this study, the authors have chosen to focus on decisions and guidelines associated with reforms focused on key problems identified in the initial report by the BRÅ in 2002, and the successive implementation of these decisions and guidelines (Springate-Baginski & Soussan, 2002; Sutton, 1999).

The analysis was conducted in three main steps. Firstly, the *central problems* examined in this study are the problems associated with hate crime investigation identified by the BRÅ in 2002. For the purpose of the analysis, the authors categorized these into three main problem areas: screening for hate crime, investigating hate crime, and sentencing hate crime. Each of these areas consists of 2–3 more discrete problems, all of which are summarized in Table 1.

Secondly, the authors subsequently tracked *policy developments and the implementation* of countermeasures intended to target these problems. For example, to counter the problem of tracking hate crime in the absence of a crime code, the Swedish police organization developed a digital screening system. Finally, the authors assessed *policy outcomes*, in part by assessing the results of available evaluations, and in part by tracking developments regarding hate crime investigation in the descriptive reports published by the BRÅ. For example, in relation to the digital screening system mentioned above, an evaluation showed that many cases were wrongly categorized, which in turn led to new measures in the form of staff education.

Table 1 Problems linked to hate crime investigation

<i>Screening for hate crime</i>	<ol style="list-style-type: none"> 1) Tracking hate crime in the absence of a crime code 2) Incorrect categorizations 3) Lack of conformity in interpretation of the hate crime label
<i>Investigating hate crime</i>	<ol style="list-style-type: none"> 1) Practical problems: a) initial measures are insufficient, b) challenges in collecting evidence that substantiates the hate motive 2) Organizational problems: a) hate crime investigation is not prioritized in practical terms, b) specialist competence is centralized in the metropolitan regions, c) gap between policy and practice 3) External problems: a) increase in cases that are difficult to investigate, b) lack of trust in the police among vulnerable minority groups, c) victims that can't or won't cooperate with the investigation
<i>Sentencing hate crime</i>	<ol style="list-style-type: none"> 1) The penalty enhancement is rarely applied in the hate crime cases that reaches the Swedish courts 2) Unclear court practice regarding how much the penalty enhancement adds to the cases where it is applied

Results

Screening for Hate Crime

The initial report from the BRÅ (2002) highlighted the challenges associated with the identification of crimes with a hate motive. Broadly, these challenges can be summarized into three main categories, each of which will be assessed further below: keeping track of hate crime in the absence of a crime code, incorrect categorizations, and a lack of conformity in the interpretation of the hate crime label (BRÅ, 2002). As was noted in the background section, all of these problems have also been highlighted in international research (Cronin et al., 2007; Hall, 2010; Nolan et al., 2004; Schweppe et al., 2018).

Firstly, as described above, hate crime is an umbrella term. As such, there is no crime code in the Swedish offense reporting system that can be used to identify hate crimes. This creates challenges in distinguishing hate crime from non-bias crimes, which is a prerequisite for prioritizing these cases (BRÅ, 2018; Cronin et al., 2007; Granström & Åström, 2017; Hall, 2010; Nolan & Akiyama, 1999; Nolan et al., 2004; Polismyndigheten, 2017a; Rikspolisstyrelsen, 2013).

As is the case in many other countries, the Swedish Police Authority has worked continually to increase the capacity of front-end staff to identify and register the hate crime motives. This is a critical stage of the process, as registering the hate motive is a prerequisite for following the established guidelines for prioritization. To counter these problems, the Police Authority developed routines and guidelines for hate crime categorization and registration since 2008. The digital reporting system was upgraded in 2019 to also include a pop-up reminder to screen for a possible hate motive before the report is sent to a lead investigator. The reminder is accompanied by a short explanation of the hate crime concept (Polismyndigheten, 2019).

However, this leads us to the second problem, since the Swedish police have long been criticized for making incorrect categorizations (BRÅ, 2002), and this criticism has persisted (Polismyndigheten, 2022). When the BRÅ published their first report on hate

crime investigation in 2002, they identified extensive problems due to front-end officers and investigators lacking basic knowledge and skills regarding hate crime investigation. The report concluded that “a broad increase in competence and awareness within the whole justice system is the most important measure to improve effectiveness” (BRÅ, 2002, p. 9). The problem of false positives and negatives has since repeatedly been raised in a number of reports and evaluations (Rikspolisstyrelsen, 2013; Polismyndigheten, 2017a, 2022).

Over the subsequent period, the BRÅ has conducted several comparisons of the level of conformity between the categorizations made by the Police Authority and an independent screening of cases by the BRÅ respectively. The first of these comparisons noted a very large discrepancy in the two authorities’ hate crime categorizations: they agreed in only 5% of cases (BRÅ, 2009). As a result, large educational efforts were made within the Police Authority in 2015 to improve the level of conformity between the two organizations. However, these efforts seem to have had a temporary rather than permanent effect, even though the general level of conformity has improved over time (BRÅ, 2018, 2021). The level of conformity rose temporarily from 56% prior to the educational intervention to 65% in the following year (BRÅ, 2018). However, in the most recent comparison conducted by the BRÅ, the level of conformity had dropped to a similar level to that noted prior to the intervention, 54% (BRÅ, 2021).

Investigating Hate Crime

The following paragraphs describe the central problems identified by this study with regard to hate crime investigations, the police organization, and external factors. Each of these problems consists of a combination of subcategories, which are summarized in Table 1.

Practical Problems

Firstly, there are practical problems directly associated with the ways that investigative work is conducted. One problem identified by Swedish authorities is that the *initial measures taken in hate crime investigations are insufficient* (Åklagarmyndigheten, 2005, 2016a, 2016b). To counter this problem, the Prosecution Authority has provided checklists covering critical initial measures for hate crime investigations since the early 2000s (Riksåklagaren, 2002; Åklagarmyndigheten, 2005, 2016a, 2017b, 2022). At the same time, interviewed front-end police officers describe that they do not have time to follow the checklists provided by the Prosecution Authority and lack the resources to collect the necessary evidence at an early stage of the investigation (Polismyndigheten, 2017a). An internal evaluation from the Police Authority has therefore stressed that front-end officers need adequate resources in order to follow established guidelines, and has found that the absence of such resources results in low-quality investigations (Polismyndigheten, 2017b). As a result of this criticism, the Swedish Police Authority decided to prioritize initial investigative measures (Polismyndigheten, 2017b). However, the most recent report from the Police Authority clearly shows that hate crime investigations are dogged by a continuous shortage of resources, with hate crime specialists, for example, regularly being ordered to conduct work in other parts of the police organization that is considered more urgent (Polismyndigheten, 2022).

On the investigational side, there are also problems related to a core element in hate crime investigations, namely collecting evidence that can *substantiate the presence of a hate motive* (Polismyndigheten, 2022). In order for a crime to subsequently lead to

prosecution, it is vital that the crime is documented in great detail at an early stage of the investigation (Åklagarmyndigheten, 2022). Furthermore, it is not sufficient that measures are taken early in the investigation; these measures also need to be directed strategically at documenting the presence of the hate motive. Such strategic measures may include taking photographs to document hate symbols, questioning inconsistencies in statements made by the offender, exploring whether there are indications of repeat offending, investigating whether offenders are or have been members of a hate-related organization or whether they have communicated hate-related content or messages online, and finally, using coercive measures such as search and seizure in the offender's home (Åklagarmyndigheten, 2022). It should be noted that in the Swedish legal context, the evidence presented in court is examined according to the principle of the free examination of evidence, that is, there are no evidentiary rules saying that some types of evidence are not permitted, such as hearsay. This means that the police can gather any type of evidence that points to a potential hate motive, and that it is then up to the court to assess the value of this evidence. Exactly how a hate motive can best be documented is likely to vary between different cases, but there are three factors that are important in all cases: how the victim identifies in terms of group belonging, whether the offender was aware that the victim belongs to a certain group, and in what ways the victim's group membership is visible. Unfortunately, an evaluation from the Prosecution Authority has shown that the initial documentation of offenses tends to be scant and superficial (Åklagarmyndigheten, 2016a).

With regard to the applicability of the penalty enhancement provision, the Prosecution Authority's guidelines for investigating hate crimes emphasize that the hate motive does not have to be the main motive for the offense. Instead, it can be one of several motivating factors. The guidelines also note that there is no requirement that the perpetrator has expressed hatred or contempt in connection with the crime. Instead, the motive can be substantiated by the choice of victim or by the perpetrators having expressed negative attitudes in other contexts, such as online forums, towards the group to which they believe the victim belongs. The use of coercive measures, preferably at an early stage of investigation, is also encouraged (Åklagarmyndigheten, 2022). These guidelines were recently updated, but the information regarding the hate motive and the hate context can also be found in earlier versions of the guidelines (Åklagarmyndigheten, 2016b, Riksåklagaren, 2002). Thus, this way of interpreting the hate crime legislation is not new.

Organizational Problems

Aside from the investigational challenges, both national and international research has also identified problems at an organizational level. To begin with, there are large regional variations in how hate crime investigations are organized (Martin, 1995, 1999; Polismyndigheten, 2017a; Rikspolisstyrelsen, 2013; Schweppe et al., 2018). An evaluation conducted by the Swedish police in 2013 indicated large regional differences with regard to the *organizational prioritization* of hate crime investigations (Rikspolisstyrelsen, 2013). In line with international results, organizational prioritization had a direct effect on the capacity to screen for, investigate, and combat hate crime (Cronin et al., 2007; Hardy et al., 2020; Lantz et al., 2019; Martin, 1995, 1999; Nolan et al., 2004; Rikspolisstyrelsen, 2013).

Another organizational aspect noted in evaluations conducted by the Swedish Police Authority is that *specialist competence tends to be centralized in the three metropolitan regions*. These three regions have specialist teams that work with hate crime cases, whereas the other Swedish regions only have one hate crime specialist each. To date, no

evaluations have examined which of these organizational approaches to the investigation of hate crime appears to be most effective (Polismyndigheten, 2017a). However, there are clear indications that the quality of hate crime investigations is higher in the regions that have introduced specialist hate crime teams (Polismyndigheten, 2017a).

More recent evaluations show that the Police Authority has worked continually with competence development, including developments aimed at achieving a greater equality in the level of competence across different regions. In 2017, for example, a mentoring network was started that involves the three metropolitan regions with specialist hate crime teams taking responsibility for supporting the regions that lack such groups (Polismyndigheten, 2017b, 2019). However, large regional differences remain despite these measures (Polismyndigheten, 2017a). These differences often go undetected unless a region initiates some form of examination or evaluation of its hate crime work. One example can be seen in police region East, a region with no dedicated hate crime team, where 90 discontinued hate crime cases were examined. The review revealed that half of the cases were so-called false positives, which lacked a discernible hate motive. The region has since invested in increased staff training to remedy the problem (Polismyndigheten, 2017b, 2019).

However, evaluations also show that the mentoring network alone cannot resolve the problem of the unequal distribution of competence across the police regions, since training and competence development still tend to be heavily focused on the metropolitan regions. The police regions that include sparsely populated areas instead find themselves in a negative spiral: there is a lower ability to correctly identify reported hate crimes due to the absence of a specialist hate crime team, which leads to a large proportion of false negatives, in turn giving the appearance of a very low prevalence of hate crime. The low number of registered hate crimes is then used by management as a reason to refrain from investing in specialist hate crime teams. The lack of specialist teams results in less training for front-end staff, since this training is the responsibility of the specialist teams. This spirals back to the first step, with the continued inability to correctly identify hate crimes resulting in large proportions of false negatives (Polismyndigheten, 2017a, 2017b, 2022). The problem of regions registering few or no hate crimes has also been noted in international publications (Bell, 2015; Cronin et al., 2007; Hardy et al., 2020; Nolan & Akiyama, 1999).

A final problem at the organizational level involves inadequate leadership resulting in *a gap between policy and practice* due to decisions not being implemented throughout the organization (Rikspolisstyrelsen, 2013; Polismyndigheten, 2017a). This is a problem that has persisted over time, with the most recent evaluation stating that the nature of the problem is such that the organization cannot reach set goals, producing negative effects for the entire organization (Polismyndigheten, 2017a).

External Problems

Finally, there are external factors that add further challenges to the police's ability to investigate hate crimes. In the Swedish case, there has been an *increase in cases that are more difficult to investigate*, such as molestation or threats (BRÅ, 2009, 2018). These cases require offensive investigative methods that rely heavily on the competence and experience of the investigators. At the same time, reports published by the police show that this competence has not been formalized. Instead, it is cultivated in individual investigators and sometimes among a group of investigators (Rikspolisstyrelsen, 2013; Polismyndigheten, 2019, 2022). Such competence is lost when trained investigators leave

for other assignments, and training new investigators to the same level of competence takes considerable time and resources (Polismyndigheten, 2022). It is therefore concerning that the most recent report from the Police Authority notes that experienced hate crime specialists are being re-allocated to work with tasks perceived by the organization as more urgent (Polismyndigheten 2022).

Aside from the increase in cases that are difficult to investigate, there are also challenges regarding the *relationship between the police and the minority groups* that are at high risk of hate crime victimization in Sweden, such as the Roma, the African-Swedish minority, the Muslim minority, and the LGBTQ community. Among minorities, a low level of trust in the police results in lower reporting rates and in victims not wanting to participate or cooperate in investigations (Rikspolisstyrelsen, 2013; Polismyndigheten, 2017a, 2017b; Schultz, 2015; Åklagarmyndigheten, 2016a). In relation to these problems, the Police Authority has worked with trust-building measures, for example, by collaborating with NGOs and civil society organizations that represent vulnerable groups (Rikspolisstyrelsen, 2013; Polismyndigheten, 2017b, 2019, 2022). However, there are large regional variations in the frequency of such trust-building measures, and in whether they occur at all. The most recent report from the Police Authority states that while this work is strategic and well developed in the three metropolitan police regions, it tends to rely heavily on interpersonal connections and interests in the rural regions (Polismyndigheten, 2022). For example, special projects on developing good relationships with the Roma and transgender minorities have been implemented in the metropolitan but not the rural regions (Polismyndigheten, 2019).

The Prosecution Authority has drawn up guidelines for the treatment of hate crime victims in order to increase the *likelihood of cooperation and participation in investigations* (Åklagarmyndigheten, 2016a, 2016b, 2022). In the latest guidelines from 2022, the Prosecution Authority states that since hate crime victims often blame themselves and may have experience of repeat victimization, it is important that they receive support in order to be able to participate in an investigation. It is therefore recommended that the victim is supported by being provided with an injured party counsel and also the opportunity to be accompanied at interrogations by a personal support person (Åklagarmyndigheten, 2022).

The Sentencing of Hate Crime

First of all, the penalty enhancement provision seems to be applied in very few of the hate crime cases that reach court. In the Swedish context, few follow-up studies have focused on this question. Broadly, the results of the studies that have been conducted show that there has been no improvement in the application rate over time, and that it has instead remained stable at approximately 1% of the cases reported to the police. In the BRÅ's (2002) study of 4284 police reports, 344 of the cases reached court. Of these, 46 cases resulted in the application of the penalty enhancement (1%). In a Prosecution Authority (Åklagarmyndigheten, 2016a) study of 300 cases, 24 cases resulted in a conviction, and of these cases, the hate motive was specified as the basis for imposing a more severe sentence in 3 cases (Prosecution Authority 2016a). Consequently, a hate crime reaching court is by no means a guarantee that the sentence enhancement provision will be applied.

A possible explanation for this is a lack of guidelines, as described in Granström & Åström (2017). It has also been discussed that there is uncertainty regarding how much the presence of a hate motive should add to the sentence, since there is little case law in this area (Granström & Åström, 2017). Furthermore, it does not help that court judgments

only tend to specify whether the penalty enhancement provision has been applied, not how much has been added to the sentence (Tiby, 2007; Granström & Åström, 2017; Enarsson & Åström, 2022). It should be noted that this way of formulating the reasons for sentencing decisions is not unique to the role of the hate motive as an aggravating circumstance. Even in cases where a penalty enhancement can be applied as a result of other forms of aggravating circumstances, court judgments rarely specify how much the sentence has been enhanced as a result of these circumstances. Irrespective of this, when it comes to hate crime, the combination of a lack of guidelines and an absence of clear case law appears to be producing a lack of clarity with regard to how the presence of a hate motive has affected the sentences imposed. This could in turn have a negative impact on the legitimacy of the penalty enhancement provision (Walters, 2022).

The latest version of the guidelines provided by the Prosecution Authority clarified that the penalty enhancement should be used whenever there is reason to consider it. Prosecutors are encouraged both to specify the circumstances that substantiate the presence of a hate motive in the summons application handed in to the court and then to present them during the presentation of the case before the court (Åklagarmyndigheten, 2022).

The reports from the Prosecution Authority state that the authority has worked with educational measures and collegial networks for hate crime prosecutors. However, unlike the police organization, there are no evaluations or follow-up reports describing these measures and their impact on the hate crime competence of prosecutors.

Discussion and Conclusions

Having presented the research and agency reports describing how the Police Authority and the Prosecution Authority have worked with hate crime investigation over the past 20 years, it is clear that while many countermeasures have been implemented, the larger problem areas identified by the BRÅ in 2002 still pose challenges for the police organization. Many hate crime cases are overlooked because they are not correctly categorized, hate crime investigations still face significant challenges, and the penalty enhancement provision is rarely specified in court judgments. These problems are not unique to the Swedish system, with international research instead showing that these are pervasive challenges that have come to characterize the implementation of hate crime law in many countries (Byers et al., 2012; Cronin et al., 2007; Hall, 2010; Hardy et al., 2020; Lantz et al., 2019; Lyons & Roberts, 2014; Nolan et al., 2004; Schweppe et al., 2018; Walfield et al., 2017; Walters, 2014).

A key problem that manifests itself throughout the justice process is a lack of implementation. For example, the Police Authority have been tasked with prioritizing the investigation of hate crime for the past 10 years. At the same time, hate crime investigators have described that they have regularly been ordered to work with other tasks that are considered more urgent during this period, and police officers consistently claim that they lack the necessary time to screen for and collect evidence to substantiate hate motives (Polismyndigheten, 2017a, 2022). While prioritization of one area does not necessarily lead to the under-prioritization of other areas, the most recent report from the Police Authority suggests that this is the case. In the Swedish case, it seems to be that the different areas of prioritization, such as domestic violence, gun violence, and hate crime, are competing for practical resources in a zero-sum manner. In line with theory (Goldstein,

1979; Lipsky, 1969), this appears to be the result of a practical lack of personnel and tight scheduling (Polismyndigheten, 2017a, 2022). Therefore, the authors suggest that financial resources should always be accompanied by instructions to prioritize certain areas in order to avoid organizational zero-sum outcomes. Additionally, there should be an organizational infrastructure in place for knowledge transfer with regard to the development of the new working methods and competencies that often accompany prioritization.

As the present case study illustrates, measures have been taken continuously to remedy the problems identified by the BRÅ in 2002. However, few of these measures have been thoroughly evaluated. One key measure has been the development of a digital screening system whereby the presence of a hate motive is supposed to be recorded when the police report is registered. At the same time, the results of the present study show that successive comparisons of the level of conformity in the categorization of hate crime still point to large differences between the Police Authority, the Prosecution Authority, and the BRÅ (BRÅ, 2018, 2021; Åklagarmyndigheten, 2016a). Consequently, we know that many cases are overlooked, and that many cases are falsely categorized as hate crimes despite the efforts focused on the development and use of a unified definition by the Swedish authorities. From a policy perspective, the authors want to highlight the importance of evaluating the utility and usefulness of the digital reporting system. It would be useful to examine whether the non-specialized staff who register police reports find the system functional, informative, relevant to their work, and applicable to relevant cases (Bornemark, 2020; Goldstein, 1979).

Additionally, it could be argued that instead of seeing specialized hate crime units as the solution for increasing the number of hate crimes that are recorded and investigated, it would be fruitful to discuss how the recording of hate crimes is conducted. In England and Wales, for example, more hate crimes are recorded than in the rest of Europe combined, without the presence of specialized hate crime units outside London. This is due to the recording method employed. The police in England and Wales use the perception test, which means that a hate crime is defined as any crime perceived by the victim or anyone else to be motivated by prejudice or hostility (Giannasi & Hall, 2016). However, it could also be argued that this way of defining hate crime could lead to a misrepresentation of the actual prevalence of hate crime, at least in the context of what is subsequently defined as a hate-motivated crime in terms of what can be prosecuted on the basis of evidentiary requirements.

When it comes to collecting evidence to substantiate the presence of a hate motive, it remains largely unclear whether there is any consensus regarding the kind of information that is relevant from a legal perspective. Police officers have continually highlighted their uncertainty as to the kind of evidence that is needed (Polismyndigheten, 2022). Bornemark (2020) argues that people in interpersonal professions always encounter what she refers to as horizons of unknowing. To draw upon this metaphor, police investigators and prosecutors always face the limitations of their own knowledge in each case that they work with. Both Bornemark (2020) and Goldstein (1979) describe a capacity for professional curiosity as a key element in successful practice. Relying on curiosity is seen by both authors as a prerequisite for professional development, especially when faced with unknown and new situations.

While a lot of the problems associated with hate crime investigation are blamed on a lack of theoretical training among staff, there are limitations to what can be achieved by this approach. Bornemark (2020) points to the way manualization can result in overly restrictive interpretations of policies and guidelines. A number of interview studies with police officers also indicate that this might be the case with regard to hate crime screening

(Atak, 2019; Bell, 2015; Walters, 2014; Peutere & Kääriäinen, 2010). For example, Atak (2019) study of police officers in Stockholm found that the bias motive often needs to be very clear and also the single motivating factor for a crime for the offense to be considered as meeting the criteria for the hate crime label, even though such a restrictive interpretation is not in line with the Swedish regulations and guidelines (Åklagarmyndigheten, 2022).

In line with Bornemark's (2020) theory, the authors would argue that professional competence cannot be achieved solely by means of theoretical educational measures. Instead, these measures need to be accompanied by practical training in how the guidelines should be used in a broad variety of scenarios. This could be accomplished via a combination of mentorship and field work. By building practical experience in how to apply and implement guidelines, professional judgment can be improved (Bornemark, 2020). Many of the challenges and problem areas identified in the present study, such as organizational resources and the ambiguous role expectations of investigators, also touch on the conditions highlighted in Lipsky's (1969) classic work on street level bureaucrats. Consequently, this framework might prove useful in future studies on hate crime investigation.

With regard to the evidence that is important in the courts, the Prosecution Authority is an important actor which operates in a space between the courts and the police. Therefore, the authors recommend that hate crime specialists within the Prosecution Authority should adopt a more expansive role with regard to instructing, guiding, and training hate crime investigators within the police. Such a practice might fare better in combining theoretical knowledge with practical experience. As has been mentioned earlier, the three metropolitan police regions have organized their hate crime investigators in specialist teams, something that has been identified as an important factor in producing higher quality investigations (Polismyndigheten, 2017a). In addition, a well-functioning dialogue between police investigators and the prosecutor was identified as having a positive effect on the effectiveness and outcomes of hate crime investigations as early as 2013 (Rikspolisstyrelsen, 2013). It is therefore cause for some concern that not all police regions in Sweden have organized their hate crime investigations in this way.

The impact of external factors on hate crime investigation can be understood in the light of Goldstein's (1979) presentation of police work as a form of work that primarily revolves around finding solutions and strategies for dealing with and mitigating the impacts of complex behavioral and social problems. The external factors that influence the possibilities and prerequisites for investigating hate crime, such as which types of offenses are reported, the overall trust of vulnerable groups in the institutions of justice, and the likelihood that victims will cooperate with and participate in investigations, all point to the importance of combating hate crime in the broader context that enables these crimes. It is also relevant to note that while the authors refer to these factors as external, they are also likely to be impacted by policing practices (Goldstein, 1979; Lipsky, 1969). For example, the Prosecution Authority has repeatedly stressed the importance of developing good contacts with minority communities and establishing a trusting relationship with victims for successful investigation (Åklagarmyndigheten, 2022).

Within the Prosecution Authority, a system of specially appointed hate crime prosecutors has been in place since the late 1990s. This means that each local prosecutor's office should have at least one prosecutor who specializes in prosecuting hate crimes. In reality, these prosecutors also deal with other types of crime, and there is no guarantee that hate crime cases always find their way to the specialized prosecutor. There is little or no information about how these prosecutors are trained and prepared for their work with hate crime cases or how much of their time is actually spent working on such cases. And as has been noted, studies show that both specialized hate crime prosecutors and the Prosecution

Authority in general are critical of the lack of court precedent regarding the impact of a hate crime motive on sentencing. This is a recurrent theme — there is currently no way of discerning how the hate crime motive has affected the outcome of the case in those few instances where the courts have found that the prosecutor has presented sufficient evidence.

A Swedish interview study with judges, prosecutors, and lawyers who work hate crime cases also showed that these practitioners ascribed the low application rate of the penalty enhancement provision to failings that occur at earlier stages of the legal process (Granström & Åström, 2017). It might be the case that there is a mismatch between the kind of information sought by the courts and the investigative measures prioritized by the police.

At the same time, studies show that the richness of detail or the degree of documentation in investigations is not a guarantee that the prosecutor or the court will choose to raise or even consider the hate motive (Enarsson & Åström, 2022; Granström & Åström, 2017; Tiby, 2007). A remarkable finding made by Tiby & Sörberg (2006) in their study of homophobic hate crimes was that the hate motives highlighted by the examples provided by plaintiffs in police interviews of, *inter alia*, homophobic slurs were rewritten in more neutral terms for the court hearing. The nature of the paraphrasing of such slurs was such that the hate motive was no longer discernible. An example highlighted in the study is that the expression “fucking gay bastard” documented in a police report was described as an “offensive complaint” in the court judgment. In these cases, the judgments also failed to mention the presence of hate motives (Tiby & Sörberg, 2006). This is evidence that the legal processing of hate crimes is inconsistent regardless of the level of detail with which the existence of a hate motive is described in the material from the police investigation. The same tendencies were observed in Enarsson and Åström’s (2022) most recent study. Consequently, the evidence suggests that the courts may fail to apply the penalty enhancement provision despite the police having done an exemplary job collecting evidence.

A possible explanation for this might be the lack of guidelines regarding how, when, and by whom the presence of a hate motive should be presented (Enarsson & Åström, 2022; Granström & Åström, 2017). For example, interviewed judges state that the existence of a motive for hatred is not always raised by the prosecutors in their opening presentation for the court. According to some of the judges interviewed in the study by Granström & Åström (2017), it is instead mentioned in passing later on during the trial, without being well substantiated. On the other hand, interviewed prosecutors said that they spent a lot of time gathering evidence to substantiate the hate motive and directed a lot of focus at this in the indictment, but that the judges did not attach much importance to it (Granström & Åström, 2017).

To conclude, over the last 20 years, screening for, investigating, and the sentencing of hate crimes in Sweden have been the focus of many reforms and changes. Despite this, many of the problems identified in 2002 continue to pose challenges in hate crime investigation. To analyze why this is the case, and to identify ways forward, there is a need for a stronger focus on evaluating what works and why, and also a need to make use of the opportunities that exist for interaction between the different actors involved, *i.e.*, the Police Authority, the Prosecution Authority, and the research community. Based on the present study, the authors would argue that there are some possible paths forward. One path worth trying would be to combine theoretical and practical training in hate crime investigation. Another would be for the Prosecution Authority to assume a greater responsibility for knowledge transfers between the police organization and the courts. A third path would be the provision of adequate financial resources to avoid zero-sum outcomes in the police organization. And last, but not least, it would be very useful to develop continuous collaborations and knowledge exchanges with minority communities.

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Data Availability The dataset generated and analyzed during the current study are available from the corresponding author on reasonable request.

Declarations

Compliance with Ethical Standards The present study does not contain any sensitive personal data and complies with the ethical regulation in the country where the research was conducted and the Helsinki declaration.

Conflict of Interest The authors declare no competing interests.

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