



Cooperation between criminal justice agencies and civil society in combating hate crime

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Abstract

This chapter examines the relationship between criminal justice agencies and civil society in efforts to combat hate crime. It notes the difficulties faced and co-operation required in attempts to recognise the rights of hate crime victims. This involves an analysis of the work being done at a European level to encourage the involvement of civil society experts and how this might lead to better recording of hate crimes. As such this has meant a recognition of the unique knowledge and expertise that civil society organisations possess and how this can be effectively utilised.

Introduction

Countering the growth in hate crime has become an urgent priority for European institutions, and two published comments illustrate these concerns.

“Over recent years, racism, xenophobia and other forms of intolerance have been growing and spreading across Europe at very high speed” [1].

“Every day across Europe, many people are harassed, threatened or assaulted verbally or physically, or are victims of crime because of who they are, be it on grounds of their ethnic origin, religion, sexual orientation, gender identity, disabilities, social status or other characteristics. Hate speech and incitement to hatred and intolerance targeting ethnic, religious and other minorities is also widespread in the public debate, including online platforms, social media and chats.” [2].

Hate crime is the most severe expression of discrimination and a core fundamental rights abuse, and the inabilities of governments to combat it effectively calls into

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question their commitment to human dignity. In the words of the Director of the European Union Agency for Fundamental Rights (FRA) “the majority of hate crimes in the EU remain unreported, unprosecuted and therefore invisible, leaving victims without redress for their suffering” [3].

To strengthen their responses the European institutions have therefore mandated legal and operational changes designed to promote collaboration between law enforcement and civil society, in particular with regard to the collection of hate crime data, supervision of agreements and protection of victims’ rights.

In this paper I therefore briefly examine the requirements placed on European states to combat hate crime, how they are attempting to improve their hate crime data reporting capabilities and why working with civil society organisations will help them fulfil this task more effectively. Recognition of the victims of crime and their rights to be treated in a respectful and sensitive manner is mandated, as is the requirement to unmask the bias motivation behind a hate crime, and sanction it accordingly, and requires close cooperation with civil society. Representing victims, particularly those unable or unwilling to report for themselves, and the provision of support services and financial support can likewise be provided more effectively by civil society and likewise now mandated explicitly in European legislation [4]. In analysing the requirements for criminal justice agencies and civil society to cooperate, I note the difficulties that both face and the actions being taken at European level to assist them.

In referring to civil society organisations and non-government organisations, I take these to mean privately funded and or government assisted organisations which monitor and record hate crime on behalf of victim groups and religious and other minorities, and who seek to work with states’ authorities and the inter-governmental organisations (IGOs), or whose expertise is sought by them.

The rise in hate crime and non-reporting

The Inter Government Organisations (IGO) recognise that states and communities now have to confront new threats compounded by mass and uncontrolled migration resulting in inter-communal and inter-religious tensions, as well as the rise of populism and political extremism brought about by economic distress and concerns over the loss of national identity and control within an increasingly centralised Europe. They have done so by agreeing to monitor and measure hate crime in order to better inform policy making. However many states still fail to implement the agreements adequately, for a number of reasons. These reasons may include a lack of understanding of the nature of hate crime, undeveloped capacity to measure hate crime consistently and to the required standards, lack of political will or a legislative structure that does not allow for such measurement and other institutional barriers [5].

In their reporting the IGOs continually refer to the inconsistency and inadequacy of publicly available data on hate crime. Some states report incidents, others prosecutions, and yet others criminal convictions. Many still fail to disaggregate their data according to agreed classifications. The latest FRA report lists states’ recording authorities and how they disaggregate data, but comments that

“evidence collected by FRA shows that persistent gaps remain in how EU Member States record incidents of ethnic discrimination and racist crime. Unreported incidents remain invisible and preclude victims from seeking redress” [6].

I have argued elsewhere that the problems are sufficiently well known to enable policy makers to take action, and that they should not base a lack of an effective response on the failure of some states to report their hate crime data in the disaggregated form that is required, or even at all [7, 8]. Indeed, the lack of adequate data at a regional level has not hitherto prevented European parliamentary bodies and agencies from legislating, requiring states to strengthen their domestic laws, or to take bias motivation into account when sentencing perpetrators of hate crimes.

Reporting options for victims are significantly affected when they encounter difficulties in reporting hate crime, particularly if police, prosecutors and judiciary are reluctant to record and acknowledge the bias motivation behind some crimes. [9]. To improve reporting and prosecution of hate crime therefore requires close and consistent cooperation between criminal justice systems, victims’ groups and civil society experts.

Research undertaken by FRA in 2016 among criminal justice professionals on the factors that prevented hate crime victims from reporting to the police or some other agency, found that victims’ lack of awareness of their rights, or of the non-availability of victim support services, substantially impeded their access to justice. Two hundred and sixty three interviews were conducted with police officers, public prosecutors and criminal court judges as well as victim support services professionals and human rights based civil society organisations in all EU states. The interviewees identified five main themes which they believed impeded victims reporting of hate crimes. Almost 90% believed that measures are needed to improve hate crime victims’ awareness of their rights and of victim support services available to them. Additionally 60% viewed the actual lack of support services as a factor impeding victims’ access to justice. Approximately 75% stated that victims were discouraged from reporting because they did not believe the police would treat them in a sympathetic and non-discriminatory manner. Accordingly 80% of the professionals believed it to be necessary to enhance victims’ trust in the police, and 75% stated that discrimination within police forces had to be tackled. They added that practical measures, such as establishing specialised hate crime units, liaison officers and online reporting would facilitate more reporting [10].

Finally, approximately 66% believed that the police and judiciary needed to take hate crime more seriously. The survey conclusions noted that there existed a profound lack of understanding of the legal concepts and categories that define the phenomenon of hate crime, and that there was a lack of commitment to identify, prosecute and impose sentences for hate crime [10].

The professionals were asked to rank the seriousness with which they viewed each main category of hate crime: 68% noted that racism and xenophobia constituted a very or fairly serious problem; 60% noted that hate crime motivated by sexual orientation or gender orientation constituted a very or serious problem; 49% responded that they viewed anti Muslim hate crime to be a very or fairly serious problem; 38% viewed hate crime against homeless persons to be very or fairly serious; 37% noted that they viewed antisemitic hate crime to be very or fairly serious; 23% noted that they viewed hate crime against persons with disabilities to be very or fairly serious [10].

These results suggest weaknesses in perception and understanding due to experience, or lack of it. If the professionals did not perceive hate crimes against disabled people to be serious it may be because disability hate crimes have received less attention than hate crimes against other categories. FRA also pointed to a discernible difference between the opinions of state and non-state actors regarding the significance of hate crime, most likely because the support services experience hate crime through the victims' perspective whereas criminal justice agencies confront only those cases that are dealt with in official criminal proceedings [10].

Other issues highlighted by the research include the professionals' concerns over incitement to hatred by public officials and politicians, especially during election campaigns and on the internet. The latter was seen as unleashing boundless hate speech and several experts from France independently used the term "explosion" to describe how they perceive this development [10].

The FRA report noted that the ability of criminal justice systems to recognise and respond to hate crime is premised on professionals' understanding of basic concepts and that professionals are often not well acquainted with the terminology framing the hate crime discourse." Many interviewees highlighted as an issue the lack of a clear and shared understanding of the relevant concepts and hence of the phenomena they cover" [10].

The research also focussed on the barriers to reporting hate crime to police. The majority of professionals interviewed agreed that the effectiveness of criminal justice systems is severely impaired by the systemic underreporting by victims of hate crime, and that the consequences are far reaching. Offenders go unpunished if the majority of victims do not report their victimisation to the police. This inevitably undermines the effectiveness and credibility of criminal justice systems, particularly when their failure to react to offences becomes systematic and known to the public [10].

The interviewees consistently indicated that they believe it is more difficult for victims of hate crime to report to the police than it is for victims of crimes committed without a discriminatory motive. Around 66% of respondents rated reporting to the police as either more or much more difficult for victims of hate crime [10]. They indicated that victims may suffer from feelings of fear, guilt or shame that makes it stressful to report, together with a lack of awareness of their rights and provision of support services. Approximately 80% indicated that victims doubt they would benefit from proceedings if they reported hate crimes and that many of them lacked confidence in the criminal justice system. FRA therefore noted in its conclusions that allowing civil society organisations to intervene on behalf of hate crime victims "could be a powerful instrument in enhancing access to justice", that enabling them "to carry the burden of lengthy proceedings in representative cases could be a way to lower the level of impunity for hate crime" and that third party interventions could bridge the gap that results because most instances of public incitement to hate crime are not addressed to individual victims [10].

The widespread lack of data has been addressed by FRA through a series of large-scale surveys of visible minorities and immigrants. The first of these, the 2008 EU-MIDIS survey, interviewed 23,500 members of immigrant and ethnic minority groups across all EU Member States. The poll revealed a striking amount of unreported discrimination and crime. Of the different aggregate groups who had suffered racist assaults or threats, between 57% and 74% of assault victims did not report to the police.

At the same time, between 60% and 75% of these incidents were regarded by the aggregate respondent groups as “serious”. The main reason given for non-reporting was that the victims were not confident that the police would do anything, and among those who did report there was a high rate of dissatisfaction [11].

The 2012 FRA Survey on Experiences and Perceptions of Antisemitism revealed that only 13 of the 28 EU Member States collected official data on antisemitism, and that only 4 of them operated comprehensive data collection and recording mechanisms. This, despite the fact that 66% of respondents considered antisemitism to be a problem and 76% believed antisemitism to have worsened. Other responses included that 46% of respondents worried about being verbally insulted or harassed, that 26% had experienced some form of antisemitic harassment, that 33% worried about being physically attacked, and that 23% felt discriminated against because they were Jewish. Of the total number of victims of antisemitic harassment, 76% did not report the most serious incident to the police or any other organisation, and neither did 64% of victims of antisemitic physical attack. The reason for not reporting the most serious incident was because 47% of victims did not believe that anything would change by reporting the incident, and 10% stated that they did not trust the police [12].

The widespread distrust in the willingness of law enforcement agencies to recognise or investigate hate crime, and to act on their findings constitutes a serious institutional barrier. Overcoming this barrier has therefore been an important reason for enlisting civil society and non-governmental organisations (NGOs) in gathering data and reports, and for polling victims. The IGOs hope thereby to fill the gaps left by the failures of law enforcement agencies to perform the job adequately, as well as to provide much needed context to those findings in order to challenge discrimination and racism and improve support structures for victims of discrimination and hate crime.

A further barrier to cooperation in some states has been that any investigation of hate crime was undertaken by states’ security services, because the perpetrators have historically come from politically extreme ideologies, and the information was therefore classified and restricted. States were therefore unwilling or unable to share data with civil society although this practice appears to be changing. However they may still limit their disclosure and thereby frustrate scrutiny of the effectiveness of the systems. The German Agency for the Protection of the Constitution now works with other agencies to report hate crime though historically they reported its occurrence as political extremist activity alone. But they publish no data on hate crime prosecutions or convictions thus frustrating analysis [13]. Another barrier has been the reluctance of some states to open themselves up to criticism by other states and the IGOs [14].

Institutional barriers, and unwillingness to share the workload with civil society is the consequence of some law enforcement agencies’ unwillingness to cede some of their responsibilities, or to collaborate with NGOs perceived as antagonistic or unworthy of sharing official data.

European law

I now turn to states’ legal responsibilities. Two regional agreements established the current legal framework requiring states to criminalise incitement to hate. The second of these also allocates a role to civil society.

The 2008 EU Council Framework Decision required EU Member States to establish basic legal protections against hate crime by criminalising public incitement to violence or hatred against a group of persons defined by race, colour etc.; publicly condoning, denying or grossly trivialising crimes of genocide against humanity and war crimes, including the Holocaust. [15]. Its purpose was to promote a consistent criminal law approach across states, but it has limitations. It was passed as a Decision, the lowest form of legislation which does not usually bind member states, although subsequently it was accorded the power of a Directive, which does require member states to transpose it into domestic law. While requiring effective, proportionate and dissuasive penalties and a minimum term of imprisonment, it omits crime based on sexuality and other protected characteristics. An early review by Amnesty in 2013 suggested that that it had proved to be ineffective in tackling hate crime, that there were many instances where the hate motivation of crimes was neither investigated nor uncovered, that police were failing to use the powers given to them to prevent hate crime and that too many government leaders and political party leaders failed to condemn such violence, or had expressed discriminatory views themselves [16].

A more recent assessment undertaken for the EU noted that each state continued to maintain its own hate crime definitions and strategies, and that a failure to examine best practice persists among European states [17]. Herein lie two weakness in the basic European legislation: although states were initially inspected on its implementation, there has been so subsequent examination of how it is applied or how effective it has been; there is no requirement for states to cooperate among themselves, save that it ‘aims to improve and encourage judicial cooperation’ [15]. These omissions are however subsequently being rectified by other means as will be shown below.

The subsequent 2012 EU Victims Directive, which places the victims and victims’ rights at the heart of criminal proceedings has a much wider aim and stronger powers, and requires states’ national administrations to engage in close dialogue with civil society, including with relevant non-governmental organisations [4]. It required EU Member States to transpose its provisions into domestic law with the purpose of improving the rights, support, protection and participation of victims of crime to the greatest extent possible. Recognising that the Directive represents a substantial and far reaching change to the provision of justice, the EC Justice Directorate published guidance notes to assist states. It emphasised that they need to engage in close dialogue with academic experts, practitioners and “civil society, including non-governmental organisations” [18].

The guidance document notes that the core objective of the Directive “is to deal with victims’ needs in an individual manner based on an individual assessment and a targeted and participatory approach towards the provision of information, support, protection and procedural rights” [18]. This necessarily requires cooperation between criminal justice services and civil society, and the onus of consulting them is contained in several of the 25 Articles that comprise the Directive. Article 1 requires that states ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner in all contacts with victim support or restorative justice services or competent authorities operating within the context of criminal proceedings. It adds that the application of the Directive in a non-discriminatory manner may be of particular importance in the context of racist and xenophobic hate crime [18].

Article 8 ensures that victims and their family members have access to confidential support services free of charge, which should provide information and advice, emotional and psychological support and practical assistance. Member states are invited to consider who should provide victim support and other specialist support services and notes that these may be supplied by the voluntary sector as well as states [18].

Article 25 calls for the appropriate training of all criminal justice professionals, including the judiciary, although it recognises their need to retain their independence, and suggests victims' needs can be addressed by calling on general and specialist victim support services. Article 26 aims to encourage states to cooperate with each other, to coordinate actions on victims' rights and also to consider the particular vulnerability of people travelling abroad. In this respect, it suggests that the involvement of the private sector be encouraged and that states invest resources in European networks, civil society and cooperation [18].

The Directive clearly places new and onerous responsibilities on EU member states and they will struggle to absorb them in any comprehensive or thorough fashion. Transposition was due by November 2015 with a requirement to report progress by November 2017. The EC is due to report to the European Parliament and the Council by mid- November and it will be instructive to what lessons have been learned from implementation of the 2008 regulation [4].

What is apparent however is that achieving the ambitious aims will be assisted greatly by recognising and using the expertise possessed by civil society experts, and developing working and complementary relationships. An examination of these is the focus of the next section.

Cooperation between criminal justice agencies and civil society within the EU

The EC has stated that it will monitor closely the transposition and application of the Framework Decision at the national level, and to pursue this aim established the EU High Level Group on combating racism, xenophobia and intolerance in February 2017. This platform will support regional and national efforts to ensure effective implementation of the 2008 and the 2012 agreements. It works through "fostering thematic discussions on the gaps, and challenges, and by promoting best practice exchange, developing guidance and strengthening cooperation and synergies between key stakeholders. It focuses on two specific areas: improving methodologies for recording and collecting data on hate crime; countering online hate speech [2].

The High Level Group website notes that having specific hate crime and victims' rights legislation on their own have proved insufficient, that there is therefore an urgent need to step up efforts to bring together experts from member states, civil society and community-based organisations to isolate and establish best practices [2].

At the first meeting of the High Level Group, EU Justice Commissioner Vera Jourova noted that it has become urgent to improve investigation and prosecution of hate crime, raise awareness of hate crime victims and provide them with necessary support, and that this is the primary responsibility of law enforcement authorities, judicial authorities and civil society. In other words that it had to become a joint enterprise between states' authorities and civil society. She added that the EC and other

stakeholders at European and national levels would help authorities and local actors to effectively implement laws and policies by providing political impetus and guidance through training, and developing platforms for the exchange of methods and practices, and that they would fund relevant projects and initiatives [19].

The EC Justice and Consumers Directorate has therefore published a set of 10 Key Guiding Principles for law enforcement and criminal justice agencies on behalf of the High Level Group which notes that specialised training is required to develop the necessary skills to identify, record, investigate and prosecute hate crimes. These would not be legally binding but should serve as guidance with a view to building capacity, and to implement the provisions of the 2008 Framework Decision and the 2012 Victims' Directive. To be effective, the key guiding principles include ensuring that police, prosecutors and judiciary are equipped to effectively investigate hate crime.

Training programmes should support national or regional plans and strategies with clear goals and targets. These must be complemented by legal, policy and operational guidance, delivered as part of an overall rights-based approach to law enforcement and criminal justice, supported by thorough training needs' assessments and customised on the basis of the identification of target personnel and developed through structured cooperation with civil society. In respect of this latter point, the guidance notes that civil society and community-based organisations bring specific added value to the planning, preparation, delivery and evaluation of training programmes for law enforcement and criminal justice agencies and that experience gathered in a number of states shows that such actors play a key role, both as trainers and advisers, particularly in addressing authorities' attitudes, bringing perspectives and experiences, offering specialist intelligence and knowledge about the specificities of bias indicators and on local hate crime patterns and trends.

Civil society actors can build the skills of public authorities to effectively engage with communities, improve their confidence, build effective partnerships and address existing barriers and overcome mutual mistrust. Training modules should address specific forms of intolerance such as Antisemitism, anti-Muslim and anti-migrant hate and that consideration also be given to intersectionality. To do so would must therefore require close working with civil society groups [20].

The High Level Group meets regularly in Brussels bringing together experts from EU Member States, EU agencies, FRA, IGOs including the UN, OSCE, and the Council of Europe as well as expert NGOs.

At its December 2016 meeting, the High Level Group discussed hate crime training for law enforcement and judicial authorities. Among their recommendations they urged that states develop a model of structured cooperation with civil society, who they noted can bring specific added value to the planning, preparation, delivery and evaluation of hate crime training for law enforcement and criminal justice authorities. They suggested that civil society actors play a key role as trainers and advisors, particularly in addressing authorities' attitudes, gathering victims' experiences and perspectives, facilitating the involvement of victims and victims groups. They can offer specialist intelligence and knowledge about the specificities of bias indicators affecting particular groups and on local crime patterns and trends, and bolstering the skills of public authorities to effectively engage with communities.

Using these skills for training purposes may help to develop effective partnerships and overcome existing barriers, mistrust and prejudice on both sides, which would in turn enhance relations between states' authorities and communities and offer further avenues for cooperation with a view to improving reporting and evidence gathering [20].

The High Level Committee went further, and suggested mapping of possible partner civil society and or community based organisations at local or national level, with the possibility of subsequently developing models of cooperation between selected organisations and the authorities, through formal or informal arrangements. They suggest that such an approach is key to ensuring a structured, rather than an ad hoc exchange and engagement [20].

In order to achieve these objectives, hate crime training for law enforcement and criminal justice authorities must necessarily provide guidance on building positive and constructive community relations, including identifying civil society and community actors and deepening engagement with these actors [20].

Cooperation between FRA and civil society

As the EU centre for expertise established to ensure that the fundamental rights of all are protected, FRA has sought to involve civil society actors in its work since its establishment in 2007. In 2014 it published a summary of a joint workshop at which the cornerstones of enhanced cooperation were identified. These included raising public awareness of fundamental rights, enhancing the impact of FRA output at EU, national and local levels, connecting civil society organisations and enabling dialogue and the exchange of best practices, and breaking down the 'silos' between fundamental rights stakeholders and states [12, 21].

The agency encourages EU Member States to enhance their efforts to reach out proactively to victims of hate crime by encouraging their reporting, including by introducing online reporting tools and establishing specialised police units.

Over the years they have promoted third party reporting of hate crime in instances where the victim is either unable or unwilling to report personally, and to overcome religious and cultural barriers, physical and language incapacities. To further these aims, FRA suggests that law enforcement agencies establish low threshold channels to encourage reports from victims who for whom this is difficult and the establishment of specialised police units to communicate with local communities [12, 22].

FRA recommends encouraging civil society associations to take the initiative in reporting hate crime in order to 'unburden' victims of the onus of reporting, or in instances when no individual victim can be identified, or to allow public interest actions (*actio popularis*) thereby enabling third parties to institute proceedings against perpetrators of crime on behalf, or in support, of victims. However in cases when the target of discriminatory hate speech or Holocaust denial is a group or abstract category, rather than an individual, Member States should allow NGOs to represent the victims in criminal proceedings. In such instances, an NGO could present evidence on behalf of the group or category of individuals discriminated against [12, 22].

Cooperation in the wider European region

As with the EU and its institutions, the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (ODIHR) aims to increase cooperation between criminal justice agencies and civil society by addressing some of the aforementioned issues. The 2009 Ministerial Declaration on hate crime had called on participating states to take appropriate measures to encourage victims to report hate crimes, recognizing that under-reporting prevents them from devising efficient policies. It advised states to explore, as complementary measures, methods for facilitating, the contribution of civil society to combat hate crimes, and to conduct awareness raising and educational efforts, particularly with law enforcement authorities, directed towards communities and civil society groups that assist victims of hate crimes [23].

The OSCE has become ever more aware of the need to involve civil society actors, and in his overview of ODIHR activities for 2015, the Director recalled that

“This year, the Office maintained its efforts to address hate crime and other forms of intolerance, particularly through close work with civil society, both building coalitions to help foster tolerance and in partnership with to collect comprehensive hate crime data. ODIHR’s hate crime reporting this year included information provided by 43 OSCE participating States. ODIHR also continues to work closely with law-enforcement agencies and prosecutors to assist them in identifying, investigating and successfully prosecuting hate crimes” [24]

He added that

“Civil society remains a fundamental partner for ODIHR’s tolerance and non-discrimination activities, notably in providing information on hate crimes that complements the official data submitted by participating States.” [24]

During 2015 and 2016, ODIHR focussed on training civil society activists to monitor and counter hate crimes through a series of workshops, thereby expanding the network of civil society groups submitting hate crime data and helping to reduce gaps in data collection coverage. In this manner, civil society plays a central role in identifying hate crimes and supporting its victims. For example, civil society groups played a prominent role in the Conference on Advancing Tolerance and Non-Discrimination through Coalition Building and Co-operation, held in November 2015, which focussed, *inter alia*, on how national responses to hate crime can be improved through collaboration between civil society organisations and with governments. The conference was held in parallel with the annual meeting of the National Points of Contact on Hate Crime (NPCs), the government agencies or officials responsible for submitting hate crime information to ODIHR [25]. It is unclear whether ODIHR bridged the gap between the police representatives and the civil society experts who addressed them at the meeting. Resistance to civil society expertise appears to be common although a small number of states now collaborate effectively and productively with NGOs. In several northern European states, independent hate crime advisory groups collaborate closely with criminal justice

agencies in an integrated manner. The U.K. and Scottish governments, for example, assign significant roles to civil society expert and representative groups in their hate crime strategies [26, 27].

Keynote speakers and session participants addressed the importance of facilitating robust infrastructures of NGOs to foster greater civic engagement, the challenges of successful coalition building among civil society organisations, building government and civil society partnerships and mapping the key elements of collaboration between them. Following the conference, ODIHR published a series of recommendations to improve national responses to hate crime through collaboration between NPCs and civil society, which are designed to encourage police and civil society groups to exchange data on hate crimes and bias-motivated incidents such as establishing mechanisms and platforms, joint seminars and training initiatives for law enforcement officers, prosecutors and judges, encouraging governments to make their hate crime data more accessible, encouraging a victim-based approach and empowering victim groups to raise the profile of affected communities who can then influence legislation [25].

During its fifth round of country monitoring, the European Commission against Racism and Intolerance (ECRI) has identified as one of its areas of focus the progress made by member states in combating hate speech and violence. It can only do so thoroughly by speaking to civil society organisations as well as states' parties. It also issues General Policy Recommendations (GPRs) which are addressed to governments and which provide guidelines which policy makers are invited to use when drawing up national strategies and policies. Some GPRs focus on measures relating to particular vulnerable groups, such as Roma and Gypsies, Muslims and Jews [28].

ECRI also reaches out to society at large and regards NGOs as vital sources of information on hate crime. It engages with them and other civil society representatives during its country inspections as well as via the mechanism of round -table meetings with the aim of encouraging civil society and national authorities to think about jointly solving the problems of racism and intolerance.

The Conference of INGOs brings a civil society dimension to other work carried out by the Council of Europe, and although these do not address hate crime in the same manner as other IGOs they do address discrimination and violence against vulnerable persons and groups as well as protecting human rights defenders and combating radicalisation and governance issues [29].

Civil society organisations combating hate crime

I have examined the need for cooperation from the perspective of the four IGOs concerned, and will now do so briefly from the perspective of some of the civil society organisations involved at the European regional level in combating hate crime.

The European Network Against Racism (ENAR) is an umbrella body of European grassroots CSOs which advocates on racism and equality issues by organising workshops and meetings, and the publication of an annual 'shadow report' on discrimination, among other activities. By bringing disparate groups together it aims to both influence European policies and to break down structural barriers between migrants, ethnic and religious minorities. Current strategic objectives include working toward

stronger and more effective EU legislation against hate crime and reinforcing its members' capacities to report such crime, providing legal assistance and legal representation for members and advocating for states to collect disaggregated data on hate crime. It also aims to mobilise communities to enable them to impact legislators and decision makers [30].

The strength of ENAR lies in its capacity to reflect civil society concerns and to articulate them when individual groups may lack the capacity to do so themselves, thereby ensuring that these concerns are conveyed direct to policy makers, and promoting necessary cooperation between civil society and the European agencies.

Facing Facts is managed by the Brussels-based CEJI – a Jewish Contribution to an Inclusive Europe, and is a collaboration between them, the Community Security Trust (CST, UK), the Centrum Informatie en Documentatie Israel (CIDI, Netherlands) and others. Its first project was designed to assist CSOs to monitor and measure hate crime according to criminal justice standards and to use the data achieved to engage with governments more effectively. It aimed to fill the vacuum left by the inabilities of some states to collect hate crime data and was funded by the EC, with additional funding from the Open Society Foundations and the Dutch Jewish Humanitarian Fund [31].

The second project, funded by Facebook, Google and Twitter, put the project online and enabled remote participation by civil society participants. Facing all the Facts is the third collaboration by a wider group of CSOs and national authorities, and is again funded by the EC. It aims to align civil society data on hate crime with that of criminal justice agencies, in terms of understanding, definitions, and collection methodology. It will strengthen the capacities of public authorities and law enforcement agencies to advance the implementation of a victim centred approach to monitoring and recording hate crime and hate speech. It will promote third party reporting mechanisms and data exchange protocols and its participants will seek to discover what works, and identify gaps and obstacles to improving cooperation and data sharing between criminal justice systems and CSOs. It will do this by conducting research in five EU countries (Facing all the Facts). Although the project only becomes operational in 2018 it holds out the promise of an effective and continuing collaboration both because it has been planned by seasoned law enforcement professionals and civil society activists, and among its managing partners are three law enforcement agencies, from the UK, Italy and Hungary [32].

The 2008 Framework Decision requires member states to enact national laws to criminalise incitement to hate offline, and online. The Code of Conduct on Countering Hate Speech Online signed by Facebook, Google and Twitter in 2016, requires that the social networks remove criminal content on receipt of a valid notification by a recognised expert CSO within an appropriate timeframe. It also commits the social networks to intensifying their work with CSOs to deliver best practice training on countering hateful rhetoric and on delivering effective counter speech campaigns. [33].

Countering cyberhate is an arena where that cooperation is among the strongest, and which may become even more important. CSOs have developed significant expertise and experience in monitoring and countering online hate. Indeed they have sometimes been the primary vehicle through which the attention of states 'law enforcement authorities and the internet companies, particularly the social networks, are alerted to online incitement and extremism.

The International Network Against Cyberhate (INACH) is an Amsterdam based umbrella body which brings together a range of organisations which counter online hate speech and discrimination. Founded by the German Jugendschutz.netz and the Dutch Magenta Foundation, members of the body exchange information to enhance their capacities to challenge online hate [34]. Some of the constituents are government-funded NGOs; others are entirely independent, and together they are among the bodies monitoring the effectiveness of Code of Conduct by working as ‘trusted partners’ of the social networks (INACH). Their experience is now being brought to bear on the social networks’ responses to the Code of Conduct with a third round of monitoring of the four main platforms’ responses to their flagging of illegal content due to start in December 2017. It is also intended to extend the process to smaller online platforms in due course [35].

Conclusions

Cooperation between criminal justice agencies and civil society has necessarily had to improve in order to combat hate crime more effectively. The weaknesses in implementation the 2008 Framework Decision as well as the inabilities of states to monitor hate crime more effectively are now intended to be addressed by the work of the EU High Level Group. It now is accorded an oversight and monitoring role which previously was limited to inspecting member states’ transposition into national law. They have identified the lack of data collection, as well the inconsistencies in the type of data that is collected, and online criminal content on the larger social network’s platforms as two important areas to concentrate on. In addition to disseminating best practice between national police forces the EU and OSCE are jointly funding the Facing Facts programmes. These have been initiated by CSOs but with substantial police input. They will augment the programmes already initiated by the OSCE and the European Union Agency for Law Enforcement Training (CEPOL) programmes.

Notifying online criminal hate content is again an example of the use of civil society expertise. Numerous organisations have demonstrated their abilities to identify and report hate content, and were obvious partners for the EC. The EC has reported an improved removal of criminal hate speech from 28% to 59% over a 6 month period, although the speed with which messages were removed has varied. The assessment by the EC is that the combination of a non-regulatory approach, involving civil society experts, produces results when flanked by other measures which ensure compliance with agreement. It has also noted that the next stage will be to extend the Code of Conduct to smaller platforms [35].

The Council of the European Union and the Ministerial Council of the OSCE, the agencies’ highest bodies, now recognise that collaboration is not only necessary to fill the gaps left by states’ authorities. Civil society has expertise and knowledge as well as proven ability in representing the interests of its members, and this needs to be further and more effectively harnessed. As a consequence, the IGOs have progressed beyond just seeking consultation, as was the case in 2009 in the OSCE Ministerial Council Decision on Hate Crimes, to encouraging and funding collaborative working, as is now the case with the EU High Level Group, which seeks to pool assets, skills and experiences and operate as a joint enterprise.

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