

TACKLING HATE SPEECH AIMED AT GYPSIES, TRAVELLERS AND ROMA

by

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Introduction

On 27 January 2015 we commemorated the 70th anniversary of the day when Soviet troops liberated the Nazi death camp at [Auschwitz-Birkenau](#). Quite rightly we reflected upon the terrible fact that the Nazis murdered 6 million Jews in the Holocaust. Yet there was little mention of the hundreds of thousands of Romani Gypsy and Sinti¹ people that were also murdered by the Nazis during World War II in what has become known as the Porrajmos (the 'Devouring').

How were the Nazis able to commit these terrible crimes with impunity? The Nazi propaganda machine played a very significant role by reinforcing age old prejudices. Romani Gypsies and Sinti were made scapegoats, blamed for the ills of society and characterised or stereotyped as anti-social thieves and vagabonds and dehumanised. The propaganda campaign worked; the settled population had been conditioned to believe what they were being told (by what would now clearly be understood as 'hate speech'²) and there was little opposition when Romani Gypsies and Sinti were rounded up before being transported to camps from which they would never return.

70 years later the horror of the Nazi concentration camps is hard to imagine but the widespread prejudice that Roma face in Europe (known as 'anti-Gypsyism' or 'Romaphobia') has not abated and is an unwelcome fact of their daily lives.

Politicians throughout Europe continue to use hate speech against Roma which in turn creates a climate in which racist violence is thought acceptable by offenders and, tragically, in recent years Roma have been the victims of violent racist attacks and murder. For example, in 2012 a Slovakian policeman shot dead 3 Roma and severely injured two more in a killing spree which he said was motivated by a desire to 'solve the Roma problem'; whilst in 2013 four men with links to nationalist organisations were jailed in Hungary for 9 separate attacks on Roma and the murder of 6 people. Meanwhile, Roma continue to be forcibly evicted from their homes without the provision of suitable alternative accommodation, their children continue to suffer segregation in schools and they tend to live on the margins of society.

¹ Note that the term 'Roma' is used by the Council of Europe and the European Union to include Romani people, Sinti, Kale, and other related groups living in Europe, as well as ethnic minorities that identify themselves as Romani Gypsies and Irish Travellers.

² The Council of Europe's Committee of Ministers' Recommendation 97(20) defined the term in the following way: 'the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.'

Here in the United Kingdom, Romani Gypsies, Travellers and Roma migrants are amongst the most discriminated ethnic groups in our society and they are routinely targeted by those using hate speech both online³ and in the media.

The internet can provide those who wish to disseminate hate speech with the chance to spread words of hate with unprecedented effectiveness. Some online comments may be read by thousands, whilst others will be completely overlooked; whether a comment goes 'viral' is likely to depend upon the nature of the comment, the form of expression used, the platform chosen (e.g. a personal website, blog, forum, online news comment threads, facebook, twitter or youtube) and its audience.

Hostile media coverage of Romani Gypsies, Travellers and Roma migrants often occurs when the views of local and national politicians are reported. The problem can be particularly acute in the run up to elections when some politicians see the chance to win votes by playing on the fears and prejudices of the general public and the media publish their views. The risk that it will happen in the next few months, before the 2015 General Election, is very real.

How then should hate speech aimed at Romani Gypsies, Travellers and Roma be tackled effectively? In this blog I suggest that the answer is simple. It is high time that, in appropriate cases, the Police and the Crown Prosecution Service (CPS) use their existing powers to prosecute the perpetrators (whoever they may be) for inciting racial hatred.

Inequalities faced by Romani Gypsies, Travellers and Roma in the United Kingdom

Romani Gypsies and Travellers have been living in Great Britain for hundreds of years yet they remain amongst the most disadvantaged racial groups in our society with low levels of life expectancy, high vulnerability to serious illness, poor mental health, high child mortality rates and low levels of educational attainment and literacy.

A key contributor to the poor socio-economic condition of Romani Gypsies and Travellers is the fact that thousands of families still have no lawful place to station their caravans and live their traditional way of life. Meeting the accommodation needs of Romani Gypsies and Travellers should be a relatively simple task but, in the face of widespread prejudice amongst the settled population, there has been little political will to bring in legislation which will achieve that goal: meanwhile, those Romani Gypsies and Travellers without lawful sites face continual eviction and a forced nomadic life in which children cannot attend school and healthcare needs are not properly addressed.

³ By way of example, a recent survey showed that Romani Gypsies and Travellers were the number one targets of hate speech on twitter - see <http://www.wired.co.uk/news/archive/2014-06/18/hatebrain-stats-uk>

Ethnic Romani Gypsies, Irish Travellers, Scottish and Welsh Gypsy Travellers are all entitled to protection from discrimination under our equality legislation. However, despite the fact that such legislation has been in force for decades and has developed considerably to protect against increasingly subtle forms of discrimination, Romani Gypsies and Travellers still experience discrimination of the most overt kind. By way of example, 'No blacks, no Irish, no dogs' signs disappeared long ago, but 'No Travellers' signs, used intentionally to exclude Romani Gypsies and Travellers, are still widespread.

In 2004 Trevor Phillips, then the Chair of the Commission for Racial Equality (CRE), compared the prejudice experienced by Romani Gypsies and Travellers living in the United Kingdom to that of black people living in the American Deep South in the 1950s.

In an attempt to improve the situation the CRE conducted a major research project into how local authorities in England and Wales were promoting equality of opportunity and good race relations in their work relating to site provision for Romani Gypsies and Irish Travellers. The findings of that research were published in 2006 in the report ['Common Ground: Equality, Good Race Relations and Sites for Gypsies and Irish Travellers'](#).

More recently, in 2009 the Equality and Human Rights Commission (EHRC) published a report entitled ['Inequalities experienced by Gypsy and Traveller Communities: A review'](#) and a briefing entitled ['Gypsies and Travellers: Simple solutions for living together'](#). In the executive summary of the 'Inequalities' report the authors stated that:

*'Racism towards most ethnic minority groups is now hidden, less frequently expressed in public, and widely seen as unacceptable. However, that towards Gypsies and Travellers is still common, frequently overt and seen as justified. **Abusive media coverage and overtly racist statements from local and national politicians add to the ignorance and prejudice of many members of the settled population, while those in authority frequently fail to challenge them.** Complaints abound from members of the communities included in this review: of services being not welcoming or refused; of employment offers being withdrawn; and of people being harassed in or dismissed from employment. While Gypsies and Travellers have experienced such hostility for centuries, what is remarkable – and shameful – is that this continues in the present day, despite a wealth of legislation to promote equality and human rights and protect against discrimination.'* (emphasis added)

The hostile media coverage of Romani Gypsies and Travellers in the United Kingdom has also drawn criticism from a number of international bodies and organisations.⁴

⁴ See UN Human Rights Council Eighth Session, 2008, *Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland*, page 15, para 15.

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/A_HRC_8_25_United_Kingdom_E.pdf

and UN CERD, September 2011, *Concluding Observations, Seventy Ninth Session, United Kingdom of Great Britain and Northern Ireland*, page 6, para 27, page 2, para 11

<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf>

By way of example, in its 2010 report on the United Kingdom, the European Commission against Racism and Intolerance⁵ stated that it was concerned to note that:

*'...Gypsies and Travellers are regularly presented in a negative light in the mainstream media, and in particular in the tabloid press, where they are frequently portrayed, for example, as being by definition associated with ... sponging off British society, making bogus claims for protection and being troublemakers. ECRI is concerned not only at the racist and xenophobic messages themselves that are thus propagated by the media, but also by the fact that civil society actors have in some cases observed direct links between minority groups targeted by the media and minority groups targeted in violent attacks.'*⁶

Right to freedom of expression and hate speech

As a society we place great value in the right to free speech, or freedom of expression. That right is protected by Article 10 of the European Convention on Human Rights.

The right to freedom of expression necessarily covers expression that may 'offend, shock or disturb' certain groups in society.⁷ Moreover, it should not be forgotten that democracy is not without its rough edges and that tough talk is part of the cut and thrust of public debate and discourse.

However, Article 10 does not protect hate speech, whether it is expressed by politicians, journalists or individuals.

The case of [Feret v Belgium](#) (2009) (App No. 15615/07) amply demonstrates the point. The European Court of Human Rights (ECtHR) dismissed a complaint brought by the chairman of the Front National political party that his Article 10 rights had been violated when he was convicted for publicly inciting hatred, following complaints relating to the distribution of election campaign leaflets. The ECtHR observed that the leaflets presented immigrant communities as criminally-minded and keen to exploit the benefits they derived from living in Belgium and that they also sought to make fun of the immigrants concerned, with the inevitable risk of arousing, particularly among less knowledgeable members of the public, feelings of distrust, rejection or even hatred towards foreigners. Although the ECtHR recognised that freedom of expression is especially important for elected representatives of the people, it reiterated that it was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance.

⁵ See http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

⁶ See also Rachel Morris, Cardiff Law School, *Gypsies and Travellers; Press regulation and Racism*, Communications Law, 2000 Vol 5, No.6 p. 213 <http://www.media-diversity.org/en/additional-files/documents/Z%20Current%20MDI%20Resources/Gypsies,%20Travellers%20and%20the%20media%20-%20press%20regulation%20and%20racism%20in%20the%20UK.pdf>

⁷ See [Delfi As v Estonia](#) (2014) (App No 64569/09) and also [Handyside v United Kingdom](#) (1976) 1 EHRR 737 at para 49.

Inciting racial hatred

In the United Kingdom, those using hate speech (in whatever form⁸) may commit the criminal offence of inciting racial hatred. Whether they do so will depend upon whether the words used are *'threatening, abusive or insulting'* and they intend to *'stir up racial hatred'*⁹ or, *'having regard to all the circumstances racial hatred is likely to be stirred up thereby'*.¹⁰

In addition, those who publish hate speech may also commit a criminal offence.¹¹ However, publishers will not be guilty of an offence if they can show that they were *'not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.'*¹²

Decisions to prosecute

The CPS explains the way in which it deals with racist crime in a policy document entitled [Prosecution Policy on Racist and Religious Crime](#). It should be noted that prosecutions for incitement to racial hatred cannot be brought without the permission of the Attorney General and that a decision to prosecute will only be taken if there is enough evidence to provide a realistic prospect of conviction and if it is considered that a prosecution is needed in the public interest. Significantly, the *Policy* states that:

'We regard any offence motivated by hostility towards the victim because of the victim's ethnic or national origin or religious beliefs as being more serious. Also, we are aware that even relatively minor racist or religious crime can have a disproportionately large impact upon individual victims. As a result, the public interest in racist and religious hate crime cases that are referred to us will almost always be in favour of a prosecution.'

In addition the CPS has issued [Guidelines for prosecutors on assessing the public interest in cases affecting the media](#) which make clear that the media should not be afforded special status under the criminal law. The *Guidelines* explain that the CPS should consider whether the public interest served by the publication outweighs the overall criminality and give examples of conduct which is capable of serving the public interest, such as the disclosure of the fact that a criminal offence has been committed or the fact that a miscarriage of justice has occurred.¹³ However, in the

⁸ This can include such things as making a speech, displaying a racist election poster, publishing written material, performing a play or broadcasting something in the media.

⁹ Racial hatred is defined in section 17 POA 1986 as *'hatred against a group of persons ... defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins'*.

¹⁰ See section 18 of the Public Order Act (POA) 1986.

¹¹ See section 19 POA 1986.

¹² See section 19(2) POA 1986.

¹³ See para 31 of the *Guidelines*.

absence of such circumstances there can be no excuse for the reporting of hate speech and a prosecution should be brought.

Conclusion

Article 10 does not protect hate speech whether it is disseminated by politicians, journalists or individuals. The case of *Feret v Belgium* demonstrates the tough line taken by the ECtHR and provides politicians with a salutary reminder before the General Election that they should avoid comments that foster intolerance and are likely to stir up racial hatred when expressing themselves in public.

It is vitally important that those affected by hate speech report it to the Police and that the Police properly investigate such complaints. There is a clear and compelling public interest in prosecuting perpetrators and, if the CPS and the Attorney General use their powers effectively, then we may yet tackle what has become known as the last bastion of socially acceptable racism in the United Kingdom; hate speech aimed at Romani Gypsies, Travellers and Roma.

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