SUSPECTED CRIMES WITH RACIST CHARACTERISTICS IN THE CRIMINAL JUSTICE PROCESS – CASE STUDY IN HELSINKI, 2006

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Foreword

Studies on the number and characteristics of cases of racist crime reported to the police in Finland have been conducted since 1997. According to these reports, the volume of racist crime has been increasing slightly in recent years. So far, however, we have not had scientifically researched information on how the Finnish legal system deals with racist crime. Do criminal cases with racist characteristics progress through the criminal justice process in the same way as other crimes, and how well is the racial motivation taken into account in the decisions of the various officials? This study charts the progress through the criminal justice process of suspected crimes with racist characteristics reported to the police, from the pre-trial investigation by the police to consideration of charges and further to court proceedings. The study is also intended to help improve the operations of the police and the judicial officials in the processing of cases with racist characteristics.

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Tampere, 22 September 2008

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1 INTRODUCTION

Racist violence has, for a long time, been viewed just like any other serious crime. However, over the past two decades there has been a shift in thinking. Racist crime has come to be regarded as a threat to social coherence. Its implications are now understood to concern not only the actual victim of the crime but society as a whole. (Bleich 2007, 149.)

Until fairly recently, there have only been few ethnic minorities in Finland. However, this situation has changed. Since the 1990s, the number of immigrants in Finland has increased substantially. During the recession in the early 1990s, Finns took a more negative attitude to refugees and immigrants. In the 2000s, however, attitudes have become more positive. (Jaakkola 2005.) But despite this positive trend, multiculturalization still manifests itself as conflicts between the majority population and immigrants, and also between various immigrant groups.

The Ministry of the Interior has encouraged the police to pay closer attention to crimes with racist characteristics and how to monitor and prevent them. Since 1997, the police have been required to enter a 'racism code' on the report of an offence if the case has racist characteristics: if the victim has been targeted because his/her skin colour, race or ethnic origin differs from that of the offender.

Studies have been conducted annually on the number and characteristics of cases of racist crime reported to the police (Ministry of the Interior 1998; 1999; 2000; 2001; 2002; 2003; Keränen 2005a and 2005b; Ellonen 2006; Noponen 2007; Joronen 2008). The study material has consisted of reports of an offence retrieved from the national Police information system using specific criteria. According to the studies, the number of crimes with racist characteristics reported to the police has increased in recent years.

The special nature of racist crimes has been taken into account in legislation enacted to combat them. The Penal Code of Finland was amended in 2003 to make racial motivation grounds for increasing the punishment for an offence (Penal Code, chapter 6 section 5(1)(4)). In the preparation for this amendment, it was considered that racist crimes may be considered more serious than average, as they are aimed at minority groups who require special protection. The purpose of enacting grounds for increased punishment was above all to protect minority groups from racially motivated violence. (HE 44/2002.)

So far there has been no research information on what actually happens in the criminal justice process to suspected crimes with racist characteristics – how many such suspected crimes reported to the police lead to a court finding that a crime has been committed and passing sentence. The progress of any one suspected crime from the filing of a report of an offence to court proceedings is long and may be interrupted at any point along the way: by the police, the prosecutor or the court. It is not until the case comes to court that it is determined whether the suspected crime reported to the police is an actual crime – including whether it is a racist crime. The purpose of the present study is to explore how suspected crimes with racist characteristics progress in the criminal justice process from the pre-trial investigation through prosecution to court proceedings. It further explores how the racist characteristics of suspected crimes are taken into account in the pre-trial investigation, in the consideration of charges and in court.

Statistics show that racial motivation is only rarely invoked as grounds for increasing the punishment in passing sentence. In 2004, there were 10 cases where the punishment was increased on the grounds of racial motivation, and in 2005 and 2006 there were 14 such cases each year (Statistics Finland 2006; 2007; 2008a). These figures are low compared to the number of suspected crimes with racist characteristics reported to the police annually. This indicates that racial motivation as grounds for increasing the punishment is invoked extremely sparingly.

The present study is based on 107 reports of an offence with racist characteristics that were filed in the Helsinki jurisdictional district and taken up for investigation in 2006. In addition to the reports of an offence themselves, the research material includes the documents of other officials related to these cases: the pre-trial investigation material of the police, the prosecutors' applications for a summons and the decisions to waive charges, and court documents. I use this material to illustrate quantitatively how large a percentage of the suspected crimes reported progressed from the police to the prosecutor and further to court; and in cases where this progress was discontinued, why it was discontinued. I have also examined some individual cases more closely, interviewing the police officers, prosecutors and judges involved in them. The more detailed discussion of case studies is better than quantitative data to illustrate the points based on which the authorities took their decisions in these cases, and how the racist characteristics of the suspected crimes were taken into account.

Before discussing the material and the results, it is necessary to define what we mean in this context by racism and racist crime. I also briefly discuss legislation against racist crime abroad and the Finnish legislation in more detail. Although racial motivation as grounds to increase the punishment is rather a new issue in Finland, we should note that discrimination on ethnic or national grounds and ethnic agitation were criminalized in the Penal Code back in the 1970s. In chapter 5, I discuss what we know about the topic on the basis of earlier foreign research – how cases of suspected racist crime progress in the criminal justice process and what problems have been observed. In chapter 6, I discuss the materials and methods of the study in more detail. After discussing the results of the study, I present what conclusions may be drawn from these results in chapter 10. Why is racial motivation as grounds for increasing the punishment invoked only rarely?

2 RACISM, RACIST CRIMES AND HATE CRIMES

There are many definitions of 'racism', and they vary according to whether the phenomenon is considered at the individual level, at group level or in society as a whole. For example, racism has been studied in terms of prejudices and stereotypes arising in relations between groups. (Augoustinos & Reynolds 2001.) Many current definitions of racism strongly link the phenomenon to the current power relationships in the society in question. Prejudices and stereotypes do not in themselves lead to racism. The 'racial categories' on which racism is based have historically emerged in situations where there is an imbalance of power. Some population groups have had more power to make such definitions than others. Racial categories are social constructs that have no biological or indeed any other basis. However, they have been invoked throughout history and continue to be invoked as justification for unequal treatment of people. (Operatio & Fiske 1998.)

Just like prejudices, racist thinking and racist actions are not always conscious processes (Ibid.). Racism manifests itself in different ways in different societies and social contexts. Racism may manifest itself in relations between individuals and between groups, and as a result of prevalent practices and procedures in society. For example, discursive racism research focuses on how established patterns of speech in society uphold the notion of differences between people while generating and renewing inequality in society, which manifests itself as racism. (Rastas 2005.) Below, I discuss in more detail what 'racist crimes' are and what is known on the basis of earlier research about the volume and characteristics of racist crime in Finland.

2.1 Definition of a racist crime and a hate crime

The present study focuses on racist crime, i.e. racism in the form of conscious, unlawful actions aimed at harming another person or group of persons. It is an essential feature of racist crime that the motive instigating the deed is the actual or perceived 'otherness' of the other person or group and that the crime would not have been committed had the victim not been ethnically different from the offender. Racist crime is often aimed at 'visible minorities', i.e. people whose external characteristics or language clearly distinguish them from the majority population. In Finland, such groups traditionally include the Roma and, more recently, various immigrant groups. Majority population members may also fall victim to racist crime, particularly those who are married to members of ethnic minorities or who publicly oppose racism. (Makkonen 2000, 6–10.)

Offences whose essential elements involve racism as defined in the Penal Code of Finland include discrimination and ethnic agitation. Discrimination is a racist crime when it is based on a person's ethnic or national origin. Specifically prohibited criteria for discrimination also include, for example, age, gender and sexual preference. The law also states that any crime may be construed as a racist crime if its motivation is that the victim belongs to a specific national or ethnic group. For example, racial motivation may be invoked as grounds for increasing the punishment in cases of assault, damage to property or unlawful threats. I discuss the Finnish legislation pertaining to racist crime in more detail in section 3.2.

Racist crime may be more broadly defined as hate crimes. 'Hate crime' is a term generally used to refer to crimes that may be motivated not just by ethnic or national origin but also by characteristics such as the gender, sexual orientation or disability of the victim. However, there is no single definition for hate crimes, since these crimes are by their nature closely connected

to the political, cultural and social environment in society in general. Behaviour or prejudices that may be acceptable in some places may be discriminatory towards minorities in others. (Perry 2001, 7–10.) The Office for Democratic Institutions and Human Rights (ODIHR) operating under the Organization for Security and Cooperation in Europe (OSCE) has issued a definition of hate crimes which is as broad as possible, covering many different victim groups and criminal actions[1].

Racist crimes and other hate crimes are regarded as special cases because they are construed to cause more harm to the victim than the corresponding 'ordinary crimes'. A hate crime is also a message to the entire group represented by the victim: they are different and undesirable, and any other member of the group might be the next victim of a crime. (Hall 2005, 69.) Therefore, the impact of hate crimes extends beyond their individual victims: hate crimes generate and maintain fear and prejudices between population groups (Perry 2001, 10).

2.2 Crime with racist characteristics in Finland

So far, only the volume of racist crime has been monitored in Finland. No broader monitoring of hate crimes has been conducted. Studies have been conducted annually since 1997 on the number and characteristics of cases of racist crime reported to the police. Since 1997, the police have also been required to enter the racism code in the report of an offence if the case appears to have racist characteristics.

However, the police only give the racism classification to about half of the reports of an offence that obviously have racist characteristics (see e.g. Joronen 2008). Because of this, the Police College of Finland has been developing the crime monitoring system to identify comprehensively those reports of an offence that feature racist characteristics, so as to include them in the statistics. In other words, the mechanism developed also aims to identify those relevant reports of an offence where the police have not entered the racism code. As the materials for the study in 2003 and subsequent years were compiled in the same way, the results of these studies are therefore comparable.

The studies show that the number of reports of an offence with racist characteristics has been increasing steadily in recent years. In 2003, 387 reports of an offence with racist characteristics were filed with the police; these involved 522 individual deeds or suspected crimes (Keränen 2005a). In 2006, the number of such reports of an offence was 442, with 748 suspected crimes (Noponen 2007). This growth may be due to a growth in the number of crimes committed but also to a change in the incidence of reporting the crimes to the police. Also, the figures only show the number of suspected crimes – not actual crimes; it is up to the court to determine whether the suspected action was in fact a crime and, if so, whether it was racially motivated. Because of this, I am using the term 'suspected crimes with racist characteristics' in the present study.

So far, the most common type of offence with racial characteristics reported to the police each year has been assault. In 2006, for example, attempted assault and various degrees of assault accounted for 40 % of all suspected crimes. Discrimination, breach of honour, unlawful

[1] "A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B. B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor." (OSCE/ODIHR 2007, 9)

threats and damage to property are also common types of offence. The most common places of occurrence were bars and restaurants and their immediate vicinity, as well as outdoor locations such as squares, streets and parks. Most of the suspected crimes occurred during the evening and night. Typically, the alleged offenders were unknown to the victim. In cases of assault in particular, the percentage of alleged offenders unknown to the victim is high. (Noponen 2007.)

More than half (56 %) of the suspected crimes with racist characteristics reported in 2006 were filed in the Province of Southern Finland, about 40 % in the Helsinki Metropolitan Area, and about 25 % in Helsinki itself. The incidence of racist crime seems to be highest where the percentage of ethnic and national minorities in the population is highest. (Noponen 2007.) Almost half (44 %) of all foreign citizens resident in Finland live in the Helsinki Metropolitan Area, and 27 % in Helsinki itself (Population Register Centre 2008). The present study focuses on reported crimes in Helsinki itself.

The annual studies on racist crime only yield information on those suspected crimes that have been reported to the police. With racist crime as with any other kind of crime, not all cases are reported to the police. According to a survey conducted among immigrants in 2001, 71 % of those who had experienced an incident that could be construed as a racist crime had not reported the incident to the police. The reasons mentioned for not reporting such an incident included the minor nature of the offence and the belief that reporting the offence would not lead to any action being taken. (Jasinskaja-Lahti et al. 2002, 94–102.) Of the suspected crimes with racist characteristics reported to the police, the majority have been cases of assault. However, according to the immigrant survey, the most common type of racist offence experienced by immigrants is breach of honour, followed by threats (Ibid.). The conclusion is that minor offences in particular are not reported to the police because of their minor nature. However, because no similar survey among immigrants has been conducted since 2001, we cannot know whether the incidence of reporting crimes has improved since then or not.

Hidden crime accounts for a large percentage of all crime; however, this is not the only reason why it is difficult to determine whether Finland has a high or low rate of racist crime compared with other countries. Crime statistics are compiled in different ways and with different criteria in different countries, thus making international comparisons impossible. Indeed, comparisons can only reliably be made with regard to trends in crime within one country. (FRA 2008, 27–32.) Even then, fluctuations in the incidence of reporting crimes must be taken into account. On the other hand, what is more important than precise figures is that we are aware of the existence of racist crime and can recognize its characteristics (Perry 2001, 11).

3 LEGISLATION PERTAINING TO RACIST CRIME

Legislation against racist crime has been developed in European countries over the past couple of decades (Bleich 2007). There are differences in legislation pertaining to racist crime and other hate crimes between countries just as there are differences between their legal systems. The history of any particular country and historical relationships between its ethnic groups influence attitudes to hate crimes in that country and the legislation pertaining to those crimes. In Germany, for instance, hate crime legislation is specifically geared towards anti-Semitism and extreme right-wing movements. In the UK, by comparison, the country's colonial history is apparent in the focus of legislation on crimes based on 'race'. (Goodey 2008, 17.) Because I refer to earlier research conducted abroad on the progress of cases of hate crime in the judicial system in section 5.1 below, I first need to discuss the main features of legislation pertaining to such crimes in certain other countries. Following this, I discuss Finnish legislation pertaining to racist crime in more detail, including its background and its motivations.

3.1 Features of legislation in other countries

Generally, legislation in various countries addresses racist crime and other hate crimes by specifying their motives as grounds for increasing the punishment when passing sentence. In the United States and in the UK, hate crimes are (also) defined as separate types of offence in criminal law. There are also differences between countries as to how broadly hate crimes are defined in their legislation. In some countries, the sexual orientation and disability of the victim, for example, are specified separately as motivations for hate crimes in legislation. In other countries, the definition is less specific, being covered by the clause 'or on some other basis' added to the end of the point of law in question. (OSCE/ODIHR 2007, 80–81.)

The term 'hate crime' was coined in the United States, where hate crime laws were enacted much earlier than in Europe. There are both Federal laws and state laws against hate crimes in the United States, and there are considerable local differences. In practice, state law is more relevant than Federal law, as the majority of offences are tried and sentenced under state law. States decide independently which minorities or other groups their hate crime legislation is intended to protect. (Bleich 2008, 9–10; Hall 2005, 114–120.) There have been arguments in the United States both for and against defining in law that gender and sexual orientation as motivation for a crime constitute grounds for increasing punishment in passing sentence (Gerstenfeld 2004, 46–51).

Indeed, the effectiveness of hate crime legislation in general has been the subject of much debate in the United States (Hall 2005, 131). Jacobs and Potter (1998), for example, have questioned whether an increased punishment contributes to increased tolerance on the part of the offender or whether such legislation actually aggravates prejudices between population groups. They feel that extending the scope of hate crime legislation is particularly problematic because the more groups that are protected by law, the more the law loses its original symbolic significance. On the other hand, singling out certain groups to be protected by law inevitably means excluding other groups from that protection. (Ibid.)

In addition to the USA, the UK has combated racist crime and other hate crimes by developing the effectiveness of legislation and the judicial system in particular (Bleich 2007). The

Crime and Disorder Act of 1998[2] stipulates that a crime is racially aggravated if it is racially motivated or if the offender demonstrates towards the victim hostility based on the victim's membership of a racial group. The Act sets out nine new types of offence based on types of offence previously enacted. There is also a separate section entitled 'Increase in sentences for racial aggravation' applicable to any type of offence. The Anti-terrorism, Crime and Security Act of 2001 amended the aforementioned Act, providing for religiously aggravated offences. The Criminal Justice Act of 2003 provides for increase in sentences for aggravation related to disability or sexual orientation. (Hall 2005, 120–124.)

In Sweden, an Act enabling racial motivation to be considered as grounds for increasing punishment in passing sentence was enacted in 1994. Under the Penal Code of Sweden, a more severe punishment may be imposed in passing sentence if the motivation of the crime was injuring a person, a population group or similar group because of their race, colour, national or ethnic origin, religious denomination or similar characteristic. Since 2002, the Penal Code has also included the sexual orientation of the victim among the motivations constituting grounds for more severe punishment. (Lönnheden & Schelin 2002, 14.)

3.2 Legislation pertaining to racist crimes in Finland

The Constitution of Finland stipulates that all people are equal. Under section 6 of the Constitution of Finland, everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. This provision may be construed as a general prohibition against discrimination, even though the word 'discrimination' itself is not used (Lundström et al. 2008, 27). Under section 22 of the Constitution of Finland, the public authorities shall guarantee the observance of basic rights and liberties and human rights.

Offences whose essential elements involve racism as defined in the Penal Code of Finland include discrimination based on ethnic or national origin and ethnic agitation (Penal Code, chapter 11, sections 10 and 11). Moreover, chapter 47 of the Penal Code criminalizes work discrimination (section 3) and profiteering-like work discrimination (section 3a) on the basis of ethnic or national origin, for instance. Participating in the activities of an organized criminal group may also be construed as a racist crime if the group's objective is to commit racist crimes. (Illman 2007, 14.)

The Penal Code was amended in 2003 to allow for increased punishments for racially motivated crimes. This amendment stemmed from international obligations. In November 2001, the Commission of the European Communities issued a Proposal for a Council framework decision on combating racism and xenophobia. The Proposal stated that Member States should enact provisions specifying racist and xenophobic motives as grounds for an increase in sentences. (HE 44/2002.) Also, the UN Committee on the Elimination of Racial Discrimination gave Finland a recommendation in 2000, according to which member state should consider adopting provisions whereby sentences for racially motivated crimes, particularly racial violence, may be increased (Towards ethnic equality... 2001, Appendix 2).

Under chapter 6 section 5(1)(4) of the Penal Code, grounds for increasing punishment include circumstances where "the offence has been directed at a person belonging to a national,

[2] Note that this discussion only concerns legislation valid in England and Wales. The legislation of Scotland and Northern Ireland differs slightly.

racial, ethnic or other population group due to his/her membership in such a group". The other grounds for increasing punishment that were already enacted in the Penal Code earlier were methodical criminal activity, membership of a group organized for serious offences, committing the offence for remuneration, and the criminal history of the offender.

The Government Bill proposing this particular amendment (HE 44/2002) notes that racially motivated crimes are aggravated because they are aimed at minority groups that are most in need of protection. Treating racist crimes more severely is justified by the estimation that they are often premeditated. The Bill notes "a racially motivated crime raises serious fears in the victim, because falling victim to the crime is not a random occurrence, but is instead usually caused by a visible characteristic of the victim which may render him/her liable to fall victim to such a crime again". The Bill highlights that not all crimes committed against members of a certain population group can be construed to have been committed specifically because the victims are members of that group. The purpose of the provision is to protect members of specific groups against those crimes that *are* committed because the victims are members of those groups. The groups mentioned as needing protection are national, ethnic and racial population groups. The aim, therefore, is to provide protection against crimes motivated by racism or xenophobia. The Bill indicates that crimes against members of certain religious denominations and sexual minorities may be considered comparable to the above. The majority population is not excluded from the provision: in certain cases, the grounds for increasing the punishment may be invoked in cases of a crime against a majority population member, if the crime was committed specifically because the victim is a majority population member. (Ibid.)

The Bill indicates that the grounds for increasing the punishment may, in principle, be applied to any type of offence. However, the most obvious scope of application for the provision is in violent crime and offences that undermine the security, income or livelihood of minority members. (HE 44/2002.) According to State Prosecutor Mika Illman (2007, 15), the grounds for increasing the punishment also apply to racially motivated breach of honour.

However, the Bill notes that these grounds for increasing the punishment should not be invoked in cases where the crime is already legislated against with the specific intention of protecting minority groups and where racial motivation is already included in the essential elements of the crime. Discrimination and ethnic agitation are such crimes. (HE 44/2002.)

The Non-Discrimination Act that entered into force in 2004 is intended to promote equality and to enhance the potential for people discriminated against to take action against their treatment. Underlying this Act are two Directives issued by the Council of the European Union in 2000, the Race Discrimination Directive (2000/43/EC) and the Employment Discrimination Directive (2000/78/EC). These Directives lay down the framework for equality and the prevention of discrimination. Because the prohibition of discrimination was already provided for in several different acts in Finland, it was considered best, as noted in the Government Bill, to draft an entirely new Act to complement the old ones and to implement the aforementioned Directives. (HE 44/2003.) According to the Non-Discrimination Act, the Ombudsman for Minorities and the National Discrimination Tribunal of Finland monitor compliance with anti-discrimination legislation except in the area of private and public-sector employment relationships, where the occupational safety and health authorities are responsible.

The principal reforms enacted in the Non-Discrimination Act include shared burden of proof and the possibility for the victim of discrimination to receive compensation. The party breaking the law may be sentenced to pay the injured party compensation for any suffering caused by discrimination. Compensation must be requested by filing a claim with the district court, and tangible proof must be presented of the discrimination. If there is sufficient evidence of discrimination, the party suspected of discrimination must demonstrate for their part that the

prohibition on discrimination of the Non-Discrimination Act has not been infringed. The purpose of this shared burden of proof is to encourage victims of discrimination to prefer charges. However, the shared burden of proof does not apply in criminal cases. (HE 44/2003.)

At the time of writing, Parliament is debating a Government Bill (HE 82/2008) to amend section 2 of the Non-Discrimination Act. The purpose of this amendment is to expand the scope of application so that the prohibition on discrimination on the basis of ethnic origin would to some extent come to apply to relationships between private individuals. There is also a broader reform of equality legislation under way. A committee has issued an interim report on this reform, and the report has been circulated for comment (OMLS 2008:13).

In practice, a victim of discrimination has three possible courses of action. The easiest is to submit the matter to the National Discrimination Tribunal, which is a legal protection body that specifically monitors compliance with the Non-Discrimination Act. The National Discrimination Tribunal may issue a decision prohibiting the party suspected of discrimination to continue the discriminatory action or confirming conciliation has been reached between the parties. Conciliation may involve, for example, compensation paid by the violator of the prohibition to the victim of discrimination. The victim may also, or instead, file a claim for compensation with a court of law. The third option is to report the discrimination as an offence. If the prosecutor chooses to bring a charge in such a case and the defendant is found guilty in court, the defendant may be sentenced to a fine or a maximum of six months' imprisonment. Additionally, the victim of discrimination may claim compensation under the Non-Discrimination Act, and also compensation for damages and for mental suffering. For a case of discrimination to be processed as a criminal case, there must be sufficient evidence of the discrimination, because the shared burden of proof provided for in the Non-Discrimination Act only applies in cases brought before the National Discrimination Tribunal and civil cases, not in criminal cases. On the other hand, in a criminal case of discrimination, compensation may be claimed under the Non-Discrimination Act in addition to any compensation for damages claimed.

4 STAGES OF THE CRIMINAL JUSTICE PROCESS

Because the purpose of this study is to explore how suspected crimes with racist characteristics progress through the criminal justice process, this chapter discusses the stages of the criminal justice process in Finland: the pre-trial investigation conducted by the police, the consideration of charges by the prosecutor, and the court proceedings.

4.1 Filing a report of an offence and the pre-trial investigation

The threshold for filing a report of an offence is low. A pre-trial investigation authority is obliged to file a report of an offence on any incident reported by the victim or any other party, which the party reporting the incident considers to be a crime. Information on the incident is recorded in the report of an offence in the manner desired by the reporting party. The reporting party does not need to define a specific crime; a free description of the course of the incident is sufficient. A report of an offence may be filed personally, through a representative, by phone or in writing. Reports on minor property and damage offences may be filed over the Internet. (Helminen et al. 2006, 176–181.)

Reports of an offence are entered in the national Police information system. The report of an offence is the basic document in the launching of a pre-trial investigation. The threshold for launching a pre-trial investigation is higher than that of filing a report of an offence; a pre-trial investigation is launched if there is probable cause that a crime has been committed. Pre-trial investigation may be waived if the crime in question is not likely to result in a sentence more severe than a fine, if the crime as a whole must be regarded as minor, and if the victim has no demands in the matter. The decision not to conduct a pre-trial investigation must be communicated to the complainant together with the reason for the decision. (Ibid., 176, 194, 223.)

Crimes may be divided into private-prosecution crimes and public-prosecution crimes. Private-prosecution crimes include, for example, unlawful threats, breach of honour and petty assault. Assault and discrimination, on the other hand, are public-prosecution crimes. This distinction is of significance regarding the process in the pre-trial investigation and court proceedings. A pre-trial investigation is not conducted in cases of private-prosecution crimes where the victim does not prefer charges. In private-prosecution crimes, the victim may, at any point in the course of the investigation, request that the investigation be discontinued, whereas in public-prosecution crimes the investigation must, as a rule, be pursued to its conclusion. In simple and clear-cut cases, a limited pre-trial investigation may be conducted if the likely punishment for the offence is no more than a fine. In such cases, if the victim agrees, the case may be resolved by issuing a summary penal order, i.e. imposing a fine. (Ibid., 30, 199.)

The prosecutor may bring a charge in certain private-prosecution crimes without the victim preferring charges if a "very important public interest" so requires. Such crimes include breach of domestic peace, as provided for in chapter 24 section 12 of the Penal Code. Under the same section, the Prosecutor General may order that a charge be brought, for instance, for breach of honour if the offence has been committed using the mass media and if a very important public interest requires that a charge be brought. If it is likely that the prosecutor would bring a charge because of public interest, the pre-trial investigation authority must submit the case to the prosecutor for consideration. (Ibid., 201–202.)

The essential points to be discovered in the pre-trial investigation are whether the alleged

crime is in fact a crime and who the victim(s) and suspect(s) are. Facts and evidence both in favour of and against the suspect(s) must be determined and taken into account. The circumstances of the committing of the crime must also be established in the pre-trial investigation. These include the place and time of the deed as well as the characteristics which determine the severity of the crime (e.g. petty theft; theft; aggravated theft) or which are relevant as grounds for punishment as defined in chapter 6 of the Penal Code. (Ibid., 61, 207–208.) Under chapter 6 section 5(1)(4) of the Penal Code, grounds for increasing punishment include circumstances where "the offence has been directed at a person belonging to a national, racial, ethnic or other population group due to his/her membership in such a group". Therefore, it must be established in the pre-trial investigation whether the deed was racially motivated.

A case for which a pre-trial investigation has been concluded is generally submitted to the prosecutor for consideration of charges. A case is not submitted to the prosecutor if it has been established in the investigation that no crime was committed and that the deed does not fulfil the essential elements of any crime. Also, a case may not be submitted to the prosecutor if no person can be prosecuted and no other demand can be made. This may be the case, for instance, when the suspect is under 15 years of age; when the victim has no demands in the matter; or when the statute of limitations for the crime in question has expired. (Ibid., 246–259.)

4.2 Consideration of charges

When a case has been submitted for consideration of charges, the power of decision is transferred from the pre-trial investigation authority to the prosecutor. The prosecutor's duty is to evaluate whether the pre-trial investigation is complete and to request further investigation if required. The prosecutor takes the decision to bring a charge or to waive charges based on the written pre-trial investigation material. (Helminen et al. 2006, 251, 342.) The threshold for bringing a charge is higher than for launching a pre-trial investigation; a charge is brought if there is probable cause to support it (Virolainen 2007, 414).

A decision to waive charges may be based on procedural or sanction reasons. Procedural grounds for waiving charges include: that there is not sufficient evidence to support the charge; that the deed in question is not a crime; that the statute of limitations has expired; or that the prosecutor does not have the right to bring a charge in the case. (Ibid., 414.)

Even if all of the above criteria are satisfied, charges may be waived for sanction reasons, i.e. by virtue of the minor nature of the offence; the fact that the suspect is underage; the reasonability principle; or the concurrence principle (Ibid., 414). A crime is considered a minor offence if its maximum sanction is a fine and if the deed as a whole may be considered to be of a minor nature. The age of the suspect constitutes grounds for waiving charges if the crime was committed while the suspect was under 18 years of age and if the crime may be considered to have been committed because of a lack of understanding and recklessness rather than because of a disregard for the provisions of the law. The reasonability principle may be invoked, for example, if conciliation has been achieved between the victim and the suspect. The concurrence principle dictates that charges may be waived if the sanction for the crime in question would have no bearing on the overall sanctions, considering the other possible crimes that the suspect is alleged to have committed and the sanctions that might be imposed for those. (VKS:2007:4.)

Unlike in the case of waiving charges, the prosecutor never has to justify bringing a charge. When a charge is brought, the application for a summons must include a description of the

crime and the evidence being used on which the case intends to be proven. The application for a summons delimits the scope of the trial and lays the framework for the main hearing where the prosecutor orally presents the grounds for the charge in more detail. (VKS:2007:3.)

4.3 Court proceedings

The criminal justice process usually opens with the prosecutor submitting a written application for a summons to the court. It is the duty of the court to communicate the summons to the defendant. The term 'defendant' may only be used to refer to the suspect after the charge has been brought; prior to that, the party must be referred to as the 'suspect'. The complainant is the party against whom the crime has been committed; who has suffered damage as a result of the crime; or who has been placed in immediate danger as a result of the crime. (Virolainen 2007, 415–423.)

Once a trial has begun, the charge that has been brought must not, as a rule, be changed. The purpose of this principle is to ensure the focus of the main hearing and the defendant's chances for presenting a defence. However, if the district court agrees, the charge may be extended to include another deed committed by the same defendant. It is also possible to revise and augment a charge after the trial has begun. For example, the prosecutor may refer to new information to change the severity of the crime. (Ibid., 425–427.)

The main hearing in a criminal case is an oral proceeding divided into opening statements, the taking of evidence and closing statements. It is one of the principles of criminal procedural law that a party suspected or accused of a crime may not be required to incriminate himself/herself. The accused may refuse to answer a question and does not, unlike the complainant, have a truthfulness obligation. The court is also required to rule in favour of the defendant regarding any uncertainties in the evidence. (Ibid., 420–430.)

In sentencing, the defendant may be deemed guilty of the deed for which the prosecutor has demanded punishment. However, the court is not obliged to refer to the particular type of offence or the particular point of law under which the punishment is demanded. However, this must not come as a surprise to the defendant. The defendant must be advised of any change in the type of offence in the charge so as to give him/her a chance to present a defence. In criminal cases, the burden of proof rests almost exclusively with the prosecutor. A guilty verdict requires the case to be proven beyond reasonable doubt; a guilty verdict may not be entered unless the judge has been convinced of the defendant's guilt by virtue of the evidence presented. (Ibid., 421–441.)

The trial concludes with the court issuing a judgement, confirming the result of the trial. There are detailed specifications as to the content of the judgement. The judgement proper consists of notes on the consideration of the case, a statement of reasons and the operative part. The notes and statement of reasons inform the party in question why the case has been resolved in a particular way and enables him/her to consider whether a decision unfavourable for him/her is worth appealing. In criminal cases, explaining the evidence is important especially when the defendant has denied the charge. The operative part of the judgement indicates how the case has been resolved (guilty or not guilty) and what sanction, if any, has been imposed. (Ibid., 442–445.)

5 PROGRESS OF CASES OF RACIST CRIME IN THE CRIMINAL JUSTICE PROCESS

The number of suspected crimes with racist characteristics reported to the police has been monitored in Finland since 1997, and the studies show that their number has increased steadily every year. However, there is no research information available on the progress of suspected crimes with racist characteristics from the police to the prosecutor and to court. This topic has been studied elsewhere, though, mainly in countries with a longer history of legislation against racist crime and hate crimes such as the USA, the UK and Sweden. This chapter therefore discusses the general observations made in earlier studies concerning the progress of cases of racist crime in the criminal justice process and the problems that may emerge at various stages of that process.

5.1 Earlier research on the topic

Elizabeth Burney and Gerry Rose (2002) explored the practical impact of the racist crime legislation reform of 1998 in the UK on the investigation, prosecution and sentencing of suspected crimes with racist characteristics. Underlying this study is an observation of the disparity between the number of cases of racist crime reported and the number of sentences passed on them. Over a period of two years, it was noted that the number of incidents with racist characteristics recorded by the police tripled, while the number of sentences passed on racist crime remained low. (Ibid., 1, 107.)

The study of Burney and Rose (2002) examined the criminal justice process as a whole and was based on material derived from surveys and interviews with the police and the judicial authorities, as well as crime statistics. The purpose of the interviews was to canvass the opinions and observations of officials regarding the processing of cases of racist crime. The statistical material enabled the comparing of the progress of racially aggravated offences and equivalent basic offences in the criminal justice process and the sentences passed on them. (Ibid., 1–7.)

The police officers and judicial officials interviewed considered, on the whole, that the legislative reform was a welcome measure enabling the identification of racially aggravated offences and the passing of heavier sentences in such cases. The new Act was considered not only of practical importance but also of symbolic importance. It was a message saying that this is not considered acceptable in society and that racist crime is taken seriously. The attitude of the officials was partly reflected in the statistics. Heavier sentences were passed on racially aggravated offences than on their corresponding basic criminal cases. A Magistrates' Court is more likely to impose a custodial sentence for a racially aggravated offence than a basic offence; the fines imposed are higher on the average and cases are dismissed more rarely. However, this difference was only apparent at the Magistrates' Court level. At the Crown Court level, where the sentences imposed are more severe in general, no difference between racially aggravated offences and basic offences could be detected. The writers concluded that one reason for the smaller difference is that the crimes dealt with in Crown Courts are more serious to begin with, meaning that the sentences are, in any case, more severe, and the effect of racial motivation in the sanctions may thus be less. Also, Crown Courts dealt with fewer racially aggravated offences during the study period. (Ibid.)

Jeannine Bell (2002) studied the operations of a unit specializing in hate crimes in the USA.

She spent several months with the unit (1997–1998) observing its work, interviewing officers and reading through the unit's archives. Because of the sensitive nature of the subject, the city and unit in question were not named in the study report. In the study, Bell focused on problems that the police encountered in investigating hate crimes. One of her points of interest was observing how the police balance between the hate crime legislation on the one hand and the keenly upheld First Amendment protection of freedom of speech on the other. Police investigations of hate crimes also displayed tensions between legislation, police practices and the values of the surrounding society. Overall, Bell's observations of the investigation of hate crime were positive. For example, the police took a much more sensitive and discreet approach to victims who were minority members than had been indicated in earlier studies. However, it must be borne in mind that this was a unit which specialized in this very type of crime and which had sufficient time and resources for it. (Bell 2002.)

According to Bell (2002), the police play a crucial role in the investigation of hate crimes. Because the police are the first to encounter any crime, they are 'gatekeepers' of sorts – deciding how to investigate the cases and which cases to submit to the prosecutor. (Ibid., 2.) However, the police face many problems in investigating crimes with racist characteristics. First, it is seen as a problem that the police are not trusted by minority groups, and that cases of racist crime remain unreported because of this. (Hall 2005, 190–195.)

As shown above, a survey conducted among immigrants in Finland in 2001 indicated that the majority of the respondents had not reported to the police the racist crime that they had experienced. One of the reasons cited was a lack of belief that the report would lead to any action being taken. (Jasinskaja-Lahti et al. 2002, 143.) However, not reporting a crime is also common enough among the majority population. Päivi Honkatukia (2005) compared experiences of violence among immigrants to experiences of violence among native Finns, i.e. the majority population. The material for this study came from the Immigrants' Living Conditions Survey conducted by Statistics Finland in 2002, compared to the national victim survey conducted in 2003. Violence experienced by immigrants was reported to the police more frequently (24 % of most recent cases) than violence experienced by the majority population (13 %). This result may indicate that immigrants have somewhat more confidence in the Finnish authorities. On the other hand, it may also indicate that the reported violence experienced by immigrants was mainly violence in public places, which is more readily reported to the authorities than domestic violence, for example. In the immigrant survey, it was not established how the crimes had been reported to the police: whether a report of an offence had been filed; who had filed the report; or whether the police had found out some other way – in other words, how active the respondents themselves had been in reporting crimes that they had experienced. (Honkatukia 2005, 68–71.)

There has been concern over indifference within the police towards racist crime, and several studies on the subject have been conducted in the UK (Hall 2005, 190–195; Bowling 1998). For example, Benjamin Bowling (1998) studied how the police investigated racist crime before the enactment of the 1998 reform. In interviews with police officers conducted at the turn of the 1990s, Bowling's attention was drawn to the professional attitudes of the police in the processing of racist crime. He found that with the exception of the certain serious crimes, cases of racist crime did not take high priority in criminal investigation. Racist crime offenders were classified as poorly educated 'yobs', more likely on average to commit crimes anyway. According to Bowling, the police were not equipped to identify racism in crimes against ethnic minorities. Such crimes were commonly ascribed to cultural differences and clashes as ethnic minorities moved into traditionally white neighbourhoods. (Ibid., 248–256.)

It is generally considered that the turning point for an attitude shift in the UK was the rac-

ist murder of Stephen Lawrence in 1993, particularly following the 1999 publication of the Macpherson Report on the inquiry into his death, which was highly critical of the actions of the police (Macpherson 1999). The report revealed how the Metropolitan Police in London had failed in the investigation of the racist murder of an ethnic-minority youth and highlighted gaps in police knowledge about the investigation of racist crime. The report also uncovered institutional racism in the police. As a result, particular attention has been focused on improving police procedures in identifying, recording and investigating racist crime, and also improving the confidence of minority groups in the police. (Hall 2005, 168–189.)

In Finland, Pirkko Pitkänen has studied the experiences of the police and other authorities in multicultural work and their attitudes to immigrants in 1998–1999 and 2005–2006 (1999; 2006, respectively). According to the most recent survey, police attitudes towards immigrants seem to have become more tolerant. On the other hand, one out of two police officers considered immigrants to be difficult customers. In particular, respondents whose work involved problem and control situations were of this opinion. However, the survey showed that the majority of police officers thought that racism should be addressed more effectively, and 40 % of the respondents wished for more severe punishments for racist crime. The study further showed that police officers consider it important in their work to treat all customers equitably and similarly. (Pitkänen 2008, 161–169.) The principle of equitable treatment can work in a highly homogeneous environment. In an ethnically and culturally pluralist community, however, this may actually lead to increased inequality if the needs of special groups are not taken into account. Affirmative action can help disadvantaged groups to achieve actual equality. (Pitkänen 2008, 166; Poliisi ja syrjintä 2007, 9.)

The challenges involved in police investigations of racist crime are not confined to police attitudes. In the case of a crime with racist characteristics, not only do the traditional demands of a pre-trial investigation have to be met, but evidence of the suspect's motivation must also be found (Bell 2002, 53). Previous studies have shown that it is not very easy to identify racial motivation or hostility (Bell 2002; Burney & Rose 2002). What may constitute racial motivation may be something that the suspect said before or during the committing of the crime. If the suspect has committed earlier crimes aimed exclusively at minority members, this may also be regarded as evidence. Membership of a group embracing a racist ideology or using racist symbols may also indicate a racial motivation. (Bell 2002, 17.)

In practice, spoken words have proven to be the most important indicator of racial motivation. Bell's study shows that police officers investigating hate crimes base their cases mainly on what the suspect said before, during or after committing the crime. Without these utterances, it would have been difficult to prove the motive of the crime even if it had been apparent. (Bell 2002, 75–76.) According to Bowling (1998), experiences of racist crime described by victims also often involve verbal abuse. However, there are degrees of difference in word associations and their offensiveness. For example, the offensiveness of comments about someone's ethnic background depends on when they are said, who says them and at whom they are directed. When an inherently neutral ethnic epithet is combined with a swear word, it becomes a racist slur. The offensiveness of specific words must also be viewed in the historical and discursive context of the country in question. It is not enough to evaluate the nominal meaning of the words; some words are more offensive to some groups than to others. (Ibid., 220–233.)

There are also factors that the police cite as evidence for the absence of racial motivation. According to Bell (2002), the easiest type of case to identify in the view of police officers investigating hate crimes is one where the victim and the suspect were unknown to one another. In contrast though, if the victim and suspect are neighbours or colleagues, there might be some other motivation for the crime, such as envy, revenge or anger. (Ibid., 73.)

Burney and Rose (2002, 27) identified a number of standard types of situation with racist characteristics. Incidents with racist characteristics included street encounters, harassment of restaurants and businesses owned by members of ethnic minorities, neighbour harassment, conflict between youth gangs, bullying among children and politically tinted messages. Serious, pre-meditated racist attacks were rare, even though all of the situations mentioned above had the potential to turn into such. (Ibid., 27–28.)

Racist crime for the most part comprises 'minor' offences whose motives are not usually explored in the pre-trial investigation. Traditionally, motives are only explored in the case of serious crimes such as homicides. (Bell 2002, 12–13, 184–185.)

However, from the victim's point of view, racist crimes are not a group of individual incidents but a continuous process or even an unavoidable part of life. The victim may experience different types of racism, both physical violence and hurtful deeds and words, which do not even fulfil the essential elements of any crime. The impact of repeated 'minor' incidents is cumulative, and from the victim's point of view they are no longer 'minor'. In terms of legislation, it is impossible, at least at present, to identify the special characteristics of such actions and their cumulative effects, because in the criminal justice process each deed is considered as an individual and discrete occurrence. (Bowling 1998.)

Although the police play a central role in identifying and investigating racial motivation, it is just as important to remember to take this motivation into account further down the line in the criminal justice process. Beverly McPhail and Valerie Jenness (2005) have studied the attitudes of prosecutors in particular to hate crime legislation and the prosecution of hate crimes. They interviewed 16 prosecutors in the state of Texas in the USA for their study. The interviews revealed many approaches that delimited the cases where a prosecutor might demand an increase in punishment on the basis of a hate motive. According to McPhail and Jennes, prosecutors tended to avoid risks so as to maximize their potential for winning the case. The hate motive might be ignored in the arraignment because it is difficult to prove and it might 'mess up' the potential for winning the case altogether. Increasing the punishment is most probably called for in cases where hate is clearly the motive for the crime and there are no other apparent reasons for it. (Ibid.)

According to Burney and Rose (2002), the lack of evidence and witnesses were the major reasons for cases of racist crime not progressing to trial. Also, an offence originally identified as racially aggravated might progress as a 'basic' offence in the criminal justice process if it proved impossible to take the racial elements into account in the charge due to the lack or insufficiency of evidence. Some of the problems arising at the prosecution stage are due to the nature of legislation in the UK. If a charge is brought of racially aggravated assault, for instance, the entire crime must be proven – both the racism and the assault – or the case will collapse. This might be circumvented by a suggested alternative charge but even so there are problems. It was for these reasons that the number of sentences passed on racist crime was low compared with the number of cases of racist crime reported to the police. (Ibid.)

According to the judging and sentencing authorities interviewed by Burney and Rose (2002), racist hostility was difficult to identify and define. The interviewees wondered whether everything said in the committing of the crime referring to the ethnic background of the victim could be construed as a sign of racist crime. How nasty did the suspect have to be for racist verbal abuse to be taken into account in the punishment? According to some respondents, what was crucial was the context in which the racial slurs were uttered and how the victim perceived the situation. By way of an example, it was observed that in some neighbourhoods racist language is par for the course, while educated people would not be expected to use racist slurs. (Ibid., 13–15, 92–94.)

Under UK law, a crime is considered racially aggravated if it is racially motivated or if the offender demonstrates towards the victim hostility based on the victim's membership of a racial group. According to authorities interviewed in the study, only few cases involved a specifically racial motivation. The suspects were described as attempting to avoid both increased punishments and being labelled a racist, as racist crime is considered particularly shameful. Suspects attempted to deny any racial motivation and might invite friends or relatives to testify in court on their behalf. (Ibid., 13, 89–92.)

The progress of hate crimes in the criminal justice process was also studied in Sweden in 2002. The material for the study conducted by the National Council for Crime Prevention consisted of the racist, xenophobic and homophobic crimes reported in Sweden in 2000. The study specifically focused on to what extent punishments were increased in passing sentence on the basis of a racial or other hate motivation. The more serious the crime, the more frequently the prosecutor called for increasing the punishment. The punishment might also be increased even if the prosecutor had not referred to the relevant point of law in the application for a summons. The racist characteristics of the deed may have emerged in the text of the application for a summons in these cases. It is also possible that the prosecutor called for increasing the punishment at the main hearing instead of in the application for a summons. The operative parts of judgements seldom showed by how much the punishment had been increased on the basis of a hate motivation, and thus it was difficult to compare punishments. Overall, the grounds for increasing the punishment were invoked quite variably. (Lönnheden & Schelin 2002.)

It may be deduced from earlier research that there are many potential problems in the progress of racist crimes in the criminal justice process. First, at all stages of the process the attitudes of officials can influence how seriously racist crime is taken – whether there is any attempt to uncover evidence of a racial motive in the pre-trial investigation, and whether such evidence, if found, is taken into account in bringing a charge and in passing sentence. Even if all the officials had the appropriate attitudes and racist crime were taken seriously, it might still be difficult to investigate, identify and prove racial motivation. Earlier studies have shown that identifying such a motive requires interpretation of the entire situation where the crime was committed; some characteristics confirm racial motivation and others counter it. Any interpretation may be tinted by an official's personal views as to what racism actually is.

5.2 Discrimination crimes under the Penal Code and the Non-Discrimination Act

The progress of cases of racist crime in the criminal justice process has not been studied in Finland previously, but the effectiveness of the Non-Discrimination Act, which entered into force in 2004, has recently been studied at the University of Joensuu. For this study, a survey was conducted among officials; jurisprudence and legality practices were compiled; and decisions and statements issued by the authorities monitoring compliance with the Non-Discrimination Act were collected. The material included 89 judgements issued by district courts and courts of appeal in cases of discrimination and work discrimination dating from between 2004 and 2006. The purpose of the diverse material was to create a comprehensive picture of how effective the Non-Discrimination Act had been during its three years of existence. (Lundström et al. 2008.)

Out of the 89 judgements issued by district courts and courts of appeal, 71 % involved discrimination crimes and the rest were work discrimination crimes. The defendants in the discrimination cases were mostly people employed in the services or business sector, while in the

work discrimination cases they were mostly employer representatives. The work discrimination cases pertained to recruitment, treatment during the employment relationship, and termination. The cases were very different, and no single basis for discrimination emerged as a distinctive factor. (Ibid., 91–92, 181.)

The discrimination cases, on the other hand, were very similar. In the discrimination cases, the most common cause for discrimination was ethnic origin, and the most typical case was a Roma person being denied restaurant services. The jurisprudence showed that the denial of service was most commonly justified with one of two reasons. First, it might be claimed that members of the ethnic group in question have, in the past, caused disruption in the business establishment in question or in some other location. Second, restaurant employees might have been instructed to prohibit persons of a certain ethnic origin from entering the restaurant. (Ibid., 181–182.)

In some cases, the justification for denial of service remained unclear because of conflicting evidence, and the court accordingly found for the defendant. A discrimination charge may also have been dismissed if there was an acceptable reason for denial of service. The average sanction for discrimination was 25 day-fines. It could be deduced from the sentences passed by the courts that issuing instructions to discriminate is considered more serious than following such instructions. Compensation was claimed under the Non-Discrimination Act in discrimination cases and work discrimination cases only rarely, even where it would have been possible by law. Compensation was only claimed in four criminal cases. (Ibid., 182, 201.)

6 RESEARCH FRAMEWORK AND MATERIAL

6.1 Research questions

This study is based on the 107 reports of an offence with racist characteristics filed in the Helsinki jurisdictional district in 2006. The purpose of the study is to explore how large a percentage of suspected crimes with racist characteristics lead to the court deciding that a crime has been committed and passing sentence. A further purpose is to establish for what reasons cases do not end up in court and at what point in the process they are discontinued, and also how the potential racial motivation of a crime is taken into account in the pre-trial investigation, the consideration of charges and the court proceedings.

6.2 Reports of an offence as material

The selection of reports of an offence was originally carried out for the purpose of the annual report entitled Racist crime in Finland reported to the police (Noponen 2007). This selection was based not only on the racism code entered by the police on the report, since it is known that the police do not classify all reports of an offence with racist characteristics as cases of racist crime. First, all reports of an offence that fulfilled one or more of the following criteria were selected: the police marked the report with the racism code; the crime mentioned in the report is discrimination, work discrimination or ethnic agitation; the description part contains the character string *rasist* or *rasism* [from the Finnish word stems for 'racist' and 'racism', respectively]; or the report contains crimes commonly associated with racist characteristics and at least one of the victims is of foreign origin. The next stage of the selection involved searching for terms of abuse that typically appear in reports of an offence with racist characteristics. Finally, all of the reports retrieved were reviewed. At this stage, the reports selected for the final material were those that fulfilled one or more of the following criteria: the police marked the report with the racism code; the report contains obvious terms of racial abuse; the suspect indicated xenophobia as the motive for the crime and the victim was a member of an ethnic minority; or any of the victims or the police considered the case a racist crime. (For more details on the selection of the material, see Noponen 2007, 24–26.)

For this study, only reports filed and taken under investigation in Helsinki were used out of the material of the annual report. Thus the basic material was a complete data matrix with information from reports of an offence encoded in numerical format. Reports of an offence contain information pertaining to the filing of the report (time received, manner of notification), geographical information and information on all persons involved in the case: name, personal identity number or date of birth, country of birth, citizenship and contact information. The description part of the report comprises a summary and the description proper. The summary is a brief outline of the incident. The description proper is a more detailed explanation. The criminal investigators update the information in the report as the investigation progresses or at the very latest when it is concluded. The investigations of certain suspected crimes included here have progressed during the course of this study; as a result, the information in the original reports has changed, and thus the research material has had to be updated accordingly.

6.3 Court documents and decisions to waive charges

It is possible to find out from the Police information system which suspected crimes the police have submitted to the prosecutor for consideration. It is probable that out of an individual report of an offence, some suspected crimes are submitted for consideration of charges and others are not. The material for this study included such cases.

I first made an inquiry at Helsinki District Court concerning suspected crimes that had been submitted to the prosecutor. The District Court found out which of the cases included in the research material and submitted to the prosecutor had been processed in court and at what stage they were. I received copies of the judgements on concluded cases from the Helsinki District Court. Some of the cases included in the research material were still pending, however, and only the prosecutors' applications for a summons were available. Because court cases are not public before their first main hearing, I requested permission from the Administrative Director of Helsinki District Court to obtain copies of the applications for a summons of the cases still pending. As some of the cases were actually processed at the District Court in spring 2008 while the research material was being compiled, I requested that judgements on these cases be mailed to me as and when they became available.

From the Prosecutor's Office of Helsinki I received prosecutors' decisions to waive charges for those suspected crimes which did not progress to court. In some cases, the prosecutor had brought a charge or decided to waive charges regarding all suspects. Other cases involved both charges and decisions to waive charges. Moreover, in some cases a single suspect was prosecuted for only some of the suspected crimes reported.

6.4 Interviews with officials

The purpose of the study was to follow the progress of individual criminal cases in the criminal justice system in some detail. For these individual cases, I interviewed senior investigating officers, criminal investigators, prosecutors, judges and one lay judge. There were many different grounds on which to select cases for closer examination. My aim was to find a diverse selection of cases on which to base my interviews. I endeavoured to find cases with different crimes and also cases that had progressed through the criminal justice process in different ways.

All official documentation showed which officials had handled each particular case. The Police information system yielded information on which police precinct had handled the case and who the senior investigating officers and criminal investigators were. The documentation of the Prosecutor's Office and the court showed which prosecutors, judges and lay judges had participated in the processing of the case. Naturally, my choice of cases and of interviewees was also influenced by whether the relevant officials were available, whether they were still holding the same posts, and if so, whether they were willing to be interviewed.

I began my coverage of the cases chronologically with interviews with the police officers involved. For the purpose of selecting cases and interviewees, I entered the names of the senior investigating officers and criminal investigators into a data matrix. This enabled me to see the distribution of the cases by police precinct, by senior investigating officer and by criminal investigator. The largest number of cases out of the research material handled by the same senior investigating officer was 22, and the largest number of cases handled by the same criminal investigator was five. It was thus possible to cover more than one case at a time when interviewing the police officers.

I interviewed a total of six police officers: three senior investigating officers and three criminal investigators. None of the police officers I contacted refused an interview. I conducted my first interviews with a senior investigating officer and a criminal investigator in late February 2008. This gave me an impression of how well police officers recalled suspected crimes investigated by them in 2006 and what kind of things they related regarding them.

According to Hirsjärvi and Hurme (2004, 59), a scientist conducting an interview survey may use a rough outline as a basis but should first engage in exploratory discussion. This will allow the testing of the original ideas, after which the interviewer can decide whom to talk to and what to talk about. This is the procedure I followed, since I did not choose all of the cases for detailed study at one time. I wanted to use my interview experiences for improving my selection of other cases and interviewees and for developing my interview questions.

The number of suspected crimes covered in the interviews with police officers varied. In my first interview, I only discussed a single report of an offence with a criminal investigator; however, the following five interviews each covered several reports. I requested the pre-trial investigation materials of the cases I was studying from the relevant police precincts and reviewed them before the interviews. I also informed the interviewees beforehand which cases I intended to discuss. All interviewees had taken time to recall the cases in question in some way before the interview, and some had retrieved the pre-trial investigation material concerning their case. The interviews lasted one hour on average.

The interview questions and the progress of the interview varied according to how many cases were discussed, which suspected crimes were in question and at what stage the processing of each case was. The same question framework could not be used in all interviews, which undermines the comparability of the interviews. However, this was also seen to be an advantage. Because the interviews concerned real, concrete suspected crimes, the discussions were much more diverse than if I had interviewed the officials solely at a general level. I also believe that this approach brought up matters that I would not even have considered asking.

There were certain themes which I aimed to bring up with all interviewees. At the beginning of each interview, I asked how well the interviewee recalled the case(s) in question and which points were particularly memorable. I also made case-specific questions about why a particular course of action was taken in the pre-trial investigation. Why, for example, had all witnesses recorded in the report of an offence not been interviewed, and what (if anything) delayed the investigation of the case? The principal theme in each interview was to consider the racist characteristics of the cases. For example, I asked the police officers to estimate whether the suspect had had a racial motivation and how this could be deduced.

The work of criminal investigators and senior investigating officers is different, and thus their interviews revealed different kinds of information on the suspected crimes discussed. According to the interview notes, the criminal investigators recalled individual cases better than the senior investigating officers and were able to provide more details. Senior investigating officers are in charge of the criminal investigators and do not usually conduct interviews themselves. They did, however, seem to have a broader overview of criminal cases in general and made comparisons between the handling of individual cases and general pre-trial investigation practices.

After interviewing the police officers, I contacted the prosecutors and judges who had dealt with the same suspected crimes as the previous interviewees. The suspected crimes with racist characteristics that had been submitted to the prosecutor were evenly distributed among prosecutors and judges. No individual prosecutor had processed more than three of the cases in the research material, and no individual judge had tried more than two. As with the police officers, all the prosecutors I contacted agreed to an interview.

I interviewed five prosecutors in all, discussing two cases each with two and a single case each with three of them. Of the four judges I contacted, one refused an interview and one was no longer employed at Helsinki District Court and could not even be contacted. Therefore, I only conducted two interviews with judges.

The questions I asked the prosecutors, judges and lay judge were partly the same as I asked the police officers. At the beginning of each interview, I asked how well the interviewee recalled the case in question and whether there were any particularly memorable points about it. I asked the prosecutors, judges and lay judge to consider to what extent the case in question could be regarded as racist crime and whether the suspect had had a racial motivation. We also discussed increasing the punishment in passing sentence on the grounds of racial motivation and what evidence was required for this.

6.5 Analysing the material

The reports of an offence included in this study can be quantitatively described in many ways. A single report of an offence may involve several different types of offence, several victims and several suspects, any of which may be taken as a unit for quantitative description. In the annual reports on racist crime, this material is analysed on the basis of the most serious of the crimes committed against the victim, known as the principal offence. The most serious deeds are those aimed directly at another person. The scale of severity from most serious to least serious is: homicides and attempted homicides, sexual crimes (rape), physical violence (assault), threatened violence (unlawful threats), discrimination, breach of honour, breach of domestic peace and damage to property. (Noponen 2007, 25.)

The same principle is observed in this study. I mainly classify reports of an offence according to the principal offence aimed at the victim. I describe other crimes against the same victim as secondary offences. In section 7.3, I compare the situation in the processing of suspected crimes in the research material to statistics on crimes reported to the police in general. The comparison is based on the types of offence entered in the reports of an offence, regardless of the number of victims or suspects. In chapters 8 and 9, the analysis concerns suspected crimes that progressed to consideration of charges and court proceedings.

I also describe individual reports of an offence in the material. In discussing individual suspected crimes, the context and situation of committing the crimes are obscured. Individual actions may be very different even if they are described as the same type of offence. The situations in which the suspected crimes occurred are best highlighted in the chapters where I describe the progress of individual cases in the criminal justice process, through interviews with officials and through documentation.

6.6 Ethical issues

In the course of this study, I have considered how much information I can reveal of any individual suspected crime and its progress in the criminal justice process without making it possible to identify individual parties or the officials involved in handling the case. In reporting my results, I have aimed to obscure any details that could lead to the identification of concerned parties and interviewees. On the other hand, I have aimed to focus sufficiently on points underlying the decisions of the officials in these cases. In order to discuss the reasons underlying the decisions

of officials, it is necessary to describe the individual cases in some detail.

The Police information system contains information on the country of birth and citizenship of the victims and suspects entered in reports of an offence. This information is presented as statistics in the annual reports on crime with racist characteristics reported to the police. In discussing individual suspected crimes, the citizenship and country of birth of the concerned parties cannot be revealed as their privacy could be compromised. However, information at this level of detail is not necessary for the present study. The pre-trial investigation material in these cases generally contains reports of verbal abuse or other descriptions related to the situation which allow the deduction that the suspect and the victim are of different ethnic backgrounds, and that one of them belongs to the majority population and the other to an ethnic or national minority.

The language used to describe criminal cases in official documents varies. In particular, the descriptions proper in reports of an offence often quote verbatim the racist slurs used in the situation where the crime was committed. As has been demonstrated in earlier research on this topic, the utterances of the suspect often constitute the principal evidence for the existence of racial motivation. In the course of this study, I have had to consider to what extent I can reproduce verbatim the verbal abuse recorded in the documents – on the one hand, the language used forms an important part of the material I am studying, while on the other hand, it seems dubious to reproduce racist language. I have therefore only used verbatim quotes in contexts where I feel it is absolutely necessary.

7 CRIMES REPORTED TO THE POLICE

7.1 Characteristics of the reports of an offence and suspected crimes

This study involves 107 reports of an offence filed in Helsinki in 2006. A single such report may name several suspected crimes, or types of offence, several complainants and several suspects. For the purpose of the present study, I have analysed suspected crimes by complainant; in other words, the number of suspected crimes recorded for any particular report of an offence equals the number of victims in that report. I use the term 'principal offence' to refer to the most serious crime committed against any one victim. Any other crimes committed against the same victim are termed 'secondary offences'.

A total of 192 principal offences may be identified in the police reports considered. The majority of the victims (78 %, 149) had experienced one crime. The number of principal offences is almost the same as the number of individual complainants – only one person appeared as a victim in two separate reports. The largest number of crimes committed against a single victim in one report of an offence was four. The principal and secondary offences add up to 248 suspected crimes in the police reports studied.

The largest category of suspected crimes constituting principal offences (39 %) is assault (Table 1). Taken together, the various kinds of assault (petty, ordinary, aggravated and attempted) constitute 58 % of all principal offences. Second in the material was breach of honour (17 %). By comparison, breach of honour was the largest group in secondary offences (36 %). All the cases of breach of honour recorded as secondary offences were connected to assault or unlawful threats.

Table 1 indicates that the second most common secondary offence is aggravated breach of domestic peace, which seven victims had experienced. Actually, aggravated breach of domestic peace is not a common secondary offence, as all of these suspected crimes in this material come from the same police report. This was a case where a neighbour had harassed and verbally abused, in racist terms, a family of foreign background with seven members, hence seven victims.

Table 1 Crimes listed as principal and secondary offences in reports of an offence with racist characteristics

	Type of offence as principal offence		Type of offence as secondary offence	
	N	**%**	**N**	**%**
Assault	75	39	5	9
Breach of honour	33	17	20	36
Petty assault	32	17	2	4
Discrimination	13	7	1	2
Unlawful threats	12	6	4	7
Damage to property	11	6	6	11
Aggravated breach of domestic peace	0	-	7	13
Breach of domestic peace	4	2	0	-
Petty damage to property	3	2	2	4
Attempted assault	3	1	2	4
Other crimes	4	2	5	9
Aggravated assault	1	1	0	-
Attempted aggravated assault	1	1	0	-
Resistance to a person maintaining public order	0	-	2	4
Total	**192**	**100**	**56**	**100**

Simply describing the material by crime is easily misleading, as the situations and contexts of the individual incidents reported, and also the number of crimes and concerned parties, vary greatly. I have therefore grouped the police reports into nine categories according to what best describes the occurrence (Table 2). The categories are not mutually exclusive, and some cases could have been placed in several of them. However, this gives an indicative overview of the nature of reports of an offence with racist characteristics.

As the situations and contexts of assault in particular vary greatly, I chose to divide them into three categories. A large number (33) of the reports studied were filed for assault with racist characteristics. It is typical of such situations that the suspect and the victim are not reported to have had prior contact but that the victim was targeted without warning. Any situation might have had one or more offenders and victims. The next greatest number of assaults (14) was reported from mass fights involving 3 to 10 persons. In such situations, the same person is typically both a victim and a suspect in assault, and there are several conflicting descriptions of how the fight started. Mass fights typically occur in the evening or at night in a restaurant, on the street or in some other public place such as a metro station.

Some cases of assault only involve two people. In these, the situation typically begins with a racist provocation and ends with both parties committing crimes such as assault and breach of honour. The remaining four reports of assault are cases where a person of foreign background was provoked by a racist slur and subsequently was the only suspect in a case of assault. In these cases, therefore, the only suspected crime entered in the report of an offence is assault, and the only suspect is a minority member.

The largest group after assault (22) involves situations where physical violence is not used

at all, such as breach of honour and unlawful threats. One such case involved racist abuse posted on the Internet. A total of 10 reports involved discrimination. Of these, eight concerned situations where one or more ethnic minority members were denied entry to a restaurant. Out of the two remaining cases of discrimination, one concerned work discrimination. In the other, the suspect was an official at an employment office who had behaved inappropriately towards a customer who was a minority member. There were nine cases involving breach of domestic peace or damage to property near the home. Seven cases involved harassment at a business or restaurant owned by an ethnic minority member.

Table 2 Situations and contexts of reports of an offence with racist characteristics

Assault with racist characteristics	33
Breach of honour or unlawful threats without violence	22
Mass fight between three or more people	14
Discrimination	10
Breach of domestic peace or damage to property (e.g. car in the yard)	9
Fight between two people, sparked by racist provocation; crimes committed by both	8
Harassment at an ethnic restaurant or at a business owned by a minority member	7
Assault ascribed to racist provocation	4
Total reports of an offence	**107**

7.2 State of investigation of suspected crimes and their submission to the prosecutor

Concerning the suspected crimes that were principal offences, 74 % of the cases were concluded, 21 % were suspended and 5 % were pending. Suspending the investigation means that there are no active ongoing efforts to solve the crime. If new information comes to the knowledge of the police later, the case may be reopened. Table 3 shows the percentages of suspected crimes listed as principal offences in the concluded cases. All discrimination cases had been concluded and half of the cases of damage to property had been concluded. Concluding the case does not necessarily mean that the case has been cleared or solved. For instance, if the victim presents no demands and the crime is a private-prosecution crime, the case is concluded even if the crime has not been solved.

Furthermore, not all concluded cases involving solved crimes are submitted to the prosecutor for consideration of charges. Out of the suspected crimes listed as principal offences where the police had concluded the investigation, 62 % ended up with the prosecutor for consideration of charges. The percentage is different for different types of suspected crime. For example, 93 % of assaults were submitted for consideration of charges, but fewer than one in five (17 %) of petty assaults. I will discuss later the reasons why some suspected crimes are not submitted to the prosecutor by the police.

Table 3 State of the investigation in principal offences, and percentage of suspected crimes submitted to the prosecutor

		Investigation concluded		Submitted to prosecutor	
Type of offence as principal offence	**Total suspected crimes as principal offence**	N	% of suspected crimes as principal offence	N	% of suspected crimes where investigation is concluded
Assault	75	45	60	42	93
Petty assault	32	29	91	5	17
Breach of honour	33	29	88	17	59
Discrimination	13	13	100	8	62
Damage to property	11	5	45	3	60
Unlawful threats	12	11	92	7	64
Breach of domestic peace	4	2	50	0	-
Other	12	8	67	6	75
Total	**192**	**142**	**74**	**88**	**62**

In the majority of cases, the investigation of secondary offences progressed in parallel with that of principal offences: for example, in cases open or suspended with regard to the suspected crime as principal offence, there were no secondary offences which, unlike the principal offence, would have been solved. For four complainants, the result was that the principal offence had been solved but a secondary offence in the same context had not. An example of this is a case of breach of honour in an altercation where a theft from one of the three persons involved was never solved.

Table 4 lists the reasons why certain suspected crimes as principal offence did not progress from the police to the prosecutor. The conclusions of the police regarding suspected crimes in concluded investigations are listed on the left and the reasons why a particular case was suspended or is still open on the right.

The most common reason for suspending an investigation is that the suspect remains unknown. This happened most commonly in cases of assault and damage to property. There may have been eye witnesses to the cases of assault, but the victim and bystanders have only been able to give a partial description. Situations may have involved one or more victims and suspects. In some cases, CCTV footage from the location has been available but insufficient to identify the offenders. In some cases, the police have been notified and a report of an offence filed immediately after the assault; in other cases, the victim has filed a report on the following day or later.

Table 4 State of investigation of suspected crimes and decisions of the police concerning the principal offences not submitted for consideration of charges.

Investigation concluded		**Investigation suspended or open**	
Private-prosecution crime, no demands	32	Offender(s) unknown	34
No crime committed	9	Investigation pending	10
Demand for punishment issued	5	Insufficient evidence	3
Suspect is under 15 years old	3	Victim does not arrive for interview	2
Limited pre-trial investigation	2	Other investigation, suspended	1
Conciliation effected	1		
Other investigation, no crime committed	1		
Statute of limitations expired	1		
Total	**54**		**50**

I discussed several such 'dark' crimes with one of the criminal investigators. The suspect had remained unknown, for example, in a case where a customer in a restaurant had uttered verbal racist abuse and assaulted the restaurant owner of foreign origin. The restaurant owner filed a report of an offence the following day, by which time it was difficult for the police to locate any other customers who might have been in the restaurant at the time of the occurrence. The police officer investigating the case said that the assumption was that the victim of the assault had already asked any other customers in the restaurant at the time whether they knew the offender and informed the police accordingly. In this particular case, the investigation was suspended because there was no clue as to the identity of the suspect.

In 16 cases, the suspect may have been known, but there was insufficient evidence of the suspected crime, or it was not possible to interview all concerned parties. In one case of breach of honour, the investigation was suspended because no outside witnesses to the occurrence were located, even though the alleged breach of honour had taken place in a crowd. The suspects were identified on the basis of the description provided by the victim; however, when questioned, the suspects denied the breach of honour. As the suspects denied the allegation and no one else had heard anything, the police had no option but to suspend the investigation.

For 32 of the suspected crimes as principal offence, the investigation was concluded and not submitted to consideration of charges because the victim has presented no demands in the case or has later retracted a demand presented earlier. If a victim failed to arrive for an interview or otherwise contribute to the investigation of the case, the investigation may have been concluded on the assumption that the complainant had no demands to present in the matter. In the majority of such cases (20 out of 32), the principal offence was petty assault, followed by breach of honour (6 out of 32). Some of the cases of petty assault arose out of mass fights, in which the victim may also have committed a crime and was therefore unwilling to demand punishment as a victim of petty assault.

In some cases, the complainant retracted a demand for punishment after the offender had ceased verbal abuse or other harassment. Sometimes the victim did not file a report of an offence until the verbal abuse and harassment had continued for some time. In one case of damage to property, the report of an offence concerned a man living next door who had soiled the door of the flat of a family of foreign origin and otherwise harassed the family**.** The complainant

retracted the demand presented after the man suspected of the crime had confessed his deed to the police officer summoned to the scene**.** The victim just wanted the neighbour to leave the family alone.

Although the victim's retraction of a demand for punishment may have been voluntary in many cases, one of the police officers interviewed surmised that in a number of cases this may have been suggested by the police. The police consider it a good thing if a case is resolved without going through the criminal justice process. This is because taking the case to trial might re-ignite an argument between neighbours, for instance, and the fact that the criminal justice process usually takes a long time to complete. The police had suggested retracting a demand for punishment in one case of breach of honour where a Roma woman had reported that she was suspected of being a thief. It was concluded in the pre-trial investigation of the suspected crime that there was no probable cause to suspect a crime. The police considered that suspecting someone of being a thief cannot be considered a crime in itself in this case, as there had been just cause for this suspicion.

In some cases, the investigation was suspended or concluded because the victim himself or herself failed to attend an interview and therefore appeared to be reluctant to contribute to the investigation of the case. In a case of assault which occurred in a public place, the names of the suspects were known to the police; however, the victim did not, despite several requests, come to the police for an interview to explain what had happened. In order for the police to pursue such a case, the victim must identify those suspected of the assault and file his/her demand for punishment. In this particular case, the victim did not even report the occurrence; the report of an offence was filed by an eye witness.

There was also a case of discrimination in a restaurant where the complainant failed to return calls from the police. Although there were impartial witnesses to this case of discrimination, it was impossible to pursue the case. According to information available to the police, the victim had only been visiting Finland and was resident in another country. There is no evidence as to whether the victim ever even received the requests of the police to contact them.

Following the pre-trial investigation, the police may also come to the result that no crime has been committed, or that the deed did not fulfil the essential elements of any crime. Such a decision was entered for nine suspected crimes. For example, in a case of discrimination in a restaurant, it was found after the pre-trial investigation that no crime had been committed. The senior investigating officer concluded that the essential elements of discrimination had not been fulfilled. According to the restaurant staff, the man seeking entry to the restaurant had been too drunk to be admitted. However, there were no impartial witnesses to this occurrence.

Some cases were not submitted to the prosecutor because the suspects were under 15 years old, because conciliation had been effected between the concerned parties, or because the statute of limitations had expired (Table 4). For five of the principal offences studied, the case was resolved by summary penal order, i.e. by imposing a fine on the offender. This procedure is possible if the deed is a minor one and the case is clear-cut, and if the concerned parties in the case agree. Figure 1 outlines the situation in the study material in the investigation of suspected crimes as principal offence and their progress from the police to the prosecutor.

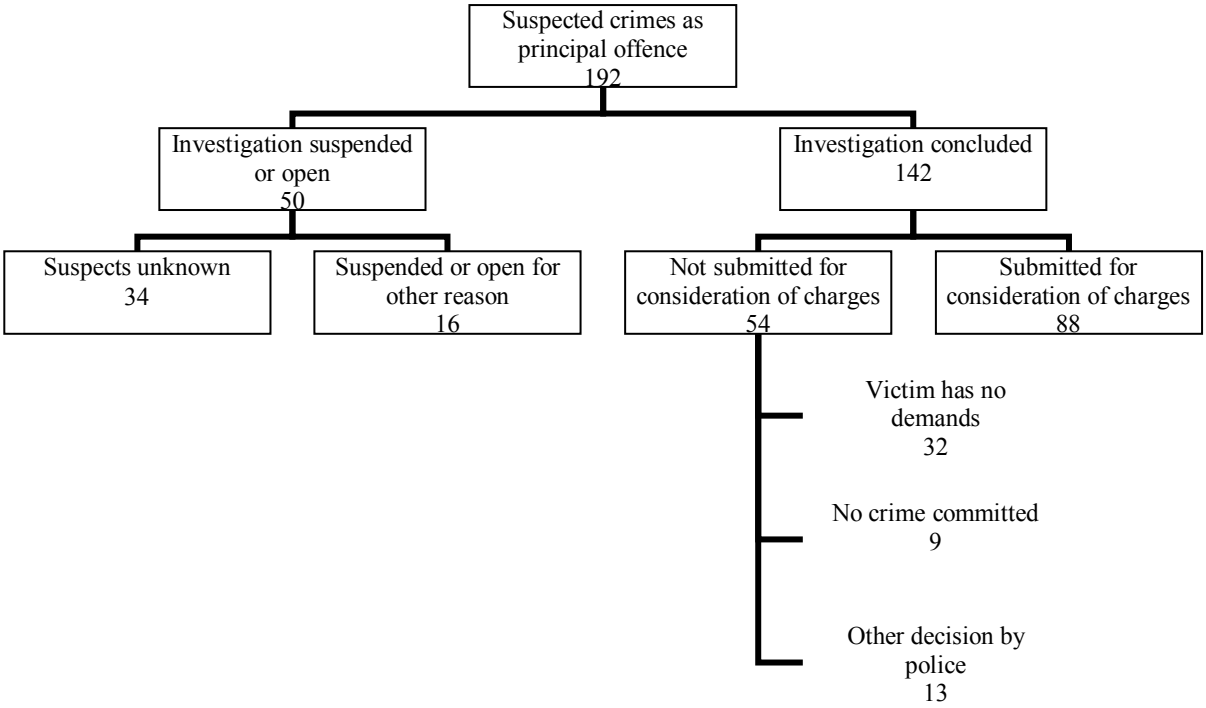

Figure 1 Situation in the study material in the investigation of suspected crimes as principal offence and their progress to consideration of charges

7.3 State of investigation of suspected crimes and their submission to the prosecutor: statistical comparisons

The above figures do not in themselves show how well or how poorly cases of crime with racist characteristics have been solved. The situation in the investigation of suspected crimes in this material can be compared to the statistics on crimes reported to the police. Because the reporting and solving of a crime often do not take place in the same year, a decision must be made as to how to calculate the clear-up rate for crimes based on the statistics. The usual way for calculating the clear-up rate is to divide the number of crimes solved during a year with the number of crimes reported to the police in that same year. The number of solved crimes may thus contain crimes which were actually reported to the police before the year in question. Some of the crimes reported to the police in the year in question may also be solved in later years. (Lappi-Seppälä & Niemi 2007, 287.)

The crime clear-up rate, calculated as given above, varies greatly from one type of offence to another. In 2006, 80 % of cases of assault were solved, but only one in four cases of damage to property. The crime clear-up rates have remained fairly stable for most types of crime in recent years. For example, the clear-up rate for cases of assault has remained between 75 % and 80 % nationwide. (Lappi-Seppälä & Niemi 2007, 288–289.)

Table 5 shows the clear-up rates for the suspected crimes with racist characteristics included in the present study and the average investigation times in days. The comparison data in the table consists of the number of crimes reported for each type of crime in Helsinki and

nationwide in 2006, together with their clear-up rates and investigation times. The comparison data is taken from the Police result information system (Polstat). For comparison purposes, I have calculated the total numbers of suspected crimes with racist characteristics and their clear-up rates and investigation times in the same way as in the Police result information system. In the Police result information system, crimes are not entered according to how many victims they have, but according to the types of offence entered in the report of an offence.[3] Because of this, the numbers of suspected crimes given in Table 5 differ from those given in earlier chapters where I have grouped suspected crimes according to the principal offence committed against each victim.

Table 5 Clear-up rates of suspected crimes and average investigation times in days

	Crimes with racist characteristics in Helsinki			**All crimes in Helsinki**			**All crimes nationwide**		
	Repor-ted	**Clear-up %**	**Inv. time**	**Repor-ted**	**Clear-up %**	**Inv. time**	**Repor-ted**	**Clear-up %**	**Inv. time**
Assault	66	64	123	3 639	71	134	20 059	81	113
Petty assault	31	42	67	1 375	62	72	8 411	73	76
Damage to property	11	55	95	6 887	17	78	38 653	22	107
Breach of honour	40	73	136	442	58	100	3 115	59	119
Unlawful threats	13	69	155	995	66	112	5 826	74	102
Discrimination	6	83	197	12	83	124	61	84	138

The small size of the sample must be taken into account when comparing clear-up rates. In particular, the numbers of cases of damage to property, unlawful threats and discrimination in the material are so small that the clear-up rate figures vary greatly with the smallest change. The clear-up rates for the suspected crimes with racist characteristics referred to above would seem to be the same or higher than in Helsinki and in the country as a whole. There is a slightly higher number of cases of breach of honour in the material (40). The clear-up rate for such cases with racist characteristics (73 %) is higher than the comparable overall figure in Helsinki (58 %) and nationwide (59 %).

There is little difference in average investigation times between suspected crimes with racist characteristics and all suspected crimes. For example, the average investigation time for cases of assault in Helsinki was 134 days, while the figure for cases of assault with racist characteristics was 123 days. The average investigation times for cases of unlawful threats, discrimination and breach of honour with racist characteristics were higher than for all such cases in Helsinki in general and nationwide. The small size of the sample must be taken into account when comparing these figures. For example, the average investigation time given for cases of unlawful threats is considerably increased by a single criminal case which took more than eighteen months to resolve. This case involved unlawful threats and breach of honour committed over the Internet; conciliation was eventually effected between the concerned parties.

The clear-up rates for cases of assault with racist characteristics are lower than for all cases

[3] The police use types of offence in varying ways in the Police information system. In some reports of an offence, each crime is entered separately for each victim with its own type of offence; in others, a single type of offence is given under which all the victims are grouped.

of suspected assault in Helsinki and nationwide. Out of the cases of assault in the research material, 64 % were solved, whereas the nationwide figure is 81 %. In Helsinki, however, the difference is not so great. In Helsinki, the clear-up rate for all cases of assault in 2006 was 71 %. This is a more relevant comparison than the nationwide figure, because the cases in the research material are from Helsinki.

For cases of assault, it must be taken into account when considering the clear-up rate that in most cases of assault with racist characteristics the suspects are unknown. The offender was unknown to the victim in 50 % of all of the cases of assault with racist characteristics reported to the police nationwide in 2006. (Noponen 2007, 47–48.) In cases of assault overall, the percentage of unknown offenders is not nearly as high. For example, out of all cases of assault reported to the police in 2005, the offender was unknown to the victim in 35 % and well known in 32 % of the cases. (Lehti et al. 2007, 62–63.) When the offender is unknown to the victim, the crime is much more difficult to solve.

The difference in clear-up rates is also considerable for cases of petty assault: 73 % of all cases of petty assault were solved nationwide and 62 % in Helsinki, but only 42 % of cases of petty assault with racist characteristics. The low clear-up rate for cases of petty assault with racist characteristics is largely due to victims not presenting demands in the cases and the pre-trial investigation being discontinued accordingly. In these cases, the investigation has been concluded even though the crime has not been solved.

Another point of comparison that may be made between crimes with racist characteristics and other crimes is in how large a percentage of the suspected crimes reported to the police are submitted to the prosecutor. This percentage can be calculated just like the clear-up rate, by dividing the number of cases suspected crimes submitted to the prosecutor in a certain year by the number of all suspected crimes reported to the police in the same year. These numbers are available in the justice statistics published by Statistics Finland (Statistics Finland 2008b). The unit used in the statistics compiled by Statistics Finland is the type of offence entered in the report of an offence.

Because assault and discrimination are public-prosecution crimes, typically all solved crimes are submitted for consideration of charges. This was true of the solved cases of assault and discrimination in the research material, except where it was established that no crime had been committed. By comparison, only 19 % (6 out of 31) of the cases of petty assault with racist characteristics reported to the police were submitted for consideration of charges. As noted above, this was largely due to the victim presenting no demands in the case. More generally, only a small percentage of cases of petty assault progress to consideration of charges. According to Statistics Finland, 29 % of all cases of petty assault in 2006 were submitted to the prosecutor. (Ibid.)

Out of cases of breach of honour with racist characteristics, 58 % were submitted to the prosecutor. A smaller percentage (45 %) of cases of offences against privacy, public peace and personal reputation under chapter 24 of the Penal Code were submitted to the prosecutor (Ibid.). The other types of offence included in the research material – damage to property and unlawful threats – are represented in numbers so small that no feasible comparison with overall statistics is possible.

7.4 Identifying racial motivation in a crime

I asked the interviewees to consider for each suspected crime discussed whether the suspect had had racial motivation and, if so, how this could be deduced. The discussions of racial motivation differed from one interviewee to another because of the different kinds of suspected crimes and situations. As I also asked the interviewees to consider the matter more generally, some mentioned examples of other suspected crimes which were not included in the research material. The police officers interviewed generally relied on a variety of indicators for identifying racial motivation. The following is a compilation of points related by the interviewees with regard to the use of the racism code, and the investigation and identification of racial motivation.

According to instructions in the Police information system, a report of an offence must be classified as a racist case if the victim has been targeted because his/her skin colour, race or ethnic origin differs from that of the offender. However, it has come up in the annual report on racist crime that only about half of all reports of an offence which actually have racist characteristics have been marked with the racism code (e.g. Joronen 2008). I asked the police officers I interviewed about the use of and attitudes to the racism code.

The interviews demonstrated clearly that classifying reports of an offence in this way is not difficult – it is just something that is easily forgotten. The case classification is not a required field; the reporting system allows the officer entering the information to bypass the field. The interviews indicate that the case classification is often left up to the officer receiving the report, and the classification is never reviewed in the course of the investigation. Ultimately, the case classification should be the responsibility of the senior investigating officer. In practice, however, *"there's no time for that sort of thing, to open up the case on the computer and look through it to see if all the stuff has been entered" (Senior investigating officer 3).* Because the function of the racism code is primarily statistical and is not included in the pre-trial investigation material submitted to the prosecutor, it is not considered a priority.

That the police easily forget to enter the case classification does not mean that they have not considered racist characteristics and the possible racial motivation of the suspect in a particular case. Suspects may be asked during the pre-trial investigation why they committed the crime. However, this is not very helpful in terms of establishing racial motivation. By contrast, in some of the cases discussed, the police considered racial motivation to be obvious even if the suspect did not say as much.

> *"— of course we're always interested why something happened ... but since the reasons are often just in their heads, then we just leave it at that, and what goes on in their heads, we often don't find out about that." (Senior investigating officer 2)*

> *"— some say that they don't like the way someone looks or they don't like something else, and that's enough. But others deny it to the last or try to make up some other reason." (Investigator 1)*

According to instructions in the Police information system, particular attention must be paid to what the suspect said and did before committing the crime to establish any possible racist characteristics. Indeed, what was said in the context of the crime is often referred to in evaluating racial motivation; however, the significance of these utterances in establishing racial motivation is not always unambiguous. One senior investigating officer focused on what was said at what point in a reported situation in a case involving a mass fight.

> *"I don't think it's a racist utterance if the situation is already ongoing and if there has al-*

ready been physical contact. If someone says something like this in that situation, it's not necessarily racist as such. But if it's what sparked the incident, if we can find that, then we tick the [racist crime] box." (Senior investigating officer 1)

Establishing racial motivation may also be based on no other explanation being available for the deed except racism. This is often the case in cases of sudden and random assault where the offender and the victim have had no prior contact or where the offender simply singles out a minority member in a crowd as a victim. By contrast, it may hinder identification of racial motivation if the offender seems to have had other reasons for committing the crime. In one report, it was noted that a man living next door had threatened, shoved and made racist remarks towards two children in the yard who were ethnic minority members. According to the report, he had accused the children of throwing snowballs at his car. According to the police, the racial motivation in this case:

"is difficult to tell, because the underlying case is given, it was throwing snowballs — — but, it's really justified, justified to think that this could be a racist case, unless something else is found." (Senior investigating officer 2)

One of the criminal investigators considered how to identify racial motivation in deeds committed by children under 15. In one case where a child under the age of 15 had verbally abused a man of foreign origin, the police considered that the motive was clearly racist. The teenager had repeatedly abused the man with racist slurs, and had admitted as much to the police later. In another case, where children under the age of 15 had harassed a woman living next door, it was more difficult to ascribe the deed to racism as such. This brings up the question of to what extent the offender must be conscious of committing a racist action: *"...can a kid aged 10 or 12 understand that it's racism to call someone a Russki?" (Investigator 2).* On the other hand, establishing racist characteristics or racial motivation is necessary only for classifying the case when the suspects are under the age of 15, because persons under the age of 15 have no criminal liability.

Earlier crimes committed by the same offender may also point towards racial motivation. In one police precinct, several reports of an offence had been filed concerning the same person, with a person of foreign origin as the victim. After repeated similar reports, it began to become obvious that the person in question had racial motivation, even if some of that person's crimes had been committed against majority population members. The complainant's background may also give indications as to whether the suspected crime is racially motivated. One person filing a report was known by the police *"to file reports sometimes that were just made up out of thin air" (Investigator 2).*

It is more difficult to estimate racial motivation if the suspect is completely unknown. One investigator mused what can be deduced from a swastika and abusive text drawn on a victim's door. The name on the door was foreign, but it never became clear to the police investigating the case whether the offender lived on the same staircase and was known to the victim or not — in other words, whether the deed was aimed at foreigners in general or at the victim personally.

I also asked in my interviews with police officers what they thought about crimes committed by minorities against other minorities and against the majority population. Is it as easy or difficult to establish racial motivation in these cases as in crimes committed by the majority population against minorities? Out of the six police officers interviewed, three considered that in Finland it is only really racism when a majority population member commits a crime against a member of an ethnic or national minority. They also considered that racism, by definition, cannot really exist between minority groups. One criminal investigator said that *"if we consider*

two different groups of foreigners, and if they clash, I wouldn't describe it as racism as such, it's just a conflict of interests" (Investigator 3).

7.5 Cases submitted to the prosecutor

In this chapter, I discuss in more detail certain individual cases submitted to the prosecutor for consideration of charges on the basis of the pre-trial investigation material and police interviews. In the following sections, I will return to the same cases to discuss the decisions made by the prosecutor and the court. I have monitored the progress of six suspected crimes to the consideration of charges through interviews with officials. Out of these six cases, four went to court. I have discussed three of these with a judge or lay judge. My purpose was not only to focus on the progress of the cases but also to use information drawn from the documentation and interviews to estimate how the racist characteristics of a case are evaluated at each stage. I have numbered the cases for ease of reference.

A typical case classified as having racist characteristics is a mass fight breaking out after an evening at a restaurant and involving several persons. In one such case included in the research material, ten people in two different groups were involved (Case 1). According to the minutes of the interview, one of the group of persons of foreign origin stated that the majority population members had called them names referring to their ethnic origin, while another stated that the majority population members had threatened them. This is the reason why the case was originally flagged in the Police information system for the annual report on racist crime; it was not marked with the racism code.

The report of an offence concerning this mass fight includes seven counts of assault. A dozen people were interviewed in the pre-trial investigation, some of them as witnesses. All interviewees reported the progress of the occurrence and its reasons in their own way. This is why, according to the police officer I interviewed, investigating mass fights is so challenging. Although interviews give the police an impression of what happened, all those involved must be spoken to even if their stories contradict what was said earlier.

Many of the people interviewed in connection with the case could no longer remember who hit whom. None of the participants in the fight had any demands as a victim with regard to the cases of assault, and some of them wanted the investigation to be discontinued. Others would have preferred conciliation. According to the senior investigating officer in the case, this is fairly common. Concerned parties are not likely to present demands if they have themselves committed assault, especially if they themselves have not been seriously injured. In this case, only the assaults committed in the situation, which are public-prosecution crimes, were submitted for consideration of charges. The counts of petty assault were not submitted to the prosecutor, as the victims presented no demands.

It is also typical of reports of an offence with racist characteristics that a person subject to racist verbal abuse is provoked to respond violently. One such case (Case 2) started with a majority population member verbally abusing an ethnic minority member in a public place so that the abused person lost their temper and hit and kicked the abuser. The situation escalated with two completely outside persons becoming involved. Seeing the ongoing fight, the outside persons 'chose sides' based on affinity with the ethnic origin of the concerned parties. Both outside persons kicked their 'opposite number' once. However, the identity of these outside persons was never established, and the case was submitted to the prosecutor as partly unsolved.

According to an investigator on the case, the occurrence was obviously sparked by a major-

ity population member picking a fight with an ethnic minority member. No other reason except racism could be ascribed to the deed, especially since the man who had been shouting abuse noted in the police interview that he doesn't really *"get along with the dark guys"*. According to the pre-trial investigation material, the victim reported that the majority population member had used abusive names and asked: *"how does it feel to be in Finland?"* Because the victim of the verbal abuse did not demand punishment for the verbal abuse in the pre-trial investigation, no eye witnesses to the occurrence were sought.

In another case, a group of drunken majority population members chased a man of foreign origin (Case 3). In the pre-trial investigation, interviews were conducted with one majority population member suspected of attempted assault, one man of foreign origin suspected of assault and one witness. In this case too, the identities of all the people involved in the chase were not known, and no attempts to find them were made. The main thing, according to the police, was to interview the main participants and to identify the principal offences. According to the victim, one of the men chasing him was holding an iron pipe and shouted out racist slurs during the chase. Examples of these slurs were recorded verbatim in the minutes of the interview. According to the victim and the witness, the situation was prolonged and became so threatening that the victim had hit the man shouting abuse in the head with his fist. In this case, the majority population member who had shouted abuse was suspected of attempted assault, and the man of foreign origin who was chased was suspected of assault which, according to him, was committed in self-defence.

Some of the cases of assault with racist characteristics had been committed suddenly and randomly with no prior contact between the victim and the suspect. In one such case, a majority population member assaulted a woman belonging to an ethnic minority in the street (Case 4). The man struck the woman, who fell down and hurt her head. According to the woman's statement, the man never said anything; however, an eyewitness to the occurrence had witnessed the suspect shouting out racist abuse before the assault. The suspect, by contrast, denied in the interview that the assault ever took place. Here, too the minutes of the interview with the witness include verbatim reports of the racist slurs shouted by the suspect before the occurrence, according to the witness. According to the police officer who investigated the case, it was difficult to establish whether the suspect was in such a state of mind that anyone he encountered could have fallen victim to the crime. No other motive emerged in the pre-trial investigation, however, other than the victim's ethnic origin.

In another similar situation, a man was suspected of attempted assault and a public order violation because his dog allegedly attacked a pregnant woman of foreign origin (Case 5). According to the victim's statement, the man intentionally let the dog loose to attack her and, as a result, fell to the ground. According to the suspect's statement, the dog had been startled by the woman's scream and had yanked itself free. The statements of the victim and the suspect thus contradicted each other. An outside person, a man, had witnessed the occurrence but had not seen how the dog had slipped the leash. Although the actual course of incidents remained unclear, the police considered that on the basis of the suspect's earlier harassment of immigrants he is likely to hold racist views.

The last of the cases discussed is a case of discrimination where two ethnic minority members were denied entry to a restaurant (Case 6). The restaurant employee at the door had said to the two women that they could not be admitted for security reasons. The customers seeking entry were upset by this refusal, and the situation escalated.

In the pre-trial investigation, interviews were held with the restaurant employee at the door suspected of discrimination, the restaurant owner suspected of discrimination and one of the regular customers of the restaurant as a witness. The restaurant employee stated as the reason

for denying entry that one of the two women had, as the employee recalled, been at the restaurant a few months earlier with a group that had stolen restaurant property. The employee was not entirely sure of this, however. The customer interviewed as a witness also recalled seeing one of the two customers denied entry being at the restaurant earlier with a group that had caused disruption.

The police officer investigating the case did not consider the explanation plausible, and earlier disruption, in any case, was not sufficient reason to deny entry. The police officer felt that it would have been clearer to ban the group involved in the earlier theft from the restaurant altogether, rather than to leave granting entry to the restaurant to the discretion of the person at the door.

8 SUSPECTED CRIMES IN CONSIDERATION OF CHARGES

Of the suspected crimes included in the research material, suspected crimes involving 83 suspects (with one or more suspected crimes each) were submitted for consideration of charges. One person was a suspect in two different reports of an offence, and the cases progressed to consideration of charges at the same time. The suspected crimes submitted for consideration of charges were filed in 47 different reports of an offence. The largest number of persons involved in a single report of an offence submitted for consideration of charges was seven (mass fight).

Table 6 Suspected crimes as principal and secondary offence submitted for consideration of charges

	Principal offence	**Secondary offences**	**Total**
Assault	47	4	51
Breach of honour	8	8	16
Petty assault	8		8
Discrimination	8	2	10
Unlawful threats	5	2	7
Attempted assault	3		3
Aggravated assault	2		2
Public order violation	1	2	3
Profiteering-like work discrimination	1		1
Damage to property	1	3	4
Possession of objects which may be used to hurt others		3	3
Work discrimination		1	1
Aggravated breach of domestic peace		1	1
Working hours offence		1	1
Imperilment		2	2
Resistance to a public official		1	1
Violation of the Contracts of Employment Act		1	1
Total	**84**	**31**	**115**

Most of the defendants (63) were only suspected of one crime. The most common crime in the cases submitted for consideration of charges was assault, which accounted for more than half (54 %) of all principal and secondary offences. The most common secondary offence was breach of honour (Table 6). The following is a discussion of the decisions taken by prosecutors, based on interviews and documentation.

8.1 Decisions to waive charges and justifications for them

Of the 83 suspects in the cases submitted for consideration of charges, 26 were not charged. For three suspects, the consideration of charges was still pending when the research material was being compiled. Table 7 shows the justifications for decisions to waive charges, separately for principal and secondary offences. A total of 30 suspects were not charged for the most severe crime of which they were suspected, i.e. the principal offence. This is more than the number of suspects who were not charged with any crime, because some suspects were, in fact, charged with secondary offences. In one case, for example, the prosecutor considered that there was insufficient evidence to prove assault but sufficient evidence to prove breach of honour in the same situation.

The majority of the decisions to waive charges were due to insufficient evidence (Table 7). Insufficient evidence was cited as justification for waiving charges for a variety of suspected crimes – both assault and discrimination. Statistics show that insufficient evidence is a justification for waiving charges in a large number of cases in general, not just in cases of racist crime. In 2006, insufficient evidence was cited in 65 % of all decisions to waive charges. (Statistics Finland 2008a, 141.) In case of insufficient evidence, the prosecutor may request the police to carry out further investigations under section 15(2) of the Pre-Trial Investigation Act. A further investigation was requested in a few of the cases included in the research material.

Table 7 Justifications for decisions to waive charges for principal and secondary offences

Justification	Principal offence	Secondary offences	Total
No evidence	16	5	21
No right to prosecute	5		5
Minor offence	3		3
Unreasonability	3		3
Overall consideration	1	1	2
Charges withdrawn at hearing	4		4
No crime committed	1		1
No separate justification	2		2
Total	**35**	**6**	**41**

With three of the suspected crimes, no charge was brought because of the minor nature of the offence. All three were cases of breach of honour. One of these arose in a situation where a customer became enraged because of poor customer service and called the customer service employee by a racist name referring to the employee's ethnic origin. According to the prosecutor's decision to waive charges, this occurrence must be considered minor with view to its impact and the guilt of the offender. The prosecutor also referred to chapter 24 section 9 of the Penal Code, according to which criticism that is directed at a person's activities in business and that does not obviously overstep the limits of propriety does not constitute breach of honour. In the two other cases, the breach of honour was considered minor because, among other things, there had been several instances of breach of honour on both sides in the situation in connection with an altercation or scuffle.

In some cases, charges were waived because the concerned parties had reached conciliation. This happened in one case of breach of honour and three cases of assault, involving a total of six suspected crimes of assault. Where a conciliated case involved a private-prosecution crime, the justification entered for the decision to waive charges is that the prosecutor has no right to prosecute. Where a conciliated case involved a public-prosecution crime, on the other hand, the justification entered for the decision to waive charges is the reasonability principle. In the general instructions for prosecutors, this approach is recommended and conciliation is said to be "a particularly recommendable procedure in private-prosecution crimes or offences very similar in nature to private-prosecution crimes" (VKS:2007:4).

In two of the cases discussed in the previous chapter, the prosecutor waived charges because there was no evidence that a crime had been committed. One of these was a case of suspected discrimination where two ethnic minority members had been denied entry to a restaurant (Case 6). The owner of the restaurant and the restaurant employee at the door at the time were suspected of discrimination. In the case of the employee, there was insufficient evidence to bring a charge. In the case of the owner of the restaurant, no crime had been committed, as the owner was not in any contact with the customers and did not talk to them. Since the owner had also not issued any instructions to deny entry to ethnic minority members, according to the prosecutor there was also no liability in this respect.

The restaurant employee reported denying entry to the customers in question because of a suspicion that one of the two women had earlier been at the restaurant with a group that had stolen restaurant property. However, in the interview the restaurant employee was not entirely sure whether it was the same person. The police officer investigating the case, whom I interviewed, considered the explanation implausible. According to the prosecutor, however, identifying the customer with reasonable certainty and suspecting that the customer might again cause disruption at the restaurant constituted sufficient grounds for denying entry. The prosecutor noted that *"in that situation it is better not to take a risk in the restaurant"*. The prosecutor further noted that the denial of entry depended more on who the individuals were and how they had behaved earlier rather than on their ethnic origin.

The suspected attempted assault against a woman of foreign background referred to above (Case 5) was also discontinued because of insufficient evidence. A majority population member was suspected of unleashing his dog to attack a pregnant woman. According to the suspect, he had not encouraged his dog to attack the woman; instead, the dog had yanked itself free with such great force that the leash had snapped. The prosecutor considered that there was no evidence of intent in the occurrence. The eyewitness to the occurrence had seen the dog attacking the woman but had not seen how the dog had got loose. The pre-trial investigation minutes also did not indicate whether the witness had heard the racist slurs which the victim said the suspect had uttered. Since the eyewitness had not seen the occurrence from the beginning, it was a case of 'he said, she said'. According to the prosecutor, if there had been evidence of a crime having been committed there would have been obvious grounds for establishing racial motivation. The suspect and victim were not previously acquainted, and nothing happened between them before the alleged crime — the only reason ascribable to the deed is the victim's ethnic origin.

8.2 Description of charges: applications for a summons

The purpose of the consideration of charges is to evaluate what has been established to have happened and what the specific crime is, if any, whose essential elements the occurrence fulfils. Although the essential elements of crimes that are relevant for the case are usually taken into account in the pre-trial investigation, the prosecutor is required to consider applicable essential elements of crimes in the case independently. (VKS:2007:3.) In most of the reports of an offence included in the research material, the prosecutor had submitted an application for a summons with the same types of offence under which the case had been investigated in the pre-trial investigation conducted by the police. In some cases of assault, the degree of severity had been altered. With two suspects, the prosecutor changed the petty assault entered by the police to assault, and with four suspects, assault was changed to petty assault. In cases where the severity was lessened, charges were also waived because the victim presented no demands in the matter.

In all, the prosecutor demanded punishment for 54 defendants. The prosecutors did not demand an increase in punishment on grounds of racial motivation in any of the applications for a summons. Only in one case of assault was racial motivation cited, and that was at the victim's demand. Even in this case, therefore, the prosecutor had not focused on the motive of the deed. The case was one of aggravated assault using a firearm. According to the complainant's demand, the shooting was to be regarded as aggravated for a variety of reasons, one of them being that the deed was racially motivated.

Racist slurs related to suspected crimes were, in some cases, recorded as breach of honour; this was already noted above in the discussion of reports of an offence: breach of honour is entered alongside assault or some other more serious crime in several cases. In these cases, breach of honour was entered as a type of offence at the pre-trial investigation stage; it was neither removed nor added in any case in the consideration of charges. Because breach of honour is a private-prosecution crime, this is only possible if the victim indicated in the pre-trial investigation conducted by the police that he/she is demanding punishment for breach of honour. Table 8 shows examples describing occurrences where racist slurs were uttered in which breach of honour was entered as a suspected crime in addition to, for example, assault.

Table 8 Racist characteristics of a suspected crime as breach of honour

Description of situation	Crimes recorded in the pre-trial investigation and decision in the consideration of charges
A neighbour harasses a family of foreign background and shouts out racist slurs	Aggravated breach of domestic peace and breach of honour → Charge brought for both
Suspected discrimination where a restaurant employee utters racist verbal abuse to a customer of foreign background combined with petty assault	Petty assault, discrimination and breach of honour → Charges brought only for petty assault and breach of honour. Insufficient evidence for discrimination.
Customer creates disruption in a shop and utters racist slurs to the shop assistant	Assault, breach of honour and damage to property → Charge brought only for breach of honour
Customer creates disruption at a restaurant and threatens a restaurant employee	Unlawful threats and breach of honour → Charge brought for both
Neighbour threatens person of foreign background and calls them names	Unlawful threats and breach of honour → Charge brought for both

The prosecutor's applications for summons included descriptions of the act of breach of honour such as the following: the defendant has defamed the victim(s) *"by calling them by racist names" / "by calling them a whore and a Russki" / "by calling them a crazy Russian whore" / "by calling them negroes" / "by calling them an obscene name" / "by calling them offensive names"*. Some of the applications for a summons record the defaming utterances verbatim, while others describe the breach of honour as being racist in nature, and still others describe it just as being offensive.

The cases of breach of honour described in Table 8 could also be interpreted as cases of assault or unlawful threat with a racist motive, for instance. On the other hand, entering breach of honour as a crime should not prevent the prosecutor from demanding an increase in punishment on the grounds of racial motivation. Breach of honour may also have a racial motivation, which constitutes grounds for increasing the punishment (Illman 2007, 15).

8.3 Identifying racial motivation

Of the five prosecutors I interviewed, only one recalled having demanded an increase of punishment on grounds of racial motivation since the legislative reform enacted in 2003. One of the interviewees reported not having read the Government Bill on the new grounds for increasing the punishment, being specialized in handling completely different kinds of criminal cases. In general, while the prosecutors had little experience of cases of racially motivated assault, they had, however, encountered cases of discrimination more often. Some interviews with prosecutors indicated that there must be strong evidence of racial motivation to be able to demand an increase of punishment in court.

"But that I could say out loud in court that a particular action is racist, I'd have to have concrete evidence of it." (Prosecutor 1)

Like the police, the prosecutors consider that any verbal abuse uttered during the occurrence constitutes important proof of racial motivation. If racial motivation is not expressed in words, it is much more difficult to prove. However, not even racist slurs can always be taken to indicate racial motivation if they may be construed to have been uttered in the heat of the moment rather than because of a person's ethnic origin. One prosecutor said that racist slurs

"— — often come up in fights, where people call each other homos and what have you – it's all in the context." (Prosecutor 3)

One prosecutor said that not all ethnic slurs can be interpreted as indicating racial motivation but rather breach of honour. Another prosecutor, however, reported entering a demand for increasing the punishment specifically in cases of breach of honour involving racist slurs. However, it seems to be considerably more difficult to prove motive than to prove that particular words were uttered in the situation.

If there seem to be other motives for a crime, the racial motivation may be obscured. Another issue is whether the racial motivation has to be the only motive for the crime for the prosecutor to be able to demand increasing the punishment:

"Well, yes, you can always demand it — — But if there's a valid argument going on that would explain that sort of behaviour, then the racism angle somehow takes a lower priority." (Prosecutor 1)

"But how you could find the connection to the crime, it could be rather hard to prove. Whether it's because he's drunk or because he's a racist, which is the stronger motive at the time of the occurrence; it's very difficult." (Prosecutor 4)

Unlike the police, the prosecutors do not take the suspect's earlier criminal record into account in considering racial motivation. In the criminal justice system, each case must be judged on its merits alone. On the other hand, the prosecutor interviews revealed that the background of the suspect, for instance membership of a group espousing a racist ideology, is one of the clearest indicators of racial motivation. In addition to membership of a particular group, a person's outward appearance may indicate adherence to a racist ideology. As a racist crime, some prosecutors recalled a case in which a group of skinheads assaulted a person or group of people of foreign origin.

The prosecutors differed in their views of whether the possible racist characteristics of suspected crimes emerge reliably enough in the pre-trial investigation material supplied by the police. For some prosecutors, the material was detailed enough. Others felt that racist characteristics should be given more focus in the pre-trial investigation so that they could be invoked as grounds for demanding an increase in punishment.

"The prosecutor only has the written material from the police to go on and is not necessarily aware of all the circumstances involved in a case." (Prosecutor 5)

8.4 Applications for a summons in the cases discussed in detail

In the six cases that I monitored in detail through interviewing officials, prosecutors had brought charges in four. In the case of the mass fight between two groups (Case 1), the prosecutor brought charges against all four persons suspected of assault. According to the prosecutor who handled the case, no racist characteristics could be attributed to it. The occurrence was a fight between two gangs where the backgrounds of the gangs were irrelevant. Although one of the concerned parties reported that racist slurs had been uttered in the situation, the prosecutor considered them to be similar to those uttered by majority population members to one another in similar situations.

The prosecutor, like the police, considered it difficult to establish the course of incidents in mass fights such as this. It is particularly difficult to evaluate who did what and whether the assault was committed singly or jointly. According to the prosecutor, it remained unclear at the hearing for the case why the fight originally began, i.e. which group began to taunt the other first.

In the case where an ethnic minority member was chased and verbally abused (Case 3), charges were also brought for the crimes entered in the pre-trial investigation material. The majority population member was charged with attempted assault and the minority group member with assault. The racist slurs were ignored because the minority group member did not say in the pre-trial investigation that he demanded punishment for breach of honour. Although the victim and the witness reported the racist slurs to the police in the pre-trial investigation, the prosecutor did not recall the racist aspect being brought up in court.

In the other case of provocation (Case 2), the prosecutor also brought charges against all persons named as suspects in the pre-trial investigation. Here, the prosecutor decided that the crime committed by the majority population member was assault, whereas in the pre-trial investigation it was entered as petty assault. According to the prosecutor handling the case, the description indicates that the deed was petty assault. However, as the deed was nevertheless marked up to assault, the prosecutor may have decided to "*somehow take into account the motive for the action"*. If the minority population member had not been provoked by the verbal abuse and the incident had remained an altercation, the grounds for increasing the punishment might have been invoked. In this particular case, the assault that resulted from provocation somehow *"trumped the grounds for increasing the punishment, so it never came up"*.

In the fourth case that ended up in consideration of charges among those that I monitored, a woman minority population member had been suddenly and randomly assaulted in the street (Case 4). The case was handled by two different prosecutors, one drawing up the application for a summons and the other prosecuting the case in court. I interviewed both, although neither remembered the case accurately. The suspect was accused of assault, and the application for a summons contained no mention of racist characteristics in the case. According to the prosecutor who was in court, it did come up in the trial how sudden the assault had been, but the reasons for it were not really touched upon. The prosecutor no longer remembered whether the witness testified at the trial to having heard the suspect shout out racist verbal abuse before the assault.

9 JUDGEMENTS OF THE COURT

A total of 50 defendants with one or more counts against them in 27 criminal cases were tried in court. Figure 2 illustrates the progress of suspected crimes from the prosecutor to court. The total number includes all suspected crimes submitted for consideration of charges. At the time of compiling the research material, the consideration of charges was still pending for six suspected crimes. In addition, court proceedings were in progress for five of the suspected crimes included.

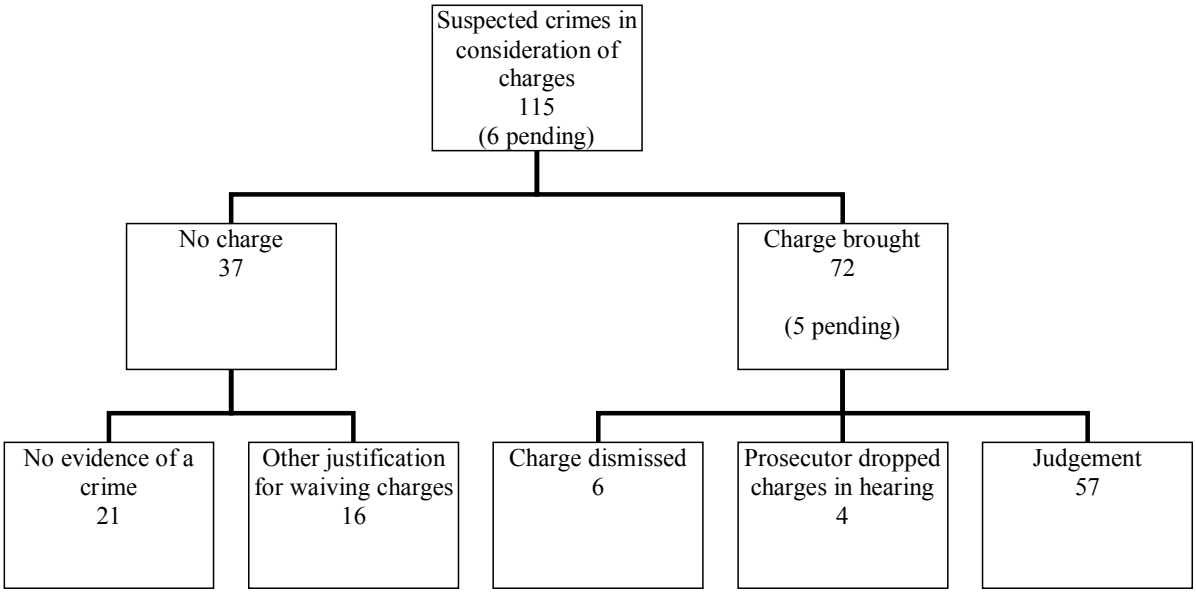

Figure 2 Progress of suspected crimes from consideration of charges to court

The average processing time of the research material cases at the District Court was five months; the shortest time less than two months. The case in question was one of assault. The longest processing time, one year, was taken by a case of discrimination. Statistics show that average processing times in court vary greatly depending on the type of crime. For example, the average processing time in a district court in 2006 was 3.8 months for assault and 3.4 months for petty assault. The processing time is calculated from the time of filing to the time of issuing a judgement. The average processing times are affected by the severity of the crime and the number and lengths of adjournments granted. (Statistics Finland 2008a, 372–373, 395.) The cases of assault included in the research material had an average processing time longer than the overall average – 4.8 months. The number of cases of other types of crime in the research material was so small that it is not feasible to calculate average processing times.

Comparing the levels of punishments in passing sentence on crimes with racist characteristics to statistics regarding sanctions is not a simple affair. If a single defendant is convicted of several crimes, a combined fine or sentence of imprisonment is imposed. It is therefore impossible to isolate what, for instance, a conviction for assault contributed to the overall sanction. Also, the earlier criminal record of the defendant and other cases tried at the same time may also influence the level of sanctions and thus make it impossible to compare them reliably. For these reasons, sanctions are recorded and monitored in three different ways, each with their own ‘pros and cons’, according to Lappi-Seppälä and Niemi (2007). For example, the ‘single crime’ statistics only include cases where the judgement included one crime only. The ‘combined sen-

tence' statistics also comprise judgements that include several crimes, the crime being entered in the statistics being the most severe one listed in the judgement. (Ibid., 333.)

According to the statistics on sanctions practices, more than 80 % of all cases of assault are sentenced according to the ordinary provisions on assault. Two thirds of those convicted of assault are sentenced to a fine – 40 day-fines on average. Sentences of imprisonment for assault are 2 to 4 months on average. (Ibid., 336.) In the cases with racist characteristics that have progressed to court, 29 persons have so far been convicted of assault only, or of assault as the most serious crime in the judgement. Out of these defendants, two thirds (21 out of 29) were sentenced to a fine – 40 day-fines on average. Eight persons were sentenced to imprisonment or given a suspended sentence.

The comparison seems to indicate that the sanctions imposed in judgements in cases with racist characteristics are similar to general sanctions practices. However, it must be taken into account in statistical comparisons that some of the assaults with racist characteristics occurred in situations where the assault was committed because of racist provocation. Such cases cannot be considered equivalent in the statistical sense with cases where the assault was racially motivated. In the case of a limited sample of material, the most feasible approach is to consider the sanctions in the context of the occurrence. The following is a discussion of the sentences imposed in the light of documentation and interviews.

As with the prosecutors' applications for summons, the racist characteristics of the deed are referred to in some court documents. For example, the notes on the consideration for the attribution in a case of breach of honour states that the deed was a racist offence and was also offensive "in an objective sense". However, the notes on the consideration for sanctions and the operative parts of the judgements indicate that racial motivation was not invoked as grounds for increasing the punishment in a single one of the cases studied. This is hardly surprising, since an increase of the punishment because of racial motivation was only imposed 14 times in the entire country in 2006. (Statistics Finland 2008a, 252.).

Although the prosecutors did not in their applications for summons demand increasing the punishment on the grounds of racial motivation, they could have also entered this demand at the main hearing. By law, a prosecutor may augment a charge by appealing to new material facts, changing the criminal law significance of the description of the deed without changing the description of the deed itself, its execution or its consequences (Virolainen 2007, 426–427). This, however, had not happened in these cases on the basis of the documentation, i.e. the notes on the consideration in the judgement and the court records.

In the only case of aggravated assault in the research material, referred to in the previous chapter, where the victim actually referred to racial motivation in the demand for punishment, the court considered that racial motivation had not been proven. The notes on the consideration in the judgement state that there were conflicting reports of the defendant's shouting of racist slurs. The notes further state that even if the suspects had been shouting racist slurs, the court considers that the motive for the deed itself was a completely spontaneous incident where the concerned parties could have been anyone at all, regardless of their ethnic origin.

Out of the cases monitored in detail, four cases of assault were tried in court. I have discussed two of these cases with a judge and one with a lay judge. In a mass fight between two groups (Case 1), there were four defendants. All those accused of assault were convicted and sentenced to a fine, while some of them were also sentenced to pay damages of various sizes. The judge did not consider that anything unusual emerged during the trial, and the defendants, on the whole, admitted to what they had done. Although one of the members of the group of foreign origin had stated in the pre-trial investigation that the majority population members had called them racist names, this verbal abuse was no longer referred to in court according to the

judge. In other words, none of the officials I interviewed in connection with this case considered this mass fight to have been racially motivated. The interviewees noted that this was simply an encounter between gangs and that the ethnic origin of the groups was irrelevant in the situation. As the judge in the case comments, in cases like this *"it's just a coincidence that it happened to be a gang of Finns on the other side, and it could be the other way around too, of course"*.

In the case where a minority population member was chased (Case 3), the majority population member who had shouted racist slurs was accused of attempted assault. The ethnic minority population member accused of assault stated that he had acted in self-defence. The majority population member was convicted of attempted assault and sentenced to 25 day-fines. The charge of assault against the minority population member was dropped, as it was ruled to be justifiable self-defence. The court considered in the notes on the consideration in the judgement that the chase and attempted assault against the minority population member was such a threatening situation that striking the attacker was necessary to stop the attack.

According to the judge who tried the case, the concerned party of foreign origin made it clear that the chase and attempted assault were due to his ethnic origin. The judge ruled that even by objective criteria the situation was a threatening one and the ethnic origin of the other concerned party could be considered a contributing cause. Although the prosecutor did not demand an increase of the punishment on the grounds of racial motivation, the judge could have made this ruling ex officio. However, the crime in question was merely attempted assault, and the effect of increasing the punishment would probably have been negligible anyway. This is a case where the police and the judge considered the crime to be racially motivated, whereas the prosecutor had not noted this.

In the other provocation case (Case 2), the charge of assault against the majority population member was dropped. The minority population member who was provoked by the racist verbal abuse of the majority population member was convicted of assault and given a suspended sentence. I interviewed a lay judge who was involved in the trial. Although this lay judge no longer recalled the case very well, it seemed obvious that the racist angle was no longer referred to when the case came to court. The police had considered the occurrence to have been racially motivated, as had the prosecutor to some extent; however, according to the lay judge this was not referred to in court.

In the case of sudden and random assault against a woman of foreign origin (Case 4), the defendant was convicted and sentenced to 60 day-fines. He was also sentenced to pay damages to the victim to compensate for aches and pains and for mental suffering. In the pre-trial investigation of the case, the witness to the incident had reported that the suspect had shouted racist slurs before the assault itself. However, the notes on the consideration in the judgement contain no mention of whether the witness referred to this in court or not.

Two cases of discrimination in the research material went to court – one leading to a conviction. In this case, the restaurant employee was convicted of a discrimination offence and sentenced to 35 day-fines and also to pay damages to the two victims to compensate for mental suffering. It is often difficult to present conclusive evidence in cases of discrimination, especially if there are no outside witnesses to the occurrence. In this case too, it was one person's word against another's. The attribution was based on the fact that the court considered the story of the two victims regarding the discrimination situation more credible than the defendant's story because the defendant claimed in court not to remember the situation at all despite denying the charge.

10 SUMMARY AND CONCLUSIONS

Studies on the number and characteristics of racist crimes reported to the police in Finland have been conducted since 1997. According to these studies, racist crime has been increasing. The Penal Code was amended in 2003 to make racial motivation grounds for increasing the punishment for a crime (Penal Code, chapter 6 section 5(1)(4)). In the preparation for this amendment, it was considered that racist crime may be considered more serious than average as it is aimed at minority groups who require special protection (HE 44/2002).

The purpose of the present study was to explore how suspected crimes with racist characteristics progress in the judicial system from the pre-trial investigation through prosecution to court proceedings. Another purpose was to explore how the officials take the racist characteristics of a deed and its possible racial motivation into account at various stages in the criminal justice process. The study focused on 107 reports of an offence with racist characteristics filed in the Helsinki jurisdictional district in 2006. The research material was compiled by retrieving from the Police information system such reports of an offence that were classified by the police as racist crime or which could otherwise be classified as racist crime. In addition to the reports of an offence and the pre-trial investigation material, the material used included the prosecutors' applications for a summons and decisions to waive charges, and court documents.

Most of the crimes reported were petty assaults and assaults. Discrimination, breach of honour, unlawful threats and damage to property were also common types of offence. In many of the cases of assault, the deeds were sudden and random with no prior contact between the suspect and the victim. Reports of an offence had also been filed concerning situations where a person had been defamed or threatened but no physical violence had been used. Fights between two or more people, with crimes committed by all parties, were also typical situations in the reports.

Although it would have been possible to monitor the progress of the cases on the basis of the documentation alone, I selected a few cases for closer study and interviewed the police officers and judicial officials involved in those cases. The interviews provided a better insight into how and for what reasons cases progress in the criminal justice process and how racist motives are identified. However, it was not possible within the scope of this study to conduct a sufficient number of interviews to draw general conclusions of what the attitudes to racist crime are among police officers, prosecutors and judges in the Helsinki jurisdictional district. The interviews principally support the conclusions that may be drawn from the documentation.

Out of the 192 principal offences reported to the police, just under half (46 %) were submitted to the prosecutor for consideration of charges. The most common reasons for suspected crimes not progressing from the police to the prosecutor were that the suspects remained unknown, that the victim had presented no demands in the case, or that the victim had withdrawn an earlier demand. In the case of private-prosecution crimes such as petty assault or breach of honour, a pre-trial investigation may be conducted and the case submitted for consideration of charges only if the victim chooses to prefer charges. Typical cases in which the victim did not wish pursue to matter further were cases of fights where all parties involved had committed offences.

The research material is a small sample, and this places limitations on how the investigation of suspected crimes or the sanctions imposed on different types of crime may be compared to overall crime statistics. Only assault and breach of honour are represented in the research material in sufficient numbers to enable feasible statistical comparisons. A larger percentage of cases of breach of honour with racist characteristics was solved than of cases of breach of honour in

general – both in Helsinki and nationwide.

The clear-up rates for cases of assault were lower: 64 % of the cases of assault in the research material and 42 % of the cases of petty assault had been solved, whereas the comparable nationwide figures in 2006 were 81 % and 73 %, respectively. However, the difference to the comparable figures for Helsinki in general was not as great. In Helsinki, the clear-up rate was 71% for assault and 62 % for petty assault in 2006. One cause of the lower clear-up rates may be that in cases of assault with racist characteristics, the suspects are more frequently unknown to the victim than in other types of assault, which makes it much more difficult to solve the crimes. In cases of petty assault with racist characteristics, a contributing cause to the low clear-up rate is that victims did not wish to pursue the cases further. On the basis of this study, it is not possible to ascribe any other reasons to the discrepancies in clear-up rates.

More than two thirds of the suspects in the cases submitted for consideration of charges were charged with at least one crime. The most common reason for the prosecutor deciding to waive charges was the same as the statistically most common reason for decisions to waive charges – insufficient evidence. The sentences for convictions in cases of assault with racist characteristics were similar to the general sanctions practice in cases of assault. Two thirds of the defendants convicted of assault were sentenced to an average fine of 40 day-fines. Other types of offence numbered so few in the cases in the research material that went to court that it is not possible to make reliable comparisons with statistics.

The results indicate that suspected crimes with racist characteristics progress just like 'ordinary' crimes in the criminal justice process. Problems in the progress of suspected crimes with racist characteristics have to do with the identification and investigation of racial motivation and taking it into account as grounds for increasing the punishment. This, however, is not a problem exclusive to Finland; it has also been observed in studies in the field abroad that it is particularly difficult to identify and prove a hate motive (Bell 2002; Burney & Rose 2002). In the UK, for example, a crime may, by law, only be defined as a racist offence if the offence is racially motivated or if the offender demonstrates towards the victim hostility based on the victim's membership of a racial group. According to a UK study, few cases of racist crime that went to court involved actual racial motivation. (Burney & Rose 2002.)

Most of the suspected crimes with racist characteristics are crimes whose motives do not usually need to be established in the pre-trial investigation, unlike homicides, for example. Establishing the motive is often more difficult than establishing what crime has been committed. As indicated in earlier research, suspects rarely admit to racial motivation (Burney & Rose 2002). This study leads to the conclusion that there is no systematic way of establishing racial motivation in a pre-trial investigation. In some cases, racist characteristics emerged in the report of an offence or the police pre-trial investigation material through verbatim reporting of the statement of a witness or victim as to what racist slurs were actually uttered in the situation. If this only emerged in the victim's story, and the victim did not demand punishment for breach of honour, for instance, apparently no effort was made to find witnesses for the verbal abuse in the pre-trial investigation.

Indeed, recording such abuse in the minutes of the interview is probably the only way for the prosecutor to find out that the suspected crime has racist characteristics. Even if the police enters the racism code on the record, this classification is not visible in the material submitted to the prosecutor. The classification only exists for statistical purposes. Racist characteristics were mentioned not only in the pre-trial investigation material but also in some of the applications for a summons drawn up by the prosecutors. For example, in a case of breach of honour it might be explained in detail which racist epithets were used in the situation. In other cases, the application for summons simply classified the crime as racist, while in others it might be clas-

sified generally as offensive. It would seem that information on racist characteristics involved in a suspected crime is conveyed from one official to another in the criminal justice process in a somewhat random manner.

Although in some cases racist characteristics were clearly apparent in the pre-trial investigation material submitted by the police, the prosecutors did not demand an increase in the punishment on the grounds of racial motivation in a single case in the research material. The court also never brought up racial motivation at its own initiative nor took them into account in imposing sanctions. On the other hand, the judge I interviewed felt that this would not be "good procedure"; it would be better for the prosecutor to make this demand.

Some of the crime situations with racist characteristics were such that the victim had been verbally abused or threatened without actual physical violence. It was also typical for racist slurs to be uttered in connection with an assault or a mass fight. In these cases, breach of honour was entered on the report if the complainant has so demanded. In these cases, racist slurs are typically taken into account further down the line: where the police have entered breach of honour as a suspected crime in a case, the prosecutor has brought a charge against it and the court has confirmed the charge. If racist slurs uttered in a situation where a crime is committed are only taken into account as a case of breach of honour (or are ignored), and a racist motive is not considered, racial motivation as grounds for increasing the punishment as provided for in the Penal Code becomes irrelevant. The purpose of the law to provide special protection for minority population groups is then not fulfilled.

The interviews with police officers and judicial officials revealed the same kinds of factor that earlier research has shown as background factors for identifying racial motivation (Bell 2002; McPhail & Jennes 2005). These factors delimit the range of situations where racial motivation might be imaginable. For the same reasons, the threshold for prosecuting for racial motivation would seem to be very high. If there are other factors involved in a crime such as an argument before the occurrence, any racist characteristics may be obscured by them. A pre-trial investigation often uncovers other potential reasons for a crime, especially through the statement of the suspect. Also, some of the crimes included in the research material appeared to be highly random rather than premeditated. The random nature of a crime contradicts the principle that a specific motive presupposes premeditation. Therefore, breach of honour (such as uttered slurs) is probably easier to prove than the actual motive. Indeed, words uttered in the situation itself are often the only indication that there may have been racial motivation underlying the crime; and if there are no witnesses to these utterances, it is more difficult to prove the motive.

Under the Penal Code, grounds for increasing punishment include circumstances where "the offence has been directed at a person belonging to a national, racial, ethnic or other population group due to his/her membership in such a group". According to the relevant Government Bill, the "other" population groups may be construed to include certain religious communities and sexual minorities (HE 44/2002). So far, there is no information available in Finland on how many hate crimes, other than cases of racist crime, are reported to the police. The Police College of Finland is planning a project to improve and expand the monitoring of and statistics on racist crime to cover all hate crimes.

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