THE GERMAN HATE CRIME CONCEPT: AN ACCOUNT OF THE CLASSIFICATION AND REGISTRATION OF BIAS-MOTIVATED OFFENCES AND THE IMPLEMENTATION OF THE HATE CRIME MODEL INTO GERMANY’S LAW ENFORCEMENT SYSTEM

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In the United States, hate crime has been on the criminological agenda since the 1980s. In 2001, Germany also made an attempt to adopt a similar concept as part of a reformed police registration system for so-called ‘politically motivated offences’, focusing predominantly on right-wing extremist crime. However, hate crime is a category which is open to selective interpretations and subjective judgments and to date there are still large empirical deficiencies regarding the identification and classification processes applied by the German police. High levels of ambiguity, uncertainty and arbitrariness initiate a debate surrounding the validity of official hate crime statistics in Germany and reveal a large potential for conflict when it comes to the definition and registration of xenophobic violence and other forms of hate-motivated crime. In this respect, it seems indispensible to carefully evaluate the implementation of the hate crime concept into Germany’s law enforcement system and to analyze current trends and developments, in order to provide valid data on the qualitative and quantitative nature of hate crime incidents in German society.

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Introduction

The term ‘hate crime’ was coined in the United States in the 1980s and describes a criminal phenomenon that is of contemporary significance for societies all around the world. Hate crimes encompass unlawful conducts of intimidation or physical persecution directed at a wide array of different target groups (Green, McFalls and Smith, 2001). Such offences are committed against people primarily because of their group affiliation and are motivated by hate or disdain based on nationality, ethnic origin, sexual orientation or any similar characteristic of the victim. To date there is however still no universally accepted definition of what actually constitutes ‘hate crime’ and how this phenomenon is to be ultimately defined. Scholars however agree that what makes a crime a ‘hate crime’, is mainly the existence of bias or prejudice against an individual based on someone’s real or perceived group membership or identity (Cogan, 2003). The victim becomes thereby interchangeable as the crime is intended to intimidate not only one particular person but to send a message that imposes a subordinate and inferior status to the entire community that shares the same attributes as the victim.

In the United States of America, the Hate Crime Statistics Act\(^2\) was introduced in 1990. It requires the Department of Justice to collect data on crimes that are committed because of the victim’s race, religion, disability, sexual orientation or ethnicity (Streissguth, 2003). As a result of legislation enhancing sentencing for hate-motivated offences in 1994, hate crimes have since been recognized as a distinct category of American criminal law. Data on officially registered offences are published by the FBI within the annual *Hate Crime Statistics* and the concept of hate crime has thus been institutionalized in the social, political, and legal discourse of the United States. It is difficult to generate a common understanding of the hate crime definition between Germany and the United States, as the data of officially registered criminal offences regarding this subject are basically incomparable (Watts, 2001). To date, attempts of comparative studies between Germany and the U.S. on that topic are therefore quite rare (Aronowitz, 1994; Seehafer, 2003; Aydin, 2006; Coester, 2008). Xenophobic aggression and bias-motivated violent offences, just as the legislative and legal attempts to identify the offender and to measure such incidences, are based on very different historical perspectives and experiences of racism and violence in the past of the two countries. In the U.S., the legal concept of hate crime mainly emerged due to actions of the black civil rights movement beginning in the 1960s which focused especially on discrimination and violence against racial minorities, such as lynching or police brutality against black citizens (Jenness, 2007). From the 1970s onwards, the anti-hate crime movement was pushed further by other victims’ rights groups including women’s movements, gay and lesbian rights groups or disability movements.

\(^2\) The federal statute of the *Hate Crime Statistics Act* was signed into law by President George H. W. Bush in April 1990 and codified: 28 U.S.C. 534. Since then, additional pieces of legislation have been passed including the *Hate Crimes Sentencing Enhancement Act of 1994*, the *Violent Crime and Law Enforcement Act of 1994* which includes physical and mental disability as a separate category of hate crime, the *Church Arson Prevention Act of 1996* and the *Hate Crimes Prevention Act of 1999*. 

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In this regard, Germany of course has a very different historical outset, dating back to the racial and anti-Semitic hatred during the time of the National Socialism. Legislations and policies passed later were therefore mainly aimed to prevent a resurgence of anti-Semitic violence, including manifestations of right-wing extremism and Holocaust denial (Bleich, 2007, p15). In the postwar era, Germany then experienced a high level of immigration and developed into a society of ethnic diversity. After the unification, a series of violent hate-motivated attacks against minorities in various German cities eventually turned the focus towards a notion of hate crime. After several attacks against immigrants and asylum seekers in Hoyerswerda (1991), Rostock (1992), Mölln (1992), Solingen (1993), and the arson of a synagogue in Lübeck (1994), hate-motivated crime had been put on the political and criminal justice agenda. Improvements were made in order to target racist perpetrators and to gather information on trends and developments concerning xenophobic violence and anti-foreigner crime. The idea of hate crime has also repeatedly been part of contemporary public debates and the term is now used more and more frequently in German literature (Willems and Steigleder, 2003; Schneider, 1995; 2001; McDevitt and Williamson, 2002; Bannenberg et al., 2005). Efforts to tackle the problem of racist and xenophobic violence had also been made by the European Union. In 1993, the Council of Europe established the European Commission against Racism and Intolerance (ECRI) with the aim to monitor phenomena of racism and racial discrimination in the European Union. In 1997, the EU also founded the European Monitoring Centre on Racism and Xenophobia (EUMC) which was supposed to collect nationwide data and information on the prevalence and development of racist and xenophobic violence in the member states (OSCE/ODIHR, 2005).

Naturally in Germany, the very specific historical experiences with regard to bias-motivated violence resulted in a radically different content and understanding of the term hate crime. Still, the adaptation of the hate crime concept is closely inspired by the American definition of this phenomenon. German police agencies now keep statistics on the prevalence of so called ‘hate-motivated incidences’ and hate crime has become a common description for predominantly right-wing-offences against people with migrant backgrounds. The definition of hate crime is however a rather complex issue that shows very broad characteristics. This makes it a difficult subject in practical terms for criminal justice practitioners and legislators as to which forms of criminal behavior should be embraced by the term and how to identify bias-motivated offences. A prime example for this is the so-called ‘Ermyas Case’ which occurred in Potsdam. On April 16, 2006 the 37-years-old Ermyas Mulugeta (German of Ethiopian origin) was beaten up and suffered serious head injuries. He remained unconscious for nearly two weeks and was unable to recall the incident after his recovery. However, seconds before the attack he had called his wife to leave a message at her mailbox which incidentally recorded an argument between Mulugeta and two men. The men allegedly insulted the victim with the word ‘nigger’ which instantly turned it into a bias-motivated incident. The case was considered as a threat to inner security which is why the General State Attorney – encouraged by the governmental leadership at that time – took over the investigation process. The two

3 Important laws to prevent acts motivated by right-wing extremism, anti-Semitism or anti-foreigner bias include: a) § 130 StGB: ‘Public incitement’; b) §86, 86a StGB: ‘Distribution/display of Nazi propaganda’.

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presumed perpetrators were charged with attempted murder out of a xenophobic motive and the trial was accompanied by high media coverage and a heated political and public debate regarding xenophobia and racism in Germany (Zeit Online, 2007). However, while in the beginning the attack was clearly labeled as a hate crime, this was soon taken into doubt due to uncertainties regarding the apparent xenophobic motive. The case was dropped by the Attorney General and eventually resulted in the acquittal of the alleged perpetrators. The ‘Ermyas Case’ demonstrates the difficulties when it comes to accurately identifying a ‘hate’ motive – especially in consideration of the influence of public and political pressure. What remains is a large political issue regarding the trouble with definitions and the power of interpretations.

The whole concept of hate crime is still a rather unexplored issue in Germany. It is characterized by ambiguous classification processes and large empirical deficiencies on the qualitative and quantitative nature of such incidences (Bannenberg, Rössner and Coester, 2005; Coester, 2008). An in-depth scientific debate on this topic appears to be a pressing matter since – despite the apparent lack of scientific expertise on the definition of hate crime or the actual benefits of this category for German law enforcement and crime prevention measures – the notion of hate crime has nevertheless already become an integral element of the country’s criminal policy.4

This article is therefore an attempt to describe the German understanding of hate crime. It will examine the reporting methods and present the latest figures of officially registered offences while taking a critical glance at the nature and the quality of data collection by the country’s law enforcement agencies. The discussion focuses on an evaluation of the German hate crime statistics and on the factors influencing the identification and classification of hate-motivated offences. By referring to a range of material from academic, police and governmental resources, this paper examines how xenophobic and other hate-motivated incidences are defined and counted in Germany’s criminal policy.

The Emergence of the Hate Crime Concept in Germany

Up until the year 2000, the Federal Office of Criminal Investigation (Bundeskriminalamt) and the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz) had recorded all criminal offences that were considered right-wing extremist or involved a xenophobic or anti-Semitic background. This registration system focused primarily on extremist crimes against the State, which had the intention to threaten the fundamental democratic principles

4 With regard to the legal provisions in Germany it should be noted that the hate crime concept is however not explicitly mentioned in the German Criminal Code (Strafgesetzbuch - StGB). The Penal Code however does provide sentencing guidelines on mitigating and aggravating circumstances which can be applied to racist or bias-motivated offences (Paragraph 2 of Section 46 (StGB) – Principles for Determining Punishment). In its determination the court shall counterbalance the circumstances which speak for and against the perpetrator. In doing so consideration shall be given in particular to: the motives and aims of the perpetrator; the state of mind reflected in the act and the willfulness involved in its commission; the extent of breach of any duties; the manner of execution and the culpable consequences of the act; the perpetrator’s prior history, his personal and financial circumstances; as well as his conduct after the act, particularly his efforts to make restitution for the harm caused as well as the perpetrator’s efforts to achieve mediation with the aggrieved party (Criminal Code as passed on November 13, 1998).
of Germany (Motiv der Systemüberwindung). Due to varying methods of classification and the application of disparate definitions, this eventually resulted in large discrepancies in officially registered cases (Rühl, 2002, p9) and a growing public concern about the true extent of racist and xenophobic crimes in Germany. In September 2000, two newspapers published a death toll of 93 victims that allegedly had died due to right-wing hate-violence during the past ten years since the unification (Tagesspiegel, Sept. 13, 2000). In contrast, official statistics had only reported a number of 24 victims (Kleffner and Holzberger, 2004). This enormous discrepancy between the chronology of the media and police figures was one decisive factor that eventually urged the Government to re-consider the crime statistics system and the classification methods in Germany. The term ‘hate crime’ was first explicitly introduced into the country’s criminal policy in January 2001, when the Federal Ministry of the Interior introduced the concept as part of the reformed police registration system. Hate crimes are since being addressed as ‘politically motivated offences’ (politisch motivierte Kriminalität) and labeled as such if: ‘...in the assessment of the circumstances of the crime and/or attitude of the perpetrator, there is reason to suspect that the act was directed against a person because of his or her nationality, ‘race’, origin, ethnicity, skin color, physical appearance, sexual orientation, disability, religion or social status and the offence is thus in a causal relationship to this’. (Bundeskriminalamt, 2004, pp7-8).

Police Registration of Hate Crime

The new definition system called ‘criminal investigation registration system for politically motivated criminality’ (Polizeieliches Definitionssystem Politisch motivierte Kriminalität - PMK) set nationwide standards to classify and register so-called hate-motivated crimes. Offences are assigned to a certain category according to quality and seriousness of an act, which include (1) propaganda offences; (2) politically motivated offences; (3) politically motivated violent offences; and (4) terrorism (see figure 1). Following this first categorization, it is then determined whether an offence is actually classified as a hate crime and allocated accordingly to that topic area. Central to the classification of a hate crime is the police’s assessment of the circumstances of the offence and the perpetrator’s motivation. Eventually the registered hate crime is classified according to the presumed background of the crime. Those areas include (1) left-wing; (2) right-wing; (3) offences committed by offenders of foreign origin; and (4) non-definable crimes (see Table 1).

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5 Note from the author: The term ‘race’ (German: Rasse) is to be used with caution in this context. The term is part of a controversial debate and its use has been repeatedly criticized for expressing racist implications (Cremer, 2008, p4).

6 Politically motivated violent offences refer to homicides, assaults and battery, arson, deprivation of personal freedom, blackmail, resistance to law enforcement officers and sexual offences (without propaganda offences).
The new classification and registration system particularly involved the detachment from the previously dominant orientation towards an extremist terminology. With this new system, the Government had introduced reporting standards that focus primarily on the political motivation that triggered the attack. As mentioned earlier, hate crimes represent a specific sub-category of politically motivated crimes which are further divided into xenophobic and anti-Semitic offences. Xenophobic crimes are thereby defined as hate crimes ‘which were committed due to the victim’s actual perceived nationality, ethnicity, and ‘race’, color of skin, religion or origin.’ Anti-Semitic acts are considered as offences ‘which were committed because of anti-Jewish sentiment’ (Bundeskriminalamt, 2004, p8). In this regard, hate crimes are considered to present a threat towards human and constitutional rights and the democratic and pluralistic system of Germany (Schneider, 2003, p115). The renewed system of registration was to ensure that ‘due to nationwide standards of registration and the introduction of comprehensive definition criteria all relevant facts are recorded, assessed and reported by the various State Offices for Criminal Investigation according to an unanimously agreed and standardized procedure’ (BMI/BMJ, Erster Periodischer Sicherheitsbericht 2001, p267). The implementation of this concept was designed to improve the identification and registration of criminal offences as hate crimes, even if an extremist background is missing or the perpetrators refuse to admit to their motives.

**Organizational Procedures**

The identification and registration of hate crime is supposed to follow a certain organizational procedure within the police structures (compare table 2 for the...
organizational processes for the registration of hate crime). When a crime occurs, usually a local patrol officer responds, completes an incident report and makes an initial assessment to determine whether there was any indication that bias or hate was the motivation of the alleged perpetrator. Central to the classification of a crime as a hate crime, is the police officer’s assessment of the motive of the offender which may be indicated by: the totality of circumstances of the offence; racial or ethnic group differences between offender and victim; perception of the victim, witnesses or suspects; display of unconstitutional symbols, offensive words or gestures; membership of the suspect in an organized hate group; or a prior legal history of similar hate incidents committed by the suspect (Schneider, 2003, p117).

Finally, the case information is passed on via the reporting service for politically motivated crimes (Kriminalpolizeilicher Meldedienst für politisch motivierte Kriminalität – KPMD-PMK) to the local State Security Division of the Criminal Police who will review the case and – if a political motivation is confirmed – resume the investigation (Kinitz, 2006). After the investigation process is finished, the State Security Police will assign the crime to a category (i.e. ‘hate crime’), specify the motive (‘xenophobic’/‘anti-Semitic’/‘other’) and choose an area of phenomenon (i.e. ‘politically motivated crime right-wing’). If the reporting system is activated, the State Office of Criminal Investigation (Landeskriminalamt – LKA) will start a ‘criminal-tactical inquiry’ (Kriminaltaktische Anfrage – KTA-PMK). The State Office will record information on the place of the offence, the suspects, and the circumstances of the crime in order to verify and register all reported cases. An assessment of a crime according to the registration system of politically motivated crime is hence made if the political motivation is in evidence or can be assumed with regard to the totality of the circumstances (BMI/BMJ: Erster Periodischer Sicherheitsbericht 2001, p265).

Table 2 - Police Registration of Hate Crime, Organizational Processes

<table>
<thead>
<tr>
<th><strong>Regional Police Officers:</strong></th>
<th>Decide about the nature of crime and (if a bias-motive is indicated) pass it on via reporting service for politically motivated crime (KPMD-PMK).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regional Police State Security Division:</strong></td>
<td>Complete investigation process, assign the crime to a category (‘hate crime’) and an area of phenomenon (i.e. right wing).</td>
</tr>
<tr>
<td><strong>State Office of Criminal Investigation:</strong></td>
<td>Via criminal-tactical inquiry (KTA-PMK), case is passed on to the State Office of Criminal investigation (LKA) for review and federal statistics.</td>
</tr>
<tr>
<td><strong>Federal Office of Criminal Investigation:</strong></td>
<td>Collect nationwide Reported cases of politically motivated crimes to produce the annual statistical report for Germany.</td>
</tr>
</tbody>
</table>
Since in Germany the law enforcement agencies are under the jurisdiction of the federal states, the statistics on politically motivated crime and hate crime are collected at the state level. Subsequently, all registered crimes are passed on to the Federal Office of Criminal Investigation (Bundeskriminalamt – BKA) who accumulates the data for the annual statistical report of the Government. However, the statistics published in the report on the Protection of the Constitution (Bundesverfassungsschutzbericht) only provide limited data on the victim groups affected by hate crimes. The official figures publicly available do not differentiate the specific victim characteristics and just present data on anti-Semitic and xenophobic crimes as well as offences against left-wing opponents and ‘others’ within the category of right-wing political crimes (Bundesverfassungsschutzbericht, 2008, p30). The statistics presented below are therefore drawn directly from the hate crime statistics collected by the Federal Office of Criminal Investigation, which allow a more distinguished overview on the sub-categories of hate crime victims and offender motivation.

**Prevalence of Hate Crime in Germany**

When the renewed definition system was first introduced in 2001, there was a high of 5456 cases of hate crime in Germany (compare table 3 for the data on registered hate crime). On the one hand, this may be due to an actual rise in criminal activity but it can also possibly be explained by the different system of classification and definition which encompasses more forms of criminal behavior than earlier reporting methods and additionally might have caused an increased sensitivity towards hate-related crimes by the police and the public. The overall figures decreased from 2003 to 2005 and remained more or less stable at 4300 to 4500 registered incidences per year. In 2006, Germany then experienced a steep rise of the overall number of officially registered hate crimes to a high of 5367 cases, which meant an increase of almost 20 percent (2005: 4503). 644 reported cases involved bodily harm (2005, p513). The Ministry of the Interior (Bundesministerium des Inneren) tried to explain this increase (which was mainly assigned to the category of right-wing motivated crime) by the heated public and political debate about xenophobic violence in the forefront of the football world-cup in Germany in 2006 and a strong police presence before and during this event (Bundesministerium des Inneren, 2007). In 2007, numbers had accordingly slightly gone down again. Overall 4793 hate crimes had been registered by the police, including 642 violent attacks. The latest figures for hate crime were registered by the Federal Police for the year 2008. The overall quantity of hate crimes decreased slightly to a total of 4759 registered cases of which 561 incidences involved violent attacks.
Table 3 - Total Amount of Registered Hate Crime in Germany 2001-2008

Source: Federal Office of Criminal Investigation, Germany, 2009

Offender Categories

Table 4 illustrates the distribution of the perpetrators motivation in Germany in 2008 according to the definition system of politically motivated crime and hate crime.7

Table 4 - Hate Crime in Germany 2008 According to Offender Category

7 As there is a quite similar percentage of distribution between the different areas of phenomenon every year, the period of 2008 was chosen as an example. During this time period a total number of 4,759 hate crimes were officially registered by the Federal Office of Criminal Investigation (of which 561 were violent offences).

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It immediately becomes evident, that the majority (91.6 %) of hate crimes officially registered during that year were related to right-wing offenders (4360 cases). 127 criminal offences (2.7 %) were assigned left-wing offenders and 112 cases (2.4 %) had been registered as hate crimes committed by foreigners. The large prevalence of right-wing offence in comparison with the other areas of phenomenon is partly due to the great amount of propaganda offences.\footnote{Propaganda offences in Germany include unconstitutional display/dispersal of symbols/material of unconstitutional organizations according to §§ 86, 86a of the German Penal Code. Due to the specificities of the German Penal Code regarding unconstitutional speech and propaganda in relation to the historical experiences with the National Socialism, this category differs strongly from the perception of the United States. In 2007, 83.9 % of the total amount of right-wing crimes registered was related to propaganda offences (Bundeverfassungsschutzbericht 2007, p20).} With regard to violent hate crime, the distribution between the different groups is however similar. In 2008, 477 cases of bodily harm were registered in the area of right-wing criminality while left wing violence was counted with 43 cases. People with foreign backgrounds had committed 16 violent hate crimes. A total of 160 registered cases (of which 25 were violent hate crimes) could not be allocated to one of the three main categories.\footnote{Politically motivated crimes that cannot be clearly assigned to a specific political background (right-wing, left-wing, foreign origin) are labeled as ‘not specified’ and are accordingly allocated to this category.}

**Victim Groups**

The data on the victim characteristics affected by violent hate crime in Germany has to be analyzed and interpreted very carefully. The registration system for politically motivated crimes allows for one crime to be assigned to multiple topic areas within the statistical framework. The different topic areas of hate crime include the following motives: xenophobic, social status, racism, anti-Semitism, sexual orientation, religion, disability. However, the number of crimes presented in the different subcategories does not necessarily reflect the actual incidence of single hate crime offences concerning a distinguished group of victims (Abgeordnetenhaus Berlin: Press release: 16/11491). Such statistics therefore merely provide data as a basis for examining trends and developments in certain categories of hate-motivated violence.

From the subcategories of violent hate crime it can be referred that the main focus in Germany in the year 2008 was related to xenophobic offences followed by attacks against the social status, racism and anti-Semitic crimes (see Table 5 for the diffusion of victim groups). According to the data distributed by the Federal Office of Criminal Investigation, right-wing violence is most often committed out of political, anti-Semitic, xenophobic or racist motives but also include offences against member of the LGBT-community, people with disabilities or homeless people (social status). Left-wing hate violence is much lower and is mainly allocated as incidents against the social status or right-wing political opponents. Hate crimes committed by foreigners focus mainly on anti-Semitic, xenophobic or religious victim groups.

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8 Propaganda offences in Germany include unconstitutional display/dispersal of symbols/material of unconstitutional organizations according to §§ 86, 86a of the German Penal Code. Due to the specificities of the German Penal Code regarding unconstitutional speech and propaganda in relation to the historical experiences with the National Socialism, this category differs strongly from the perception of the United States. In 2007, 83.9 % of the total amount of right-wing crimes registered was related to propaganda offences (Bundeverfassungsschutzbericht 2007, p20).

9 Politically motivated crimes that cannot be clearly assigned to a specific political background (right-wing, left-wing, foreign origin) are labeled as ‘not specified’ and are accordingly allocated to this category.
Table 5 - Violent Hate Crimes in Germany 2007 According to Victim Groups

<table>
<thead>
<tr>
<th>Victim Group</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Xenophobic</td>
<td>424</td>
</tr>
<tr>
<td>Social Status</td>
<td>51</td>
</tr>
<tr>
<td>Racism</td>
<td>78</td>
</tr>
<tr>
<td>Anti-Semitic</td>
<td>47</td>
</tr>
<tr>
<td>Sex. Orientation</td>
<td>27</td>
</tr>
<tr>
<td>Religion</td>
<td>11</td>
</tr>
<tr>
<td>Disability</td>
<td>8</td>
</tr>
<tr>
<td>Religion (Total)</td>
<td>11</td>
</tr>
<tr>
<td>Social Status (Total)</td>
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</tr>
<tr>
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<tr>
<td>Disability (Total)</td>
<td>8</td>
</tr>
</tbody>
</table>

Source: Federal Office of Criminal Investigation, Germany 2009

Current Trends and Developments

The fact that the topic of hate crime calls for urgent attention is underlined by the latest figures published by the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz) which show that Germany is apparently experiencing an increase in criminal offences that to some extent may be assigned to fit the category of hate crime. In the year 2008, an overall of 4360 (2007: 4295) offences where officially registered that were committed out of a right-wing motivation and included predominantly xenophobic and anti-Semitic criminal offences. The number of violent cases however decreased in 2008 to a total of 477 cases (2007: 514) (Bundesverfassungsschutzbericht, 2008). Still, for the first time since 2004 hate-motivated attacks again resulted in the death of the victims. The two officially registered cases are shortly summarized below (box 1 - 2).

Box 1 - Disco-Murder, August 16, 2008

20-year-old Bastian O. is accused to have beaten the art-student Rick L. to death in the aftermath of a night out at a dance-club in Magdeburg in Saxony-Anhalt on August 16, 2008. Bastian O. is a known member of the ‘neo-Nazi’ community and dresses accordingly. He is being charged with manslaughter at the district court in Magdeburg. According to the prosecution, the accused allegedly left the nightclub ‘Fun Park’ on the day of the offense at about 4:30 a.m. On his way home, he met his victim at a bus stop. The two men got into an argument because Rick L. made some critical remarks about O.’s evident right-wing attitude. As a result, Bastian O. hit the student in the head with his fist and continued until his victim dropped to the floor. Thereafter, the accused used his combat boots to kick Rick L. in head, stomach and genitals. Rick L. died at the crime scene. The trial against Bastian O. is currently still in progress (Landgericht Magdeburg, 2009).
Box 2 - Murder in Templin, July 22, 2008

The two right-wing extremists Sven P. (19) and Christian W. (22) were found guilty of murdering the 55-year-old homeless Bernd K. in Templin, Brandenburg on July 22nd 2008. Bernd K. was badly abused and brutally beaten until he died due to strong force against the head. The district court of Neuruppin called the crime a ‘tremendously brutal and inhuman act’. The two offenders already had previous convictions for grievous bodily harm and arson. During the proclamation of the judgment, the chief judge emphasized that the neo-Nazi attitude of the perpetrators was the decisive factor for choosing Bernd K. as a victim whom they despised because of his low social status. Sven P. was sentenced to 10 years in prison. Christian W. was found guilty of assistant murder and grievous bodily harm and sentenced for 9 years and three months (Focus Online, 2009).

Evaluation of the Police Registration System and the German Hate Crime Statistics

Over the past years, significant efforts have been made to develop a system of collecting data on the prevalence and quality of hate crime in Germany and to recognize all the different victim categories that may be accounted for in the definition. There is no doubt that the initiation of the new registration system for politically motivated crime in 2001 was a clear improvement to provide more accurate and uniform national crime statistics and to enhance the quality of previous reporting methods. Nevertheless, the registration system continues to display some distinct weaknesses.

After the introduction of the new registration system, the Ministry of the Interior and the Ministry of Justice published a report addressing the issue of politically motivated crime and hate crime and pointed out the importance of police discretion when it comes to defining and identifying offences (BMI/BMJ: Erster Periodischer Sicherheitsbericht 2001, p265). However, police operational guidelines for assessing and classifying so-called ‘hate motives’ have to date not been independently evaluated and the handling of hate crimes by the criminal justice system is virtually unexplored. In order to define an incident as a hate crime, ‘hate’ or ‘bias’ has to be identified as the primary motivation. Yet, problems with correctly identifying the motive emerge for example, when offenders do not seem to belong to a stereotypical category commonly associated with hate crime. Difficulties in assessing a potential hate motive hence arise if an obvious link between the suspect or the victim to a certain ‘group’ is missing but also if a crime involves multiple motives or multiple victims of different status’. In addition, there are apparently often problems and irritations in passing on a case to the responsible investigation agencies. In fact, for many police officers the official definition of hate crime does not appear to be very familiar.

According to a recent study published by the victim-support group Opferperspektive, many criminal offences are only considered and registered as a hate crime if the perpetrator is directly affiliated to a far-right organization (Grell et al., 2008, p47). In addition, the two main sub-categories of the hate crime definition xenophobic and
anti-Semitic are (with rare exceptions) predominantly registered for the category of politically motivated right-wing crimes. As a result, hate crimes which depart from these guidelines (i.e. crimes committed out of disdain for the origin, sexual orientation, social status or religion of the victim by persons from the left-wing milieu, foreigners who are attacked by other perpetrators of non-German origin, or foreigners who attack a German) are thus neglected and often not recognized as a hate crime (Peucker, 2006, p3). The reformed police registration system is hence placed under constant criticism which is often caused by discrepancies between official police statistics and the number of cases registered by victim-support organizations.10

For example, contrary to the officially registered number of two deaths in 2008, victim-aid groups counted three additional deaths possibly caused by hate-motivated right-wing violence which do not appear in the official police statistics on hate crime. The boxes 3-5 listed below provide detailed descriptions of the alleged hate-crime cases (Source: ReachOut Berlin, 2008).

**Box 3 - Dessau-Roßlau, August 1, 2008**

According to the district attorney, on August 1, 2008 two men went to a parkway in front of the main train station in Dessau, Saxony-Anhalt and brutally killed 50-year-old homeless Hans-Joachim S. out of pure ‘lust to kill’. The forensic report revealed that the victim died of multiple kicks against the head. The prosecution stated that the two accused had knowingly killed their victim out of deep disdain and defiance for his social status as homeless. Both perpetrators were found guilty of murder. 24-year-old Sebastian K. was sentenced to life, 34-year old Thomas F. was sentenced to 12 years in prison. The case had been highly criticized due to the fact that the court did not define the attack as one with a right-wing extremist background. Even though the district attorney mentioned the right-wing-attitude of the convicts, he did not see any correlation of this fact with the current case.

**Box 4 - Berlin-Marzahn, August 6, 2008**

The 20-year-old Vietnamese Cha Dong N. was killed on a public street in Berlin-Marzahn on August 6, 2008. The accused Tino W. (35) met his victim in front of a supermarket and stabbed him. Hours later, Cha Dong N. died of his injuries. Tino W. was known to have made racist remarks and threats towards the victim on previous occasions. The victim-support group CURA classified the attack as a racist murder (CURA, 2008).

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10 The organization Human Rights First stated in their annual report for Germany that in the year 2007, 600 people have become victims of violent right-wing racist crimes. In comparison, official police statistics on violent right-wing hate crimes only registered 514 cases during that time period. (Human Rights First. 2007, p7).
It appears to be a problem for Germany’s hate crime recording system that an offense needs to be identified as one with a certain political background in order for it to be recorded within the official hate crime statistics. Despite the fact that the new registration system is no longer dependent on the previous regulation which only recorded ‘extremist’ offenses, the categorization scheme still requires a certain group-affiliation of the perpetrator in order for the criminal investigation to be passed on to the specialized police division and thus being identified as a hate crime within the catalogue of politically motivated crime. So in summary, the model of reporting and measuring hate crime in Germany is still strongly orientated towards political attitudes (Kubink, 2002, p340). However, a large number of bias-led or prejudiced crimes probably occur without any overt political motivation (Coester, 2008, p369), just as the display of Nazi-propaganda does not necessarily indicate a true ideological adherence to National Socialism (Aronowitz, 1994, p42). Hence it may be concluded that the current approach of collecting data and classifying hate crime is not sufficient in providing a realistic survey of bias-motivated incidences and it has to be assumed that there is still a large unknown dimension of hate crimes hidden in the dark figures of unreported and unregistered crime (Aydin, 2006, p366).

**Conclusion**

This article attempts to analyze how the hate crime concept has been implemented within the institutional structures of Germany’s law enforcement system and to demonstrate how hate crimes are defined, classified and recorded by the German police. Due to the country’s distinct historical context, the German notion of hate crime has developed under completely different circumstances than the American counterpart of the concept. In Germany, hate crimes are considered *politically motivated offences* because they present a threat to the human and constitutional rights of the victim and undermine the democratic, pluralistic directive of the country. In this regard, the German approach towards recording hate crime incidences is based on an offender-oriented system of classification, which focuses primarily on the political motive of the alleged perpetrator. The disadvantage of this approach is clearly the difficulty for the law enforcement agencies to identify a (political) hate motive and to classify a case according to the parameters of the hate crime definition. The police hence face several challenges in order to accurately classify presumed hate crimes and to apply legal definitions to such cases (Ziercke, 2006; Kubink, 2002). In addition, the process of assigning a crime to a certain category is often marked by conflicts regarding governmental interests or state-specific discrepancies in handling
xenophobic or other hate-motivated attacks.\textsuperscript{11} This results in a very high potential of ambiguity, uncertainty and arbitrariness when it comes to the identification of a so-called hate crime and initiates a crucial debate about the definition criteria the validity of the hate crime statistics and the usefulness of the hate crime category altogether.

As mentioned in the beginning, there is a great shortage of empirical evaluation with regard to the nature and the prevalence of hate crime in Germany and also on how the law enforcement agencies address and respond to such incidents. In this respect, Aronowitz poses quite an important question in his comparative study of hate crime in Germany and the United States of America. He states:

\textit{How can the phenomenon be successfully dealt with if we don’t know exactly what, and to what extent, it is occurring? That calls for precise definitions of an act as a hate crime, proper reporting and registration, and recognition by the police and other criminal justice agencies.} (Aronowitz, 1994, p40).

The term itself has however already been politicized and is being applied as a striking emotional label by the media to reflect a growing public concern over racist attacks. Germany is also witnessing a continuous debate regarding the introduction of extended judicial sanctions and enhanced punishment measures for so-called ‘hate-motivated offenders’ (Spiegel Online, March 13, 2008) and the European Commission addresses the hate crime issue by proposing a \textit{Council Framework Decision on Combating Racism and Xenophobia} in order to reinforce criminal law measures to prevent racist and xenophobic offences in all member states of the European Union (Council of the European Union, Document No. 11522/07 LIMITE DROIPEN 68).

The overall problem with hate crime is however, that it is a category which is open to selective interpretations and subjective judgments which make it difficult to arrive at an ultimate and unanimous classification. It was therefore the main aim of this discussion to provide a comprehensive overview on how the concept of hate crime was transformed into fitting the German understanding of hate violence and to evaluate the implementation of this category into the spheres of the German law enforcement system. So far it may be concluded that the German hate crime concept has a sole symbolic appeal (Kubink, 2002: 340). The data provided in the ‘hate crime statistics’ cannot be expected to present a realistic picture of the current situation and should, arguably, be viewed rather critically, especially by those making political criminal policy decisions.

\textbf{Policy Implications}

Germany has become a country of diversity, immigration and multiculturalism that is however also accompanied by conflict. Germany’s ways of addressing the problem of

\textsuperscript{11} An example for this problem can be found in Saxony-Anhalt. While in previous years the state had registered a very high level of right-wing violence, the number of crimes for that category had decreased rapidly during the first half of the year 2007. According to media reports, this was mainly due to the fact that police officers were advised not to take cases into account where the perpetrator could not be identified even if a right-wing motive had been obvious (Spiegel Online, ‘LKA soll Rechtsextremismus-Statistik geschönt haben’, November, 2007).
hate crime are naturally different to those found in the United States, which always has to be kept in mind when examining the international comparative nature of this criminal phenomenon. However, the fact that the German hate crime model is still very much focused at the political (right-wing) attitudes of the perpetrator puts some serious restrictions upon the application of this concept. It would probably be much more efficient to generate a reporting method that includes not only the potential motive of the perpetrator, but also considers the status of the victim and is sufficiently sensitive to the event and the circumstances of the offence. A shift away from the necessity of a certain group affiliation of the perpetrator appears to be more and more important in a time where organizational boundaries are turning into informal groups and many right-wing extremist become increasingly less recognizable. This approach makes it indispensable to provide much more information on the quality of the identification, classification and registration procedures, as well as implement extensive police training programs in order for the term ‘hate crime’ to be made more comprehensible for German law enforcement personnel.

It is thus necessary to encourage a substantial scientific exploration of the hate crime phenomenon in Germany as well as a broad academic discussion on the usefulness and the applicability of this concept altogether. Current statistics on hate-motivated crime need to be closely evaluated in order to reach a comprehensive system of data collection on a national level and to create an understanding of the characteristics and the actual extent of what may be considered hate crime. In this regard, it seems essential to engage also in an exhaustive transnational examination of this criminological phenomenon and to initiate more comparative studies on the topic. Empirical research in this area would assist policy makers and law enforcement agencies to address the problem in an adequate manner and to develop prevention and control measures by improving the overall knowledge on hate crime.

12 Examples in this context are the so-called ‘autonomic nationalists’ (Autonome Nationalisten) who have emerged in Germany for the first time in 2003/2004. Right-wing militant extremist with high violent tendencies now begin to dress in clothes which used to be typical for radical left-wing group members (black hoody, sun glasses, Che Guevara t-shirts etc.) and also take on the same tactical and behavioral patterns at demonstrations as left-extremists (Hoffmann, 2008, pp19-24).
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