

Racism and xenophobia in the EU Member States

trends, developments and good practice in 2002

Annual Report - Part 2



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EUMC - Annual Report
Part 2

FOREWORD

By the Chairman Mr. Bob Purkiss and the Director Ms. Beate Winkler

This Annual Report of the EUMC on the situation in 2002 is published during the year when the two Council Directives on equal treatment – the Racial Equality Directive and the Employment Equality Directive - are due to be transposed into the legislation of Member States. The Racial Equality Directive prohibits racial discrimination in employment as well as in areas such as training, education, housing, and the supply of goods and services, and the Employment Equality Directive covers discrimination based on religion or belief, disability, age and sexual orientation in relation to access to employment, working conditions, training and membership of organisations such as trade unions.

This EUMC report details the developments over 2002 in legislative and institutional initiatives that Member States have taken by way of preparation for the Directives. While some Member States attempted to exceed the minimum standards set by the Directives, it has since become clear that the majority did not fulfil their obligations to transpose the Racial Equality Directive into their own national legislation by 19th July 2003. Only a minority have approached anything near a level which could be seen as complying with the obligations, and it seems that some countries had taken no steps at all by July 2003 to start the legislative transposition procedure.

This report also looks at national developments in education and employment over 2002, two of the main areas covered by the Racial Equality Directive. Evidence of discrimination comes from complaints raised by victims or by concerned NGOs, as well as from various surveys and research inquiries, though much of this data is not yet comparable among Member States due to widely differing monitoring practices. The report also shows encouraging evidence of new initiatives to combat discrimination and embrace diversity.

Another major theme of this EUMC Annual Report is racist and xenophobic violence and crimes. The report sets out the data available for each Member State in 2002, with cases of the crimes themselves and examples of initiatives to combat them. However, the report also shows that records on racist crimes in the Community and its Member States are not consistent or reliable, and recording systems are constantly being changed. For the majority of the Member States it is therefore not possible to assess national trends on racist crimes or make meaningful cross-national comparisons. At European Union (EU) level, the draft Council Framework Decision for combating racism and xenophobia, proposed in 2001, is still under debate. The main purpose of this Council Decision is to define a common criminal law approach in the EU to the phenomena of racism and xenophobia to ensure that all Member State

categorise the same type of racist acts as criminal offences. If agreement was to be reached on this proposal, it would provide an important tool for measuring, comparing and, most importantly, combating racist crime.

Over the coming year the EUMC will continue to play its full part in fostering the principles of equality and diversity, raising public awareness of discrimination, and measuring progress towards a fair European society free from racism and xenophobia.

PS by Bob Purkiss

As this is the last report published under the stewardship of the current EUMC Management Board, I would like to express my deep gratitude to my fellow Board members, the Director and our staff for all the support they have given me in my role as Chair. I trust that the new Board, together with the Director and staff, will continue the EUMC's important work, which is contributing to fighting and eradicating the prejudice and racism that still affect the lives of so many people in Europe everyday.

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1. Executive Summary

1.1. Introduction

The Annual Report for 2002 has two main themes. The first is to give a wider European perspective on the preparation for the implementation into national legislation of two new European laws on equality. The deadlines for implementation of Council Directives 2000/43/EC¹ (Racial Equality Directive) and 2000/78/EC² (Employment Equality Directive) are 19 July and 2 December 2003 respectively. The first part of Chapter 2 of this Annual Report focuses on developments over 2002 in legislative and institutional initiatives, and in particular what Member States have been doing in the way of preparation for these two Directives.

The Racial Equality Directive prohibits discrimination in a number of areas, including employment and education. Therefore, Chapter 2 also looks at statistics, cases and developments in education and employment in different Member States over 2002. This highlights in both areas new initiatives to combat discrimination and promote diversity, and at the same time points to the existence of unacceptable facets of inequality and discrimination which serve to confirm the original need for the Equality Directives.

The second main theme of this year's EUMC Annual Report is racist and xenophobic violence and crimes in Member States. In Chapter 3 we set out for each Member State in turn the latest data available in 2002 on this, with analyses and examples of cases to illustrate both the crimes themselves, and initiatives to combat them.

1.2. Legislative initiatives

The adoption of the Council Directives 2000/43/EC (Racial Equality Directive) and 2000/78/EC (Employment Equality Directive) in 2000 to promote equality and combat discrimination on the grounds of race or ethnicity, religion or belief (amongst others) signalled the intent of the EU Member States

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

to incorporate into national legislation by 2003 minimum standards across the EU in key fields of discrimination. The application of the Directives will therefore go beyond the immediate task of combating discrimination and promoting equality to the important work of supporting social cohesion and the free movement of labour at the national and European level, and enabling all people in the EU to engage in social and economic activity. The information provided in this report covers the situation regarding the incorporation into national legislation of the Racial Equality Directive (implementation deadline 19 July 2003) up to October 2003 and developments related to the Employment Equality Directive up until October 2003.

According to the European Commission six out of fifteen Member States - Belgium, Denmark, France, Italy, Sweden and the United Kingdom - had notified the European Commission of their partial or full application of the Racial Equality Directive by early October 2003. In addition, two Member States have yet to take any significant action to apply the Directives, namely Germany and Luxembourg. The European Commission has responded by launching proceedings against Member States for a variety of reasons.

Preparations for incorporating the Directives into national legislation have been carried out in different ways by the Member States. Some Member States focused on amending their current legislation; others were moving the main body of their legislation into the sphere of civil law. Some were including the Directive on gender equality in employment as part of an overall package of equal treatment legislation. The legal basis to combat discrimination at the national and European level should be considerably strengthened when Member States apply the EU Directives and begin to implement them effectively. A line has now been drawn which sets minimum standards, and benchmarks the future developments on non-discrimination.

1.3. Discrimination and disadvantage in education

Despite a lack of statistics in most Member States on the educational achievement of different migrant and minority groups, reports from 2002 continue to show that ethnic minorities perform less well in school and attain lower school credentials compared to the majority populations. The OECD PISA study, conducted in 2000, assessed the reading, mathematical and scientific literacy of 15 year olds in many countries of the world, including EU Member States. Since the results were released in December 2001, there has been a continuing analysis of the findings, which highlight the generally weaker educational performance of students who are themselves immigrants or whose parents were foreign-born. During 2002 the PISA study stimulated national debates in several Member States on the treatment of the children of migrants and ethnic minorities within the educational system.

Reports from the various countries during 2002 show that the children of migrants and ethnic minorities have higher drop-out rates, spend fewer years in secondary schooling, and even experience higher rates of deliberate expulsion. Ethnic minorities can be seen to be segregated into some parts of the educational system and excluded from others, sometimes by the accident of social forces, but also sometimes by deliberate design.

1.3.1. Positive initiatives

At the same time there are positive developments in the educational sphere. In most Member States there are signs of an increasing number of initiatives to further the equal integration of migrants and ethnic minorities into schooling and to combat discrimination, not least as a result of ongoing broader debates on new national integration policies and measures. Many countries have made new efforts to improve the schooling of migrants by developing special curricula and language programmes or projects (Belgium, Denmark, Greece, Spain, Ireland, Austria, Sweden) and in the Netherlands the government is starting to think about measures to counteract the trend of ethnic segregation in the field of education.

However, in some areas there are quite contradictory developments, such as with mother-tongue teaching. Mother-tongue instruction has been recognised by many experts as fostering the language development of both the native language as well as the language of the country of immigration, and facilitating educational achievement in general. Some Member States, such as Greece, do not provide any mother-tongue teaching for the children of migrants, and never have done. Some Member States are for the first time recognising the new issue of diversity in their classrooms, and are starting to provide elements of mother-tongue teaching. Some Member States have been providing it for years and continue to do so. In Denmark it has been provided until now, but the government has decided to abolish the municipal obligation to provide it for the children of non-EU migrants (whilst keeping it for the children of EU nationals, as required by EU law).

1.4. Discrimination and disadvantage in employment

In the employment sphere, statistics show that segregation persists – a concentration of ethnic minorities and migrants in some narrow sectors and types of work, and a virtual exclusion from others, with an over-representation in the least desirable types of work. Evidence for discrimination during 2002 can be categorised under five headings: workplace complaints, surveys of the minority population, surveys of the majority population, direct evidence and indirect evidence.

Data on work-related complaints are perhaps the single most important source of evidence on discrimination in employment. In general, complaints concerning employment refer mainly to wages, payment of overtime, recruitment, contracts, racial harassment, and promotions. Opinion surveys of the majority population on their attitudes towards migrants and minorities frequently reveal negative attitudes or prejudices. Surveys in 2002 included one where a majority of Portuguese respondents felt that immigrants were inferior workers,³ and a survey of Italian entrepreneurs who expressed negative attitudes to immigrants.⁴ Here the most hostile attitudes were found in smaller firms.

Direct evidence of discriminatory practices comes from matched pair “discrimination testing”. In 2002 this particular test was reported in Austria, when a Viennese male and an Austro-African male, both having the same qualifications and legal conditions for entry into the labour market, applied for the same 21 jobs. This experiment demonstrated that male native Austrians are disproportionately more likely to be invited to interviews than equally qualified applicants of African descent.⁵ Indirect evidence comes from broader statistical surveys. Reviewing the results of such analyses for the United Kingdom, a 2002 study by the UK Cabinet Office concluded that there can be little doubt that part of the explanation for ethnic differences in employment opportunities that remain after key variables have been accounted for must lie in racial discrimination.⁶

The statistics show that migrants and ethnic minorities have a more precarious hold on work than the majority population. In employment, like in education, we see a kind of higher “drop out” rate, in this sense reflecting the classic “industrial reserve army” syndrome, with migrant workers and ethnic minorities still more likely to lose their jobs in an economic downturn, because of their over-representation in fixed-term and inferior contracts. An illustration of this precariousness could be seen in March, during the strawberry harvest in Huelva, when Spanish farmers recruited 6,700 immigrants from Eastern Europe. This left unemployed about 5,000 Moroccan workers, who had been working as strawberry pickers in the area for years.

³ See: <http://www.acime.gov.pt/files/Portugues/wxifqfxugezbeste.doc> (15.4.2003)

⁴ Marini D., (2002), Formare una professione o educare al lavoro? I fabbisogni professionali degli immigrati secondo gli imprenditori del Nord Est, in Quaderni FNE, Collana Osservatori No.4

⁵ Ebermann, E. (ed.) (2002) *Afrikaner in Wien*. (Africans in Vienna), Münster/Hamburg/London: Lit-Verlag, pp.184-189

⁶ Cabinet Office (2002) *Ethnic Minorities and the Labour Market*. Cabinet Office Performance and Innovation Unit, February 2002, pp. 61 – 128 as well as pp. 209 – 211, available at <http://www.cabinet-office.gov.uk/innovation/2001/ethnicity/attachments/interim.pdf> (23.01.2003)

1.4.1. Positive initiatives

In 2002, a large number of projects and initiatives combating discrimination and inequalities in the labour market, carried out within the scope of the European Social Fund (ESF) EQUAL Initiative, came to the implementation stage. EQUAL tests new ways of tackling discrimination and inequality experienced by those in work and those looking for a job. Projects focus on diverse areas such as providing language or vocational training courses to vulnerable groups, job creation for specific minority groups, fighting and preventing racism at the workplace, or improving the quality and efficiency of Codes of Conduct in anti-discrimination.

A wide range of other initiatives included support schemes for the regularisation of workers status (Portugal), initiatives to improve the employment rate of ethnic minorities (UK, Denmark), and special schemes for fully utilising the skills of well-qualified immigrants (Portugal, Denmark), all supported by local or national governments. Employers concluded works agreements on anti-discrimination (Germany), or provided anti-discrimination training for their employees (France); trade unions set up awareness raising campaigns and counselling activities on migrants' rights (France, Portugal), NGOs were working in various ways to increase the empowerment of migrant groups (Greece, Sweden) and government, NGOs and equality bodies cooperated in an ongoing awareness campaign on discrimination (Finland).

1.5 Racist violence and crimes

Hate speech, racist propaganda or incitement to hatred or violence are punished in most Member States in line with the UN Convention on the Elimination of all forms of Racial Discrimination (ICERD), which all EU Member States have ratified (see Section 3.1).

The many reports received by the EUMC over the years show quite extensive, widespread and far-reaching racist violence and criminal behaviour in the Community. Judging from reports by the Committee on the Elimination of Racial Discrimination (CERD) and other human rights organisations, no country is immune. For most Member States where records are kept, there has been an increase in acts of racist violence over the last few years.

Legislation in all Member States gives protection from racist offences, but not all Member States consider the racist motive behind a violent act an aggravating factor. The Penal Codes in Belgium, Spain, Austria, Portugal, Sweden, and in the United Kingdom have special articles on aggravated punishment for a racist motive. However, more Member States might follow in this direction. In Finland the Government submitted a draft law in 2002 aiming at reforming the

general principles of criminal law.⁷ A new aggravating circumstance – committing a crime on the basis of racist or equivalent motives – has been proposed in sentencing. In practice a racist motive might already lead to aggravating fines. In Denmark, during the last couple of years, individual cases illustrate that the racist motive of violence has in some court cases been considered as an aggravating circumstance in sentencing.⁸ In Belgium, where the government drew up a draft bill on amending and strengthening the anti-racism law in 2002, the introduction of reprehensible motives as aggravating circumstances has been introduced in a series of articles of the penal code by the anti-discrimination law of 25th February 2003, and can be applied to a situation where there is a racist motive.

The European Commission has drafted a framework decision on combating racism and xenophobia⁹ which aims at establishing a basis for harmonising criminal legislation against racism in the Member States, providing effective and proportionate punishment and reducing obstacles to judicial cooperation. If adopted, the framework decision would oblige Member States to criminalise a range of racist behaviour and to identify racist and xenophobic motives as aggravating circumstances in sentencing.

Record keeping

In most Member States, the police authorities register complaints on racist violence and crimes. However the records are not coherent and research has proven that police practice can vary between police districts in the same country. In addition there are contradictions between the records kept by the police and records kept by non-governmental organisations. In Member States where there is a recognised problem with violence by extreme right-wing groups, the (Security) Police authorities keep records and publish annual reports on racist, xenophobic and anti-Semitic crimes committed by these groups.

⁷ See HE 44/2002. It can be found in the web at www.finlex.fi/esitykset.html

⁸ Utrykt afgørelse fra Lyngby ret den 22. december 1998, BS 3-1211/97. Afgørelsen blev stadfæstet af Østre Landsret den 27. september 1999. Decision from the Court of Lyngby from December 22, 1998. The decision was upheld by the Eastern High Court on September 27, 1999 Utrykt afgørelse fra Østre Landsret af 21. oktober 1998, B-2732-97. Unwritten decision from the Eastern High Court of October 21, 1998.

⁹ Brussels, 28.11.2001 COM(2001) 664 final, 2001/0270 (CNS): Proposal for a Council Framework Decision on combating racism and xenophobia.

1.5.1. Acts of racist violence and crimes

Three of the Member States (Germany, Sweden and the United Kingdom) have extensively higher numbers of recorded racist crimes than the other Member States. These differences are to a large extent a result of the legislation and their rather broad recording systems for racist violence. In the United Kingdom the high figures are a result of the racist incident definition, which was renewed by the Stephen Lawrence Inquiry.¹⁰ High figures for Germany and Sweden are related to a special monitoring of crimes committed by right-wing-extremist groups (also called “white-power-world”). And for these groups the crime category hate speech, incitement to hatred and propaganda crimes account for the majority of the crimes.

In 2001/2002 the number of racist incidents reported to and recorded by the police in the United Kingdom was 54,351, a 2% increase from the year before. The number of right-wing and xenophobic crimes recorded and reported in Germany by the federal Office for the Protection of the Constitution in Germany in 2002 was 12,933. 10,902 of these crimes in 2002 are categorized as extremist, a rise of 5% from the year before. And the number of recorded racist/xenophobic crimes in Sweden was 2,785.

Observations show that there has been an increase in racist violence and crimes in most of the Member States over the last few years (Belgium, Denmark, Spain, France, Ireland, Luxemburg, Portugal, Finland, Sweden and the United Kingdom). The official records in France and Spain stress an increase in physical violence, while the increase in Germany and Sweden is related to incitement to hatred or propaganda crimes. For Germany, Austria, and the Netherlands the police statistics show a possible trend break and for Italy the record of court cases has decreased in the last year. For Greece there are no measurements of racist violence and crimes.

Where anti-Semitic crimes are concerned, the picture is unclear. This is mainly related to the fact that only a few Member States keep records of these offences. According to official sources in France and Germany there has been an increase in the last years, especially in France. And when non-governmental records are added, anti-Semitic violence and crimes have also increased in Belgium, Denmark and Italy in the last year. Of the 12,933 right wing and xenophobic crimes reported in Germany in 2002, 1,594 were acts of anti-Semitism, and of the 2,785 racist/xenophobic crimes recorded in Sweden, 115 were anti-Semitic crimes.

Other notable categories of victims of racist violence are Muslims, people of North African/Arab origin, and Roma. Again it is not possible to produce

¹⁰ A government inquiry which reported in 1999 on the murder of a young black British man, exposing institutional racism and other failings in the police investigation. See <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>

accurate statistics, but it is noticeable how racist crimes towards these groups recur in the evidence from various sources such as NGOs or CERD reports. Examples are the harassment of people of Arab or Muslim background in Denmark, the regular complaints of young North African men in Belgium, and incidents such as the attack on a group of elderly Muslims in the UK or the killing of a Moroccan in Spain. Regular accounts of the harassment or ill-treatment of Roma (as well as the denial of services) appear in reports from Greece, Portugal and Italy.

In many countries the typical perpetrators of racist violence have been shown to be young men with below average education. However, this does not follow with regard to all racist crimes and hate speech. When records are kept by NGOs, rather than by the police themselves, they show a worrying number of acts of racist violence committed by law enforcement officers. The EUMC received reports in 2002 from human rights organisations on ill-treatment, brutality and verbal abuse by the police towards minorities and migrants, especially towards Roma people, asylum seekers and refugees. The situation appeared to be serious in Greece, Spain, and Italy. Also, police in Germany and Austria came under criticism in Amnesty International reports over incidents of racist violence, and a Chief of Police in Belgium was prosecuted for inciting his subordinates to commit violence against immigrants. Other prosecutions were of local or national politicians. In Portugal a local politician was prosecuted for racist speech against Roma and black people. In Denmark members of two political parties were charged with violations of the act on racist speech in relation to Muslims, including several members of the Danish Peoples Party. In Italy an MEP from the Northern League party was charged with involvement in a case of arson against undocumented migrants.

1.5.2. Preventive initiatives

Governments are taking many kinds of preventive initiatives. In Member States such as Belgium and Denmark, the Penal Code is under discussion. In Belgium, where police are not obliged to keep records on racist crimes, local pilot projects have been initiated to do this. In Ireland, Luxemburg and Portugal, among others, police and prosecutors receive special training on how to register and record crimes with a racist motive, and bring cases to court in line with the legislation. In France, ministerial instructions were sent to public prosecutors to remind them of the importance of a firm and dissuasive response to perpetrators of racist crimes. Web sites and databases have been set up in order to keep records on racist crimes and print media as well as sound media with extreme right-wing content in Austria and in Sweden. In the United Kingdom there is a web site for experts which details practical experiences in tackling neighbourhood racist harassment and attacks.

Germany is an example of a Member State where initiatives are taken to reach the younger generation in order to foster awareness of human rights, civil rights

and diversity issues. Another type of initiative is directed to young perpetrators who are members or supporters of extreme right wing and neo-Nazi organizations. In Member States such as Germany, Austria, Finland and Sweden, initiatives have been taken for several years now to reach these individuals and help them leave the organisations. In Austria there has been an initiative to hold seminars on history and democracy for young people who committed racist offences, and in Italy a campaign was started against racism and violence in sports stadiums.

1.6. The problem of comparison

One common problem for the three sections of this report on education, employment and racist violence is the enormous variety between Member States in their systems for recording the main indicators for each sphere. With regard to racist violence and crimes, records in the Community and its Member States are not coherent and not harmonized. There are contradictions between the governmental and the non-governmental records. In addition, recording systems are constantly being changed. For the majority of the EU Member States it is therefore not possible to talk about trends within them, or make meaningful comparisons between them, on racist violence. In a minority of countries, where reasonably consistent recording has been underway for a while, looking at a trend over time within that country is more meaningful. However, in such countries the fact that their monitoring systems are more sophisticated inevitably leads to the misleading impression that they have a much larger problem of cases than other countries.

There is similarly an enormous variety between Member States in their national reporting systems on discrimination, as well as their anti-discrimination legislation in the spheres of education and employment. It is clear that those Member States with better systems in place are characterised by more complaints from victims, and more cases of discrimination, which come to public notice. In other Member States, cases remain invisible, which tends to lead to the logically erroneous assumption that there is “no problem”.

The EUMC is working to improve the comparability of data. In the short term it collects data from its National Focal Points under common headings so as to maximise the comparability of existing secondary data, with all its imperfections. A medium term strategy is to commission original research with comparability built into the methodology, thereby producing directly comparable data in specific limited fields. An example is the current EUMC project “Migrants’ Experiences of Racism and Racial Discrimination”, which uses a common methodology in various Member States to produce comparable data on subjective experiences of racism and discrimination in everyday life (see Sections 2.2.2 and 2.3.2). In the longer term the EUMC hopes to encourage Member States to improve their systems for collecting data so as to facilitate

more comparability. This process will be assisted by EU developments. For example, one long-term effect of the new Equality Directives will be that more accurate recording of discrimination complaints will be made. Victims should feel that there is some point in complaining rather than remaining silent. And organisations will realise that they need to get their own procedures and record keeping in order so as to be better able to defend themselves against accusations of discrimination. This will hopefully make comparison between EU Member States a great deal more meaningful. Similarly, if and when the Council Framework Decision on combating racism and xenophobia is adopted, (see Section 3) this will improve the comparability of racist crimes between Member States.

2. Discrimination and anti-discrimination in a wider perspective in 2002

The political context

Political developments at international and European level have contributed to the growth in racist incidents in EU Member States, and also to the increasingly strident and negative tone of the public debate on migration and diversity in Europe. In particular, the current period of international tensions, which started with the 11th September 2001 attacks, has given rise to concern in the Member States regarding the situation of the Islamic and Jewish communities, both of which are especially vulnerable to racism and xenophobia. In both cases it is the religious symbols of difference – synagogues and cemeteries, mosques and headscarves - which become the locus of violence and aggression.

These developments raise vital questions. How will Europe deal with fears related to cultural, ethnic and religious diversity? When will Europe be a place where no-one on the street will have to be afraid of being attacked simply because they are recognised as a Jew, a Muslim, a Roma, a migrant or an asylum seeker? When will sections of the European population feel they no longer have to justify that they are not terrorists simply because of the way they look?

Many people's fears of difference are wrapped up in complex issues of identity, social exclusion and fragmentation, globalisation and international tensions. In this context, such fears are easily exploited by right wing populists, and in particular by extreme nationalist political parties which have been gaining political ground in some Member States. All this points to the need for courageous and consistent political leadership which makes it clear that racism and discrimination are unacceptable and unlawful, and which promotes a cross-cultural dialogue that is able, independent of day-to-day political events, to break down prejudices and reduce the resulting fears and aggression.

The EUMC has a responsibility to highlight and expose the negative developments in European societies and at the same time draw attention to positive trends and perspectives. It thereby helps to ensure that the current political and international climate does not compromise Europe's agenda on equality.

The Annual Report

Some findings of last year's EUMC Annual Report reflected the impact of the events of 11th September 2001, which increased already existing attitudes of racism, xenophobia, Islamophobia and anti-Semitism in Europe. This was in the context of already hardening public attitudes towards refugees and asylum seekers. However, even in this climate, not all developments were negative. Although year after year, EUMC Annual Reports describe the continuation of attitudes of racism and practices of discrimination, they also describe some examples of a growing willingness to recognise the problem where once there was denial, and an increasing development of measures to combat racism and discrimination and promote a positive message on diversity.

Whilst these measures, in schools, hospitals, workplaces and elsewhere, are often undertaken 'voluntarily', reflecting a growing and more sympathetic awareness of the issues, they also appear to have been stimulated by the prospect of legislation against discrimination, which sends out a clear public message about what are acceptable and unacceptable practices. Some of the good practices initiated in 2002 were conceived in the knowledge that stronger anti-discrimination legislation was on the way in each Member State, in line with the two Council Directives, the Racial Equality Directive and the Employment Equality Directive, set to come into force in the following year.

Thus one of the themes of this year's Annual Report is the preparation for the transposition into national legislation of the two Council Directives. Chapter 2 of this Annual Report focuses first on developments over 2002 in legislative and institutional initiatives, and in particular what Member States have been doing in the way of preparation for these two Directives. The Racial Equality Directive prohibits discrimination in a number of areas, arguably the most important of which are employment and education. Therefore, the Chapter also looks at statistics, cases and developments in education and employment in different Member States over 2002. This highlights in both areas new initiatives to combat discrimination and promote diversity, and at the same time points to the existence of unacceptable facets of inequality and discrimination which serve to confirm the original need for the Equality Directives.

The other main theme of this year's EUMC Annual Report is racist and xenophobic violence and crimes in Member States in 2002. In Chapter 3 we set out for each Member State in turn the latest data available in 2002 on this, with analyses and examples of cases to illustrate both the crimes themselves, and initiatives to combat them.

2.1. Legislative and institutional initiatives

By the deadline of 19 July 2003 and until October 2003, six out of fifteen Member States of the European Union - Belgium, Denmark, France, Italy, Sweden and the United Kingdom (UK) - had officially notified the European Commission of their partial or full application of the Racial Equality Directive. Two Member States, Germany and Luxembourg, did not appear to have draft legislation in place before their Parliaments and one Member State, Spain, was in the process of redrafting its draft legislation. The other Member States were at various stages of finalising the transposition process. Draft legislation existed in Greece, Ireland, Netherlands, Austria, Finland and Portugal. With regard to the Member States which had notified the European Commission of their partial or full compliance, the European Commission noted that territorial coverage of the Directive was still an issue in Belgium and the UK, the non-employment aspects of the Directive still required compliance by France and the employment aspects by Denmark. In response to the overall situation of the transposition process, the European Commission has launched proceedings against the EU Member States for a variety of reasons, related to the state of play regarding notification or issues related to compliance.

During 2002 and 2003 Member States were engaged in the process of drafting, amending and adopting non-discrimination legislation in preparation for the transposition of the Racial Equality Directive and Employment Equality Directive by the deadlines of 19 July and 2 December 2003 respectively. In addition, some Member States had indicated that they planned to transpose Directive 2002/73/EC¹¹ (amending Directive 76/207/EEC) on gender equality in employment at the same time. This would bring gender equality legislation into conformity with the latest legislative developments on equal treatment, as part of an overall package of equal treatment legislation. With the application and implementation of the Directives at the national level the legal basis to combat discrimination at the national and European level will be considerably strengthened, drawing a line which sets the minimum standards and benchmarks the future developments on non-discrimination.

The information on legislative developments presented summarises the main developments up until early October 2003 and attempts to draw some conclusions with regard to changes to legislation with a view to compatibility with the Directives.

The EUMC recognised that, prior to the transposition of the Directives, there existed in all EU Member States some form of legal framework which guaranteed the principle of non-discrimination or equal treatment on the grounds of race or ethnic origin, religion or belief, but noted that the nature and

¹¹ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

scope of the framework differed widely among the Member States with, a varying emphasis on constitutional guarantees, criminal law or civil law provisions. Certain Member States had specific anti-discrimination legislation such as Belgium, Denmark, France, Ireland, Netherlands, Portugal, Sweden and the UK. Other Member States had provisions in their Constitution or criminal law to combat discrimination or promote equal treatment (Germany, Greece, Spain, Italy, Luxembourg, Austria and Finland). A certain number of Member States had specific Equal Treatment Bodies working on race related issues prior to the adoption of the Directives (Belgium, Ireland, Luxembourg, Netherlands, Portugal, Finland, Sweden and the UK). Other Member States had bodies which addressed non-discrimination and equal treatment matters as part of a broader or general remit either under human rights or dealing with the integration matters, sometimes specified, sometimes accepted through practice (Denmark¹², Germany, Greece and France).

The nature of the anti-discrimination legislation has implications not only on the material scope of protection, the availability and accessibility to legal remedies, but also on the burden of proof required to pursue cases. All Member States are party to the United Nation's International Convention on the Elimination of all forms of Racial Discrimination (ICERD). In addition, the development of anti-discrimination legislation has been targeted particularly at the labour market and employment. There were also areas where the legislation, though existing, required more clarity particularly in defining the concepts of discrimination and harassment.

In the Directives, the labour market still remains the key focus for non-discrimination legislation with regard to the grounds of religion or belief, with occupation being stressed in addition to employment, but the grounds of racial or ethnic origin will now cover the main fields of social, economic and educational activity with a particular emphasis on access to these fields. The EUMC has previously drawn particular attention to areas such as the definition of indirect discrimination, the application of the law to the public and private sectors, the ease, adequacy and effectiveness of legal remedies, the shift in the burden of proof and the concept of harassment¹³.

The Directives set minimum standards and some Member States in their draft legislation used the opportunity of the transposition process to go beyond the minimum standards in a variety of ways – for example, by extending the non-employment aspects to grounds other than racial or ethnic origin (Belgium and

¹² The former Board for Ethnic Equality was effectively replaced by the establishment of the Danish Centre for International Studies and Human Rights (Act No. 411 of 6/06/02). The Danish Centre for International Studies and Human Rights includes an Institute on Human Rights which has amongst its tasks the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.

¹³ "Anti-discrimination legislation in EU Member States – a comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives", EUMC, Vienna 2002

Finland), by extending the employment aspects to grounds in addition to article 13 grounds (Belgium, Denmark, France, Netherlands and Portugal) or having established or proposed the establishment of equal treatment body/bodies to cover grounds in addition to racial or ethnic origin (Belgium, France, Ireland, Netherlands, Austria, Sweden and the UK). However, apart from Belgium, Member States have maintained the substantive separation of the two Directives in the transposition process even when they have adopted a single approach.

The EUMC noted that although most Member States had begun the main component of the transposition process in 2002, the degree and extent of consultation with social partners and non-governmental organisations had varied considerably, with Member States such as Belgium, Germany, Denmark, Ireland, the Netherlands, Finland, Sweden and the UK apparently having actively involved these sectors at an early stage in the consultation process. Consultation with social partners and non-governmental organisations was intended to form an important component of the transposition process and enhance not only the effectiveness of the legislative outcome, but promote broad discussion, improve understanding and target dissemination of information within key sectors of civil society.

The key changes to (proposed) legislation or the current state of play regarding the transposition process are outlined in the information below. In addition, the EUMC had identified certain aspects of Member States' legislation¹⁴ which should be reviewed with a view to compliance with the Directives. Some of these are set out in the information below. It should be noted that the final decision whether national legislation is compatible with the Council Directives rests with the European Court of Justice.

In **Belgium**, the national authorities have notified the European Commission of partial compliance with the Racial Equality Directive. Notification of transposition at the federal level has been made. Territorial scope of the Directive has still to be extended to the federal entities. The authorities adopted a single legislative approach on all grounds of discrimination indicated in the Racial Equality and Employment Equality Directives. A new general Anti-discrimination Law was adopted on 12 December 2002¹⁵. Under article 2, the Anti-discrimination Law will now cover the grounds of discrimination related to gender, race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, wealth, age, religious or philosophical conviction, present or future state of health and a disability or physical characteristic. The interpretation of religious or philosophical conviction is narrow and is related to

¹⁴ See the individual reports on EU Member States in "Anti-discrimination Legislation in EU Member States – a comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives", EUMC, Vienna 2002

¹⁵ The Loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des chances et la lutte contre le racisme was published in the Belgian 'State-paper' (Belgisch Staatsblad/ Le Moniteur Belge) on 17 March 2003 and came into force on 27 March 2003.

the existence or non-existence of a god, and therefore political or other convictions are excluded. Definitions of direct and indirect discrimination have been introduced for all the grounds. The law has opted for an open interpretation of direct discrimination instead of a closed definition, in which case an exhaustive list of all exceptions to the rules needs to be established. It also extends the competence of the Centre for Equal Opportunities and Opposition to Racism to cover all the above grounds of discrimination, except gender which is the task of an institute for equality between women and men.

In **Denmark**, the authorities notified the European Commission of partial compliance with the Racial Equality Directive in the non-employment fields under Bill No. 155 on equal treatment irrespective of ethnic origin. Bill No. 152 amending the Act on the Prohibition of Different Treatment in the Labour Market, submitted to Parliament to transpose the employment aspects of the Racial Equality Directive, was rejected on the grounds that it did not meet the requirements of the Racial Equality Directive with regard to the powers of the Equality Body to deal with discrimination in employment (its mandate was more restrictive on employment matters compared to non-employment aspects). According to the Danish Government, although other aspects related to employment are largely covered in current legislation, new legislation will still be adopted. Draft legislation to transpose the employment aspects will be re-submitted to the Danish Parliament later. Act No. 411 of 6 June 2002 established the Danish Centre for International Studies and Human Rights which incorporates an Institute for Human Rights. The Institute for Human Rights has replaced in effect the former Board for Ethnic Equality. The Institute for Human Rights is designated to meet the requirements under article 13 of the Racial Equality Directive and in addition has been given the power to make non-binding decisions on individual cases of discrimination.

In **Germany**, anti-discrimination law has yet to be presented to Parliament and there did not exist a timetable for the introduction of such legislation. The European Commission has received no notification of application of the Directives. In its report on anti-discrimination legislation in Germany¹⁶, the EUMC identified several areas in German legislation which may require review with a view to compatibility with the Directives. These included providing a legal definition of direct or indirect discrimination, providing a definition of harassment, introduction of provisions on instructions to discriminate, reviewing the scope of directives in both the public and private sector, introducing a provision for a shifting in the burden of proof, defining a concept of victimisation and designating an equal treatment body or bodies with the competences outlined in the Racial Equality Directive.

¹⁶ "Anti-discrimination Legislation in EU Member States – a comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives", EUMC, Vienna 2002

To take matters forward a task force was set up in March 2003. The task force is located in the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Members of the task force include representatives from the Ministry of Labour and Justice who previously worked on previous legislative drafts to transpose the Directives.

In Spain, the national authorities have yet to notify the European Commission of compliance with the Racial Equality Directive. In addition draft anti-discrimination legislation has yet to be presented to Parliament. There was a draft proposal for an Equal Treatment Act, with a chapter of general provisions, a chapter on equal treatment and non-discrimination on grounds of racial or ethnic origin for the non-employment field of the Racial Equality Directive and a chapter on equal treatment and non-discrimination in employment covering all the grounds under article 13 EC Treaty. The draft proposed the establishment of a Council for equal treatment and combating discrimination on the grounds of racial or ethnic origin. This draft is undergoing further revision. There was also a Bill for an Organic Law amending Organic Law 11/1985 of 2 August on freedom of association in trades union which, with regard to equal treatment, would seek to transpose the relevant provision, article 3 1.(d) of the Racial Equality Directive on membership of and involvement in an organisation of workers or employers.

In France, national authorities have notified the European Commission of partial compliance with the Directive with regard to the employment aspects. Non-employment aspects have yet to be complied with. Two laws have been adopted, Loi relative à la lutte contre les discriminations no. 2001-1066 of 16/11/01 to combat discrimination and Loi de modernisation sociale no. 2002-73 of 17/1/02 on social modernisation which includes a chapter on combating moral harassment in the work place and on the burden of proof. Article 169 of the social modernisation law was modified by article 4 of the Loi no. 2003-6 of 3/1/03 concerning the burden of proof in case of moral harassment. The President of the Republic announced publicly on 14 October 2002 a proposal for the creation of an independent administrative authority to combat all forms of discrimination. The “Médiateur de la République” has been given the task of organising the consultation process among the key actors involved in combating discrimination in France. The inter-ministerial committee which was set up to work on the issue is aiming to make the body operational in 2004.

In Greece, the national authorities have not notified the European Commission of compliance with the Racial Equality Directive. Two separate bills were planned, one on the Racial Equality directive and the other on the Employment Equality directive. In February 2003, a draft bill was prepared to transpose the Racial Equality Directive. The draft bill remains subject to discussions on extending the mandate of the Office of the Ombudsman to meet the requirements of the Equal Treatment body under the Racial Equality Directive. The Ministry of Labour has organised a working party on the Employment

Equality Directive. In June 2003 the Ministry of Labour delivered a draft Presidential Decree for the transposition of the Employment Equality Directive.

In Ireland, the national authorities have not notified the European Commission of compliance with the Racial Equality Directive. Implementation of the Directives is being carried out by amending the Employment Equality Act 1998 for the employment field of both directives and the Equal Status Act 2000 for the non-employment field of the Racial Equality Directive. The tasks under article 13 of the Racial Equality Directive will be undertaken by the Equality Authority and the Office for the Director of Equality Investigations (the Equality tribunal), established by the Employment Equality Act for all grounds of discrimination. In addition, the Labour Court, an industrial relations tribunal, investigates and makes binding decisions in disputes in relation to dismissals under the 1998 Act. But as yet no proposal has been published.

In Italy, the national authorities have notified the European Commission of compliance with the Racial Equality Directive. The Italian Government published a Decree (*Decreto Legislativo*, 9 July 2003, n. 215, published in "Gazzetta Ufficiale" 12 August 2003 n. 186, in force since 27 August 2003) to apply the Racial Equality Directive. It contains the definitions of direct and indirect discrimination and provides for some exceptions. Article 4 provides for the possibility to take judicial action to obtain the acknowledgement of the existence of discrimination. Judges should have the power to provide for recovering damages, to order the cessation of the discriminatory act or behaviour and to adopt a plan to remove verified discriminations. The right to take legal action is given to the associations that are included in a special list approved by the Minister of Labour and Social Affairs and the Minister of Equal Opportunities. An Office to promote equal treatment and to remove discrimination based on race and ethnic origin is planned to be established in the Department for Equal Opportunities of the Presidency of Council of Ministers.

The Italian Government published a Decree (*Decreto Legislativo*, 9 July 2003, n. 216, published in "Gazzetta Ufficiale" 13 August 2003 n. 187, in force since 28 August 2003) to apply the Employment Equality Directive. The Decree was adopted following the parliamentary law, *Legge 1 marzo 2002*, n.39. The "*Decreto Legislativo*, 9 July 2003, n. 216" contains the definitions of direct and indirect discrimination and provides for some exceptions. In particular, article 3 (3) sets down, in accordance with article 4,2 of the European Directive, that a difference of treatment based on a person's religion or belief, on age, on sexual orientation, on disability does not constitute discrimination when these differences are prerequisites to do particular employment, by reason of the nature of these activities or of the context in which they are carried out. Moreover, the Italian provision adds the necessity to respect the principles of reasonableness and proportionality. Art. 4 provides for the possibility to take legal action to obtain the acknowledgement of the existence of the discrimination before the court. Judges should have the same powers as with

regard to *Decreto Legislativo, 9 July 2003, n. 215*. Local trade unions will also be able to represent the victim before the court with the agreement of the victim.

In Luxembourg, the national authorities have not notified the European Commission of compliance with the Racial Equality Directive. The national authorities have yet to present draft legislation to transpose the Directive. The EUMC in its report on anti-discrimination legislation in Luxembourg¹⁷ identified the following areas which may require review to ensure compatibility with the Directives. These include provision for a clear definition of direct and indirect discrimination, provision for a concept of harassment, provision relating to instruction to discriminate, incorporation of the full scope of the Directive, clarification of exemptions relating to genuine and determining occupational requirements; provision for shifting of the burden of proof and provision to define and counter victimisation.

In the Netherlands, the national authorities have not notified the European Commission of application of the Racial Equality Directive. Implementation of the Racial Equality Directive is planned through amendments to the existing general Equal Treatment Act, the Implementation Bill, which will include the grounds of religion or belief and sexual orientation, prohibition of harassment, instruction to discriminate and membership/involvement in organisations of workers or employers. The Implementation Bill was submitted to Parliament on 28 January 2003 and the Standing Committee for Home Affairs of the Second Chamber published its report of its initial review of the draft law on 16 April 2003. The Equal Treatment Commission, the single equality body, will cover all grounds of discrimination in the general Equal Treatment Act.

In Austria, the national authorities have not notified the European Commission of application of the Racial Equality Directive. A ministerial working group drafted a proposal to transpose the Directives by amendments to the Equal Treatment Act (*Gleichbehandlungsgesetz – BGBG 1979*¹⁸) and the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz - BGBG 1993*¹⁹) by extending the Acts to all grounds of the Directives and the non-employment aspects of the Racial Equality Directive. The new Equal Treatment Act will contain three parts: Part I on equal treatment in employment and occupation, covering men and women and discrimination on all the grounds; Part II with provisions against discrimination on grounds of racial or ethnic origin in relation to the fields of social protection, social advantages, education and access to goods and services; and Part III with rules relating to institutions and procedures. There is also a plan to establish the Commission for Equal Treatment (*Gleichbehandlungskommission*) with three panels each competent for equal treatment of men and women, for discrimination on all grounds and

¹⁷ "Anti-discrimination Legislation in EU Member States, a comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives", EUMC, Vienna 2002

¹⁸ BGBl. Nr. 108/1979 as last revised by BGBl. I Nr. 44/1998 of May 1, 1998

¹⁹ BGBl. Nr. 100/1993 of February 12, 1993, as last revised by BGBl. I Nr. 30/1998

for the scope of the Racial Equality and Employment Equality Directives respectively. The office for Equal Treatment (*Gleichbehandlungsanwaltschaft*) will be set up under the same structure and will undertake the tasks of the equal treatment body outlined in the Racial Equality Directive.

The Ministry for Economy and Labour published a draft bill to transpose the Racial Equality Directive, the Employment Equality Directive and the Gender Equality Directive on 6 July 2003. A Ministerial draft was sent out on 15 July 2003 for consultation with a deadline of 8 September. With regard to public institutions a draft for amendments to the Federal Equal Treatment Act was sent out for consultation between 31 July – 12 September 2003.

In Portugal, the national authorities have not notified the European Commission of compliance with Racial Equality Directive. The Legislative Proposal to transpose the Racial Equality Directive was approved in the Council of Ministers on 16 July 2003. It amends the existing Law No. 134/99. The procedure now requires approval of the legislation by the Assembly of the Republic, followed by the promulgation by the President, then the countersigning by the Government and finally the publication in the Diary of the Republic. Areas which are addressed in the amended legislation include the definition of direct and indirect discrimination, the definition of harassment, the attribution of judiciary capacity for the autonomous intervention of equality defence associations (only possible in administrative procedure), and shifting the burden of proof and support to victims: this responsibility will lie with the High Commissioner for Immigration and Ethnic Minorities. In addition, application of the Employment Equality Directive will take place through Law no. 99/2003 of 27 August, which approved a new Labour Code.

In addition, Law no. 251/2002 of 22 November 2002 changed inter alia the regime of the High Commissioner for Immigration and Ethnic Minorities to that of High Commisariat and extended the scope of its activities.

In Finland, the national authorities have not notified the European Commission of compliance with the Racial Equality Directive. A horizontal approach is being pursued with implementation by a general single Equality Act covering all the grounds in the directives and adding language, opinion, health and other grounds, though differing by scope, obligations and supervision depending on the grounds of discrimination. There will also be amendments to the Employment Contracts Act. After a consultation process with interest groups and social partners the government submitted to Parliament a formal legislative proposal – a Government proposal to Parliament for an Act on securing equality and for the amendment of relevant Acts (269/2002) on 20 December 2002. The Government has also proposed to extend the mandate of the Ombudsman for Minorities to cover Article 13 grounds of discrimination and to set up a Board of Discrimination within the Ministry of Labour covering the grounds of racial or ethnic origin. The Equality Act did not make it through the Parliamentary process due to elections in March 2003. A new similar piece of legislation was

submitted by the Government to Parliament on the 11 September 2003. A programme of training public officials in the implementation of the Directives has also been established. As part of the implementation process, the responsible authorities will also be requested to draw up plans to promote ethnic equality.

In Sweden, the national authorities have notified the European Commission of compliance with the Directives. A new Act prohibiting discrimination came into force on 1 July 2003. The Act is aimed at combating discrimination related to ethnic origin, religion or other belief, sexual orientation or disability. Prohibition of discrimination on grounds of ethnic origin or religion or other belief will also apply to non-employment aspects. By the end of 2004, a Committee of Enquiry is scheduled to present a report on extending an equal level of protection for all grounds. A Commission will be appointed to propose how the Directive should be implemented "at the school system and other forms of education except higher education". It should provide a report in the second quarter 2004. A Commission was appointed to make proposals on to what extent and under what circumstances private individuals should be covered by a prohibition of discrimination. It is to report to the Government by January 2004.

Other legislative and institutional developments included the Equal Treatment of Students at Universities Act which came into force on 1 March 2002. The Act aims to promote equal rights for students at universities and colleges and combat discrimination on the grounds of gender, racial or ethnic origin, sexual orientation and physical disability.

In the United Kingdom, the national authorities notified the European Commission of compliance with the Racial Equality Directive by the deadline. As mentioned above, there are outstanding issues related to territorial coverage of the amended UK legislation. The Race Relations Act 1976 (Amendment) Regulations 2003, which implement the Racial Equality Directive in Great Britain, came into force on 19 July 2003. The Race Relations Order (Amendment) Regulations (Northern Ireland) Order 2003, which implemented the Directive in Northern Ireland also came into effect on 19th July. The Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 implement parts of the EC Article 13 Employment Directive. These both come into force in December 2003.

Changes incorporated into UK legislation include widening the definition of indirect discrimination and harassment, shifting the burden of proof from complainant to respondent, and introducing the concept of genuine occupational requirements. Other cross-cutting issues concern changes to provisions which affect barristers and advocates, changes which affect employment in a private home, introducing a eight-week time limit for respondents to reply to accusations, covering discrimination occurring after a relationship has come to an end and providing that claims in respect of office-holders are heard in an

employment tribunal rather than by judicial review. Principles contrary to the principle of equal treatment meant also amending provisions in the Race Relations Act 1976 which concern, for example, training for those not ordinarily resident in UK, charities as employers, seafarers recruited abroad, partnerships, and acts done under statutory authority.

In addition, the UK Government had introduced in 2001 a statutory duty to promote racial equality for public authorities and issued two orders: one increasing the number of authorities required to promote racial equality, and the other setting a range of individual duties for public authorities which had to be met by 31 May 2002

2.2. Education

2.2.1. Differences in education

Despite a lack of statistics in most Member States on the educational achievement of different migrant and minority groups, reports continue to show that ethnic minorities often perform less well in school and attain lower school credentials compared to the majority populations. The OECD PISA study assessed the reading, mathematical and scientific literacy of 15 year olds in many countries of the world including EU Member States. Since the results were released in December 2001, there has been a continuing analysis of the findings, which highlight the performance of students who are themselves immigrants ("non-native students") or whose parents were foreign-born ("first-generation students"). The report stated "*In most countries with significant immigrant populations, first-generation students read well below the level of native students even though they were themselves born in the country - which is disturbing. Students born abroad lag behind even more, although to widely varying degrees in different countries.*"²⁰ In particular, the OECD PISA study stimulated national debates in several Member States on the treatment of the children of migrants and ethnic minorities within the educational system.

The UK offers more detailed statistics than most other EU countries on the educational performance of different minority groups. According to these data, some groups, including African-Caribbeans, Pakistanis and Africans, continue to perform below the national average while Indians and Chinese perform above their white counterparts.²¹ In Germany, reports show that Turkish and Italian students achieve results below average and even though inequalities in educational achievement have improved for second-generation migrants, their

²⁰ <http://www.pisa.oecd.org/knowledge/chap6/h.htm>

²¹ Strategy Unit, *Ethnic Minorities and the labour market*, (march 2003) Cabinet Office

achievements are still considerably lower than average.²² In Greece, it becomes evident that the migrant students' drop-out rate increases sharply as they move from primary to secondary education.²³ Similarly in Portugal, the latest available statistics show that there are fewer migrant students in higher school levels, a sign that they present a higher rate of school drop-out than the majority population.²⁴ In Austria, compared to the previous years, there has been a gradual improvement with respect to the restriction of migrant children to the lower levels of education.²⁵ However, the long standing problem that migrant children are over-represented in Austrian special needs schools continues to exist.

A related issue is the difficulty of ethnic minority students in gaining access to higher education. But again, in most countries there is a lack of data to verify this fact. However for the UK, while it can be shown that minorities often do not get into the more prestigious institutions, which in turn reduces their employment opportunities,²⁶ the representation of minority ethnic students in higher education has increased in recent years.

In 2002 the school attainment of Roma and Traveller communities was also shown to differ a great deal from that of the majority population in various countries. For instance, while the enrolment of Travellers in Ireland at pre-school and primary level has substantially improved, few reach higher levels of secondary schooling and only a handful continue to third level education. The Roma in Portugal are also almost totally concentrated in the first level of schooling and are represented far below the national average in the secondary level enrolment.²⁷ The schooling of Roma pupils in Spain is, despite some improvements, still a problematic issue. According to the Gypsy General Secretariat Association in 2002, 85 per cent of Roma children in Spain are now schooled, whilst the other 15 per cent still do not receive sufficient schooling. It is also still the case that only a minority of schools recognise their cultural differences.²⁸

²² (Cf. Heckmann, Friedrich/Lederer, Harald/Worbs, Susanne (in cooperation with the EFFNATIS research team): *Effectiveness of National Integration Strategies towards Second Generation Migrant Youth in a Comparative European Perspective. Final Report to the European Commission, Bamberg 2001*; Straßburger, Gaby: *Evaluation von Integrationsprozessen in Frankfurt am Main (Evaluation of integration process in Frankfurt a.M.). Studie zur Erforschung des Standes der Integration von Zuwanderern und Deutschen in Frankfurt am Main am Beispiel von drei ausgewählten Stadtteilen im Auftrag des Amtes für multikulturelle Angelegenheiten der Stadt Frankfurt am Main, Bamberg 2001*).

²³ Greek National Focal Point Report 2002

²⁴ Portuguese National Focal Point Report 2002

²⁵ Austrian National Focal Point Report 2002

²⁶ *Help or hindrance? Higher education and the route to ethnic equality*, Shiner and Modood (2002) British Journal of Sociology of Education, Volume 23, No. 2

²⁷ Portuguese National Focal Point Report 2002

²⁸ Spanish National Focal Point Report 2002

2.2.2. Indications of discrimination

Reports of explicit racist and xenophobic practices in the educational systems of EU Member States are rare, which could be in part due to an insufficient reporting system in most countries. Still, it is clear that many migrants, particularly those from Africa, from Arabic countries, and Muslims, continue to suffer racism and discrimination. Travellers and Roma pupils in several countries also continue to face exclusion in the field of education.

Racial and ethnic segregation in the education system can be observed in several Member States. Segregation can take place within the same school, when minorities from the same ethnic background can be almost exclusively assembled in one school class without any special pedagogical justification. It can also take place between schools, for example, when there is a high proportion of ethnic minorities in less affluent school districts or an unequal distribution of ethnic minorities in public schools compared to private or semi-private schools. As reported from Spain, in some areas the concentration of migrants in public schools is extremely high as compared to the semi-public schools, which have private status but still receive public funding.²⁹ Sometimes the segregation is directly motivated, such as in the case of some Italian schools which were reported as refusing to accept the registration of some non-Italian pupils in an attempt to keep low the number of such pupils in their schools. With regard to Roma children, some Italian schools refuse to register them, claiming that these children do not have legal documents even though there are legal provisions requiring that children of undocumented immigrants and asylum seekers should have access to education in their own rights as children, irrespective of the status of their parents.³⁰

Because of a trend towards ethnic segregation in schools in the Netherlands, the Dutch government announced that it is considering altering Article 23 of the Dutch Constitutional Law. The “freedom of education” provision means that one is free to found a school based upon a particular principle of life or pedagogical belief, including the right to refuse admission to pupils who do not conform to these principles. This practice has been identified as a contributing factor to ethnic segregation in schools. It creates a loophole for Catholic or Protestant schools to refuse admission to pupils from minority backgrounds with different religious beliefs, and it has also led to a significant increase in Islamic schools over the past years. In addition, the “freedom to choose a school” contributes to further segregation because white - and increasingly black - parents choose 'white schools' outside their neighbourhood rather than their local 'black school'.³¹

²⁹ In Spain 33% of immigrants are in the public schools compared to only 17% in the publicly-funded private schools, whereas a more proportionate representation should be 33% .

³⁰ Italian National Focal Point Report 2002

³¹ Vaste grond onder de voeten; een verkenning inzake artikel 23 Grondwet. Onderwijsraad. [Sound ground: exploration of article 23 of the Constitutional Law] . The Hague: Education Council. 2002.

Complaints

Some of the evidence for cases of discrimination in education in 2002 comes from complaints. For example, in Portugal there were complaints via SOS Racism about the case of a school which segregated 18 black students from Guinea and one Roma in a separate class for a period of two consecutive years. In some countries there are proper bodies in existence to receive and register complaints, such as in Belgium where the Centre for Equal Opportunities and Opposition to Racism (CEOOR) registered a total of 1,316 complaints on racism in 2002, eight per cent of which concerned educational settings.

Survey and research data

Further evidence on racism and discrimination in the educational sphere in 2002 comes from specific surveys and research. In 2001 the EUMC initiated a research project called Migrants' Experiences of Racism and Racial Discrimination. The aim of the project is to develop comparable data on migrant and minority groups with regard to experiences of racism and discrimination in their everyday life, by using as far as possible a similar methodology for data collection and data analysis. A survey conducted in Sweden³² (similar to the surveys done in Denmark³³, Finland³⁴) has been used as a model for the project. So far six studies have been commissioned by the EUMC: in Belgium³⁵, Spain³⁶, Italy³⁷, the Netherlands³⁸, Austria³⁹ and the United Kingdom⁴⁰. With the continuation of the project into other Member States the EUMC will be able to present a comparative overview of the migrant and minority groups most vulnerable to racism and discrimination in the EU. One of the questions asked was whether they had experienced discrimination or ill treatment at school or in other institutions of education because of their ethnic/racial background in the preceding five years. The variation between the countries is wide. In the study in the UK, 60% of migrants and minorities reported that they had experienced discriminatory treatment in schools or other education institutions in the preceding five years. In the Belgian study 40% reported these experiences, while about 20% of migrants and minorities in Spain, the Netherlands, Austria, and Sweden and 13% of migrants in Italy reported that they had experienced discrimination during their time in schools or other education institutions because of their migrant/ethnic background.

³² A. Lange, (1997) Immigrants on Discrimination II, CEIFO, University of Stockholm

³³ B. Moller, and L. Togeby, (1999) Oplevet Diskrimination. En undersøgelse blandt etniske minoriteter. København: Naevnet for Etnisk Ligestilling (Experienced Discrimination. An investigation among ethnic minorities. Copenhagen: National Board for Ethnic Equality)

³⁴ K. Liebkind, Dr I Jasinskaja-Lahti, Maahanmuuttajien sopeutuminen paakaupunkiseudulla, Ministry of Labour: Helsinki

³⁵ M. Martiniello, (2002) Migrants' experiences of discrimination in Belgium, EUMC (forthcoming)

³⁶ C. Pereda, (2003) Migrants' experiences of discrimination in Spain, EUMC (forthcoming)

³⁷ M. Maneri, (2002) Migrants' experiences of discrimination in Italy, EUMC (forthcoming)

³⁸ J. ter Wal, (2002) Migrants' experiences of discrimination in the Netherlands, EUMC (forthcoming)

³⁹ C. Schwab, (2003) Migrants' experiences of discrimination in Austria, EUMC (forthcoming)

⁴⁰ S. Roberts, (2003) Migrants' experiences of discrimination in the United Kingdom, EUMC (forthcoming)

However, these figures are not fully comparable, as the levels of awareness and reporting vary widely among Member States.

The report *Some swastikas behind the gymnasium*, published in 2002 as part of the Swedish *Save the Children* campaign, highlights the increasing levels of racism and xenophobia that many Swedish schools are experiencing today.⁴¹ A survey-based study in Finland indicates that in the field of education Somalis, who represent the fourth largest foreign nationality group,⁴² are the group most likely to report being victims of racism and discrimination.⁴³ An OFSTED⁴⁴ study showed that black pupils in the UK are disciplined more harshly, and are more likely to be excluded after a single incident compared to white pupils.⁴⁵ Thus, black young people of Caribbean origin, and other black pupils⁴⁶ in the UK are three times more likely to be excluded from school than others.⁴⁷ In Italy a government study carried out in the 2000/01 school year surveyed the attitudes of teachers, students and parents of Italian pupils to the presence in schools of non-Italian pupils. The study found that resistance and lack of openness on the part of some teachers is linked to concerns about how to cope with language difficulties of some non-Italian pupils.⁴⁸

Other sources

In the absence of complaints bodies and research, cases come to public attention in a more ad hoc way, through, for example, the activities of NGOs, and through incidents reported in the media. For example, in Italy in 2002 the media reported a number of cases of physical and psychological violence in the educational system,⁴⁹ and in November 2002 the national media in Greece reported for the first time serious violent incidents occurring outside schools in the city of Herakleion on Crete. Local NGOs and students' parents reported that there is rising tension between Greek and Albanian students.⁵⁰ In some countries wearing traditional Islamic clothing leads to exclusion from schooling. While this practice has been debated in France for several years,⁵¹ a specific case was reported in 2002 in Spain of a Moroccan girl who was not

⁴¹ Swedish Save the Children, Rädta barnen, *Nagra hakkors bakom gymnasalen: Om främlingsfientlighet och rasism i svenska skolor. ("Some swastikas behind the gymnasium" On xenophobia and racism in Swedish schools)*, Stockholm 2002

⁴² <http://www.reintegration.net/finland/#1.%20Immigrants%20in%20Finland> (28.4.2003)

⁴³ Jasinskaja-Lahti, Inga – Liebkind, Karmela – Vesala, Tiina: *Rasismi ja syrjintä Suomessa – maahanmuuttajien kokemuksia (Racism and Discrimination in Finland – experiences of immigrants)* Helsinki: Gaudeamus. 2002.

⁴⁴ The Office for Standards in Education, the UK school inspection body.

⁴⁵ OFSTED: *Strategies to Promote Educational Inclusion: Improving Attendance and Behaviour in Secondary Schools* (February 2001), <http://www.ofsted.gov.uk/publications/docs/1021.pdf>

⁴⁶ In the UK official census these are the categories "Black Caribbean" and "Black Other"

⁴⁷ DfES, *Statistical First Release, SFR16/2003*

⁴⁸ M.I.U.R. (2001): *Le trasformazioni della scuola nella società multiculturale*; available at: www.istruzione/mpi/pubblicazioni/2001/indice_multi01.pdf

⁴⁹ Italian National Focal Point Report 2002

⁵⁰ Greek National Focal Point Report 2002

⁵¹ "French schools bar 31 Muslim girls with scarves," *International Herald Tribune*, November 10, 1994. "French minister defends school headscarf ban," *Reuters*, November 25, 1994.

allowed to attend school because she was wearing a headscarf, until the Regional Government Education Authority forced the school to admit her. As this report goes to press it is clear that the 'headscarf issue' is once again on the public agenda, with cases also coming to public attention in Belgium, Denmark, Germany and France.

2.2.3. Initiatives and good practice

There are now an increasing number of initiatives to facilitate the equal integration of migrant and minority pupils into the educational system in Member States. These come from national and local governments, and from NGOs.

National and local governments

Depending on each Member State's specific circumstances, there are varying needs for new developments of intercultural curricula and language programs as well as for various integration and anti-racist measures in the educational sector. Those EU Member States which are relatively new immigrant-receiving countries are starting to introduce policies in response to the diversity they are experiencing in their classrooms. In Ireland, as a consequence of the rapid increase in migration in recent years, primary and secondary schools and education bodies are seeking to meet the new teaching demands created by greater diversity. The curriculum at both primary and post-primary level has undergone extensive revision in recent years by introducing the themes of anti-racism and interculturalism. The new curricula are supported by in-service training, teacher guidelines, new publications, and full-time staff development teams. In Finland, immigration is a fairly new phenomenon. The education authorities have observed that there is an acute shortage of qualified minority teachers and multicultural teaching material, and Finnish teachers are also not given sufficient training in multiculturalism.⁵² One initiative which addresses this is a training project on multiculturalism conducted through the University of Joensuu which prepares teachers to work with immigrant children. Also, a project has been developed in Helsinki promoting cooperation between Roma families and schools, providing information on Roma culture and giving support to Roma pupils. In Greece the "intercultural" school system is still largely a copy of outdated educational policies implemented during the 1970s and 80s in other western European countries which were eventually replaced, shifting attention from an "education for aliens" to "multicultural education".⁵³ However, three major educational projects intended to counteract this trend continue into their second phase in 2002: "Roma Children's Education",

⁵² NBE (2002) Maahamuutajien koulutus (Education of immigrants), <http://www.edu.fi/page.asp?path=498:526;881:2934> (14.10.2002)

⁵³ Damanakis G. et al (2000) "The Education of the Repatriated and the Non-native Students in Greece - An Intercultural Approach", Athens, Gutenberg pp. 86 - 88

“Muslim Children’s Education” and “Education of Repatriated Ethnic Greek and Foreign Students”. In Italy the municipality of Florence has created three centres for teaching the Italian language in city districts that have a sizeable presence of non-Italian speaking pupils, in cooperation with some associations and NGOs, putting at the disposal of state schools qualified bilingual language teachers and intercultural facilitators to back the activity of regular teachers in the teaching of Italian as a second language.

There are different developments relating to mother-tongue instruction for minorities in school. The report *More languages – more opportunities*⁵⁴ by the Swedish National School Board presents a number of proposals to support education in the mother-tongue and regards it as beneficial if minorities develop advanced language proficiency in their different languages.⁵⁵ Similarly in Austria there are programmes for fostering migrant children’s first language as well as German. There is already a precedent for this in the mother tongue instruction offered to children of migrants from other EU countries.⁵⁶ As in the past, Italian and Portuguese parents in Luxemburg have the opportunity to register their children in courses which aim to preserve and develop their competences in the mother tongue, thereby giving them a better basis for the development of other languages. However, it seems that non-EU migrants cannot always expect the same treatment as EU migrants. For example, although Denmark used to offer mother-tongue lessons for free for the children of both EU and non-EU nationals, in 2002 the Danish government announced that it has abolished the municipal obligation to offer mother-tongue lessons for non-EU-nationals, starting with the school year 2002/03.⁵⁷ Instead, it is replacing this with more and better opportunities for Danish language training, a move which suggests that an educational philosophy of assimilation is being followed in Denmark. Also, in Greece there is still no provision for the teaching of migrants’ languages, or their history and culture. There are, however, bilingual schools for the officially recognised Muslim minority in Thrace.

In Denmark a campaign on the Need for All Youth (Brug for Alle Unge) was launched in November 2002, with the aim of ensuring that all young people - regardless of ethnic background – enjoy equal opportunities in the education system and the labour market. As part of the campaign, a conference was held and two ethnic minority consultants were appointed in the Ministry of Integration. In Spain, the Andalusian Government has put into practice an

⁵⁴ The National School Board, *Flera språk – fler möjligheter - utveckling av modersmålsstödet och modersmålsundervisningen 2002* (Dnr 01-01:2751) (*More languages- more opportunities - the development of the mother tongue support and the education of the mother tongue 2002*), Stockholm 2002

⁵⁵ The National School Board, *Flera språk – fler möjligheter - utveckling av modersmålsstödet och modersmålsundervisningen 2002* (Dnr 01-01:2751) (*More languages- more opportunities - the development of the mother tongue support and the education of the mother tongue 2002*), Stockholm 2002

⁵⁶ In accordance with EC Directive 77/486/EEC

⁵⁷ This leaves the individual municipalities the option of providing this tuition if they want to, as the metropolitan councils of Copenhagen and Aarhus have chosen to do.

Educational Immigration Plan with awareness campaigns to integrate migrant students. Altogether 10 regional autonomous communities have plans targeting immigration and integration, including those put forward by the Assembly of Madrid (Integration of Roma) as well as by the Basque and the Catalan Government (Integration Plans). A statutory duty to promote race equality took effect in the UK in 2002 which intends to ensure that public education bodies undertake comprehensive ethnic monitoring and take active measures to promote equality. In Sweden, in 2002, the book *Jalla! Let us redecorate the Christmas Tree*⁵⁸ was published by the Ministry for Foreign Affairs and distributed to all pupils in the first and second grade in Swedish secondary schools. The aim of the book is to combat Islamophobia and to widen the image of Muslims living in Sweden.

With regard to the recognised autochthonous minorities within some Member States, there have been new efforts made in the Austrian *Länder* of Carinthia and Burgenland to improve the status of Slovenes and Croats in fields including education, a fact welcomed by the Council of Europe.⁵⁹ Also in Austria, a prize winning⁶⁰ learning aid project for Roma children is in place in Vienna, where Roma women are specially trained to both assist children with their learning situation and help to bridge communication gaps between Roma parents and Austrian school teachers.

The situation for undocumented children has improved in that they now have access to education in those Member States which recognise the right to education and which establish the goal of compulsory and free elementary education for all, in accordance with the International Convention on the Rights of the Child. However, in Portugal a circular from the Ministry of Education has forbidden the registration, even at the level of basic compulsory education, of the children of immigrants or asylum seekers whose status has not been regularised, i.e. those who are undocumented. Asylum-seekers in the UK are able to attend further education courses funded by the Learning and Skills council. However, in July 2002 they lost the right to attend ESF funded courses.

NGOs

An example of NGO activity here is the national RASMUS Network in Finland, a coalition of civil sector organisations formed in 2002 which uses education to promote tolerance and combat racism. An extensive anti-racism public

⁵⁸ Ministry for Foreign Affairs, *Jalla! Nu klär vi granen - möte med den muslimska kulturfären (Yalla! Let us redecorate the Christmas tree - Sweden and the Muslim cultural sphere)*, Stockholm 2002

⁵⁹ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2002), Opinion on Austria; paragraphs 23, 31, 32, 57, 67; available at: http://www.bka.gv.at/bka/service/publikationen/volksgruppen/rahmenkonvention_pruefbericht_en.pdf, (24.03.2003).

⁶⁰ See Erich, R.M. (s.a.) Bericht über die Lerngruppen des Romano Centro in Wien (Report on the learning groups by the Romano Centro in Vienna), available at: http://www-gewi.kfunigraz.ac.at/romani/lem_hilfe/lemhilfe_rc01.de.html (11.04.2003), cf. also http://www.livetogether.at/wif_site/wif_pages/Presse_20_down.html

information website was launched to serve and educate both the majority and minority populations, co-funded by several Finnish ministries. A Greek non-governmental good practice that deserves particular mention is the work with Roma, refugee and migrant children in the “Kivotos” Youth Centres in Athens. The two youth centres offer a safe and secure home for more than 300 children of broken or impoverished families. Fifty volunteers cater to the needs of all these children who manage to attend school regularly. “Kivotos” relies exclusively on donations and volunteer work.

2.3. Employment

2.3.1. Differences in employment and unemployment

Despite signs of increasing diversity, national labour markets are still highly segmented along national or ethnic lines. Among immigrants, several segments need to be distinguished. One dividing line is between migrants from other EU/EEA countries, who often belong to a higher income and status group, and third country nationals, who are often employed in low-skilled, low-paid professions. The latter are still heavily concentrated in certain industrial sectors (e.g. manufacturing, construction), parts of the service sector (e.g. personal services, cleaning, catering, caring) and sectors that are subject to strong seasonal fluctuations (e.g. tourism and agriculture). In particular, women with a migrant background are often restricted to certain segments of the labour market, such as personal and domestic services, cleaning, catering, health and care.

In general, the data from 2002 (see, for example, the latest Employment Report of 2002 of the European Commission⁶¹) or the most recent available data confirm previous findings that migrants from non-EU countries and certain autochthonous minority groups have much lower labour force participation rates (activity rates) and employment rates than natives or migrants from EU/EEA countries. In some Member States, migrants and ethnic minorities from non-Western countries (e.g. non-European migrants such as Turks and people from the Middle East in Denmark and the Netherlands, Turks in Germany, North Africans in France, Bangladeshis and Pakistanis in the UK) have activity rates that are 15 – 40 per cent below that of natives or western migrants. Female migrants from Muslim countries have particularly low activity rates and are, for a variety of reasons, largely excluded from the labour market. The same is true for recently arrived refugees in all Member States and certain disadvantaged minority groups (Roma in most Member States, Travellers in Ireland).

⁶¹ European Commission; Directorate-General for Employment and Social Affairs, (ed.), *Employment in Europe 2002. Recent Trends and Prospects*. Luxembourg, p. 22-25

In addition to lower labour force participation rates, migrants and ethnic minorities from non-Western countries are typically confronted with much higher unemployment rates than the majority population. In some Member States the unemployment rates of third country (non-Western) migrants such as Turks, North Africans and people from the Middle East are three to four times the levels of the national average (e.g. Denmark, Finland, the Netherlands, Sweden), while in others it is about double the national rate (e.g. France, Germany). Everywhere, certain migrant groups dominated by recent refugee flows (e.g. Afghanis, Iraqis, Iranians, Somalis) face extremely high unemployment rates (up to 50 per cent and more), as do Roma and Travellers. However, not all trends are negative. In the Netherlands the unemployment rate of ethnic minorities declined in 2002 and research from the Dutch SCP (Social Cultureel Planbureau) showed that the rise in unemployment among ethnic minorities was no higher than among the autochthonous population.

In 2002, the already disadvantaged economic position of many migrants from non-EU countries has been further weakened due to the continuing slow-down of economic growth in Europe and the resulting decline in labour demand. There is also evidence that relative disadvantages have further increased as unemployment among migrants and minorities has increased even more than among natives (e.g. in Austria, France, Greece, Luxemburg, and Portugal). It is a typical phenomenon in times of economic downturn that employees with an ethnic minority background are more likely to lose their jobs than native workers, due to their often precarious employment positions (more fixed-term and inferior labour contracts). In addition, declining investment in industry and construction and cut-backs in public works projects have led to job-losses in employment sectors with a high concentration of migrant workers

2.3.2. Discrimination in the labour market

The observed differences in activity rates, employment and unemployment rates of migrants and minorities indicate persistent exclusion, disadvantage and discrimination. Factors influencing the employment performance of migrant and minority groups include human capital (educational and professional qualifications, language skills, etc.), non-recognition of qualifications acquired abroad, and structural changes in the economy.

Combating discrimination and promoting social inclusion by access to employment is an important objective of the European Employment Strategy and the Social Inclusion Process, both monitored by the European Commission. Following a Council Decision of February 2002 on “guidelines for Member States' employment policies for the year 2002” (2002/177/EC) the Member States accepted the following agenda:

“Each Member State will:

- identify and combat all forms of discrimination in access to the labour market and to education and training,
- develop pathways consisting of effective preventive and active policy measures to promote the integration into the labour market of groups and individuals at risk or with a disadvantage, in order to avoid marginalisation, the emergence of ‘working poor’ and a drift into exclusion,
- implement appropriate measures to meet the needs of the disabled, ethnic minorities and migrant workers as regards their integration into the labour market and set national targets where appropriate for this purpose.”

(see: Official Journal of the European Union L60/66 of March 1st 2002.)

Evidence for discrimination during 2002 can be categorised under five headings: workplace complaints, surveys of the minority population, surveys of the majority population, direct evidence and indirect evidence.

Complaints on ethnic/racial discrimination at the workplace

Data on work-related complaints are perhaps the single most important source of evidence on discrimination in employment. In general, complaints concerning employment refer mainly to wages, payment of overtime, (oral) contracts, racial harassment, and promotions. According to the available statistics there are usually more registered complaints from men than from women.

However, in a comparative perspective the level of such complaints also tends to reflect large national differences in recording mechanisms. In some countries (e.g. Belgium, France, Ireland, the Netherlands, Portugal, Sweden and the United Kingdom) there are special public bodies charged to register complaints by victims of discrimination. In others (e.g. Austria, Denmark, Finland and Spain), NGOs try to compensate for the absence of such a body by collecting information on individual cases. Also in Finland the Regional Labour Protection Offices collect information on complaints of discrimination in the labour market. In still other countries, (e.g. Luxemburg and Italy) no nation-wide reporting mechanisms are in place, and in Greece it was reported that the absence of public monitoring or complaints mechanisms hinders both the collection of data on racial discrimination, and efforts to combat it. In those Member States where there are established and tried mechanisms of complaint for victims, complaints are more likely to come to public attention. For example, in the UK in May 2002 an Employment Tribunal awarded £150,000 (215,000€) in damages to an employee of Indian origin at the Ford Motor Company after he had been victimised and abused as a result of supporting a

fellow worker who in 1999 had successfully brought a case of racial discrimination against Ford. However, in reality, only a fraction of victims of discrimination in EU Member States tend to lodge complaints. As with court cases, victims of discrimination may be sceptical as to the efficiency of lodging a complaint, may fear dismissal or may simply not be aware of existing complaint mechanisms. Hence it is important that all Member States improve their anti-discrimination legislation and develop victim support mechanisms along the lines indicated by the new Equality Directives which have to be transposed into national legislation during 2003.

Surveys of the minority population

In the EUMC project Migrants' Experiences of Racism and Racial Discrimination (see Section 2.2.2 of this report), several questions related to experiences in the labour market and at work. The findings show that about 40% of migrants in the labour market in Belgium, Italy, the Netherlands, Austria, and in the UK, state that they have experienced insults and harassment at work because of their migrant/ethnic background during the last five years and about 30% in Spain and in Sweden. Regarding suspicious that they had been denied a job they were qualified for because of their migrant/ethnic background, about 45% of the migrants who had applied for jobs in the last five years in Belgium report this, compared with about 40% of the migrants/minorities in Spain and Sweden and about 30% in Italy, the Netherlands, and Austria. For the United Kingdom about 20% of migrants report having experiences this kind of discrimination. In general migrants from African and Muslim countries have reported more perceived discrimination in the labour market than other migrant groups studied.

A Portuguese survey⁶² found that subjective discrimination was perceived more by members of minority groups from Portuguese-speaking Africa than by those from elsewhere in the world; in Germany, a representative study by the Federal Ministry for Employment and Social Order found that some 10.1 per cent of all Turkish people questioned felt disadvantaged whilst seeking a job.⁶³ However, the level of subjectively perceived discrimination is often lower with regard to recruitment than with regard to experiences at the workplace itself. That is because the victims are unlikely to be aware of the discrimination, which takes

⁶² On the evolution of racist attitudes in the Portuguese society see, for example, Vala, Jorge (coord.) (1999) *Novos Racismos: Perspectivas Comparativas* [New Racisms: Comparative Perspectives], Oeiras: Celta; Vala, Jorge, Brito, Rodrigo and Lopes, Diniz (1999) *Expressões dos racismos em Portugal* [Racisms's Expressions in Portugal], Lisboa: Instituto de Ciências Sociais; Baganha, Maria (1996) *Immigrants Insertion in the Informal Market, Deviant Behaviour and the Insertion in the Receiving Country*, 1.º Report, Centro de Estudos Sociais, Coimbra. (Mimeo).

⁶³ Bundesministerium für Arbeit und Sozialordnung (BMA) (2002): *Situation der ausländischen Arbeitnehmer und ihrer Familienangehörigen in der Bundesrepublik Deutschland. Repräsentativuntersuchung 2001* (Situation of foreign workers and their families in the Federal Republic of Germany. Representative Study 2001), Offenbach und München

place at the recruitment stage, but are far more able to recognise its effects when they are at work.

Surveys of the majority population

Another source of evidence for potential discrimination towards migrants and minorities are opinion surveys of the majority population on their attitudes towards migrants and minorities, which frequently reveal negative attitudes or prejudices. For example, a survey carried out by the Centre for Studies and Opinion Surveys on behalf of the office of the High Commissioner for Immigration and Ethnic Minorities in Portugal in 2002 found that the majority of respondents declared that immigrants are less willing to work than the Portuguese, especially Brazilians and Africans.⁶⁴ A European survey⁶⁵ carried out in early 2002 by the Italian *Fondazione Nord Est*⁶⁶ found that 29.2 per cent of the Italian sample agreed *much* or *very much* with the statement that *immigrants represent a threat to employment* for nationals. (However, this figure was slightly lower than that for the previous year - 32.3 per cent.) Also in Italy, researchers interviewed about 950 entrepreneurs in three north east regions⁶⁷ about their perceptions of migration and immigrant workers in their area, and found a similar pattern of negative perceptions. About 56 per cent of the sample agreed with the statement that *there are too many immigrants and that it is not possible to allow more to come in*⁶⁸. The research indicates that medium-sized and large firms showed a more open attitude towards immigrant workers while less open and somewhat hostile attitudes prevail among small and very small firms, particularly those that do not have any immigrant employees⁶⁹. In 2002 in connection with an analysis of “bottlenecks” in the Danish Labour Market, consultants financed by the Danish Labour Market Authority, asked employers in the public and private sectors whether they would recruit “refugees/immigrants” to solve recruitment problems. The results show that in 2001, 58% of public institutions said that they would recruit “refugees/immigrants” in the case of recruitment problems. This is a small decrease from 60% in 2000. The results were even less encouraging in the private sector. In 2001 only 42% of employers in private companies said that they would hire “refugees/immigrants” to solve recruitment problems, which is a small decrease from 45% in 2000⁷⁰. Whilst all of these are surveys of attitudes rather than discriminatory practices they do reveal factors of potential discrimination.

⁶⁴ The full study is available at: <http://www.acime.gov.pt/files/Portugues/wxifqfxugezbst.doc> (15.4.2003)

⁶⁵ Diamanti I., Bordignon F., (2002), Immigrazione e cittadinanza in Europa: Terza indagine sugli atteggiamenti dei cittadini in sette Paesi Europei. Primi appunti sui risultati dell'indagine, in Quaderni FNE, Collana Osservatori No.5, pp. 8-13

⁶⁶ European countries covered were France, Germany, Great Britain, Italy, Poland, Spain and Hungary.

⁶⁷ Veneto, Trentino - Alto Adige and Friuli Venezia Giulia

⁶⁸ Marini D., (2002), Formare una professione o educare al lavoro? I fabbisogni professionali degli immigrati secondo gli imprenditori del Nord Est, in Quaderni FNE, Collana Osservatori No.4, p. 39.

⁶⁹ Marini D. (2002): *ibidem*, p. 42

⁷⁰ COWI (2002) Flaskehals analyse, www.ams.dk

Direct evidence

Whilst attitude surveys say little about how or the extent to which such attitudes are transposed into discriminatory acts, there is unambiguous evidence of discriminatory practices available from controlled experiments, known as "discrimination testing". This method utilises two or more testers, one belonging to a majority group and the others to minority ethnic groups, all of whom "apply" for the same jobs. The testers are matched for all the criteria which should be normally taken into account by an employer, such as qualifications, experience and schooling. If over a period of repeated testing the applicant from the majority background is systematically preferred to the others, then this points to the operation of discrimination according to ethnic background.

The method of discrimination testing is one of the most important and effective means of demonstrating the existence of the problem area in the face of those who deny that discrimination occurs, and as reported previously by the EUMC, this method has been applied in an increasing number of Member States, generally showing net discrimination rates of around 35 per cent against ethnic minority applicants.⁷¹ In 2002 this particular test was reported in Austria, when a male Viennese and a male Austro-African, both having the same qualifications and legal conditions for entry into the labour market, applied for 21 jobs. This experiment demonstrated that male native Austrians are disproportionately more likely to be invited to interviews than equally qualified applicants of African descent.⁷² In recent years the ILO has sponsored this type of test in Belgium, Germany, Spain and the Netherlands, and assisted with a study in Denmark, and in 2002 they initiated similar testing in Italy using the same methodology, the results of which will be available in late 2003.

Indirect evidence

Whilst direct evidence of the above character is perhaps the most convincing, there is also an increasing amount of useful indirect evidence available from statistical surveys. In order to isolate the importance of the factor of discrimination from other such explanatory factors, certain types of statistical analysis⁷³ can be carried out. Reviewing the results of such analyses for the United Kingdom, a 2002 study by the UK Cabinet Office concluded that there can be little doubt that part of the explanation for ethnic differences that remain

⁷¹ See, for example, Roger Zegers de Beijl (ed) *Documenting Discrimination against Migrant Workers in the Labour Market: A comparative study of four European countries* International Labour Office, Geneva 2000

⁷² Ebermann, E. (ed.) (2002) *Afrikaner in Wien. (Africans in Vienna)*, Münster/Hamburg/London: Lit-Verlag, pp.184-189

⁷³ These use multivariate regression analyses to split the effects of the various explanatory factors on measured disadvantage from the residual (unexplained) factors (interpreted as discrimination)

after key variables have been accounted for must lie in racial discrimination.⁷⁴ Likewise, research carried out by the Labour Inspectorate of the Netherlands and published in 2002 shows a corrected wage difference of four per cent between native Dutch and non-Western ethnic minority workers, such as those from Turkey, the Caribbean or Morocco.⁷⁵ Again, the difference is attributed partly to discrimination.

2.3.3. New tendencies

Some themes identified in the 2001 EUMC Annual Report were further confirmed in the evidence from 2002. One was the evidence of growing competition for low skilled and seasonal work between traditional migrants and newer migrants from Eastern European countries. Again in 2002 it was reported that in Spain, employers show an increasing preference for workers from Eastern Europe in comparison with those of Arabian (mostly Moroccan) origin. For example, in March, during the strawberry harvest in Huelva, Spanish farmers went abroad to sign contracts with 6,700 immigrants, the majority of whom were Polish and Rumanian women. This left unemployed about 5,000 Moroccan workers, who had been working as strawberry pickers in the area for years. The 5,000 North African immigrants were described as “desperate”, wandering through the towns in the area living off charity, and the local mayors expressed concerns that there would be confrontations between the two immigrant groups.⁷⁶ Similarly, in Portugal some trade union officers and African workers have reported that employers are preferring to hire new immigrants from Eastern Europe as over traditional immigrants from Portuguese-speaking African countries. This issue will take on a greater significance after the enlargement process of the EU.

Another theme from 2001 had been the growing diversity in the experiences of groups. For example, migrant and minority women have traditionally had a lower employment rate than their male counterparts. However, the 2001 Annual Report described in the Netherlands, the UK and France an increasing participation of migrant and minority women in the labour force, with, for example, women of Surinamese origin in the Netherlands participating even more than women of native Dutch descent. Similarly an exception to the general picture of ethnic minorities receiving a lower hourly wage rate than native Dutch workers is the case of women with a Caribbean background, who receive a higher hourly wage than their native Dutch counterparts. In 2002 the earlier-mentioned discrimination testing in Austria found lower rates of discrimination

⁷⁴ Cabinet Office (2002) Ethnic Minorities and the Labour Market. Cabinet Office Performance and Innovation Unit, February 2002, pp. 61 – 128 as well as pp. 209 – 211, available at <http://www.cabinet-office.gov.uk/innovation/2001/ethnicity/attachments/interim.pdf> (23.01.2003)

⁷⁵ Nederland, Parliamentary Documents II, 2001–2002, 27 099, nr. 6 (04.07.2002) p. 4

⁷⁶ Spanish National Focal Point Report 2002

for African women, who were invited to interviews far more often than African men, and nearly as often as Austrian women⁷⁷.

However, the 'double discrimination' for women migrants is visible too. Sometimes the fact that women migrants encounter fewer problems in finding work is precisely because they are sought after to fill some of the least desirable jobs. In Italy, data for 2002 show that they are disproportionately represented in jobs as housemaids, personal assistants for the elderly, and cleaners⁷⁸. Italian households increasingly employ migrant women from non-EU countries as domestic helpers,⁷⁹ and one consequence of this is that these women often find it hard to have a regular family life of their own, leaving the rest of their families in their countries of origin. At the extreme end of the scale in Europe are migrant women in the most highly exploited working conditions of all, such as their increasing use as cheap labour in the sex industry, in conditions described in one Spanish report as more akin to slavery than discrimination.⁸⁰

2.3.4. Initiatives and good practices

Initiatives and cases of good practice observed during 2002 can be classified under five headings: initiatives from the EC, national and local governments, employers, trade unions and NGOs.

European Community

In 2002, a large number of projects and initiatives combating discrimination and inequalities in the labour market, carried out within the scope of the European Social Fund (ESF) EQUAL Initiative, came to the implementation stage. EQUAL tests new ways of tackling discrimination and inequality experienced by those in work and those looking for a job. The key principles of EQUAL are: transnational co-operation, innovation, empowerment, a thematic and partnership approach, dissemination and mainstreaming to ensure that EQUAL results and findings can feed into policies and practice. The activities are structured on the four pillars of the European Employment Strategy: Employability, Entrepreneurship, Adaptability and Equal Opportunities for women and men. In addition EQUAL has a separate theme which addresses the needs of asylum seekers.⁸¹

⁷⁷ Ebermann, E. (ed.) (2002) *Afrikaner in Wien*. (Africans in Vienna), Münster/Hamburg/London: Lit-Verlag, pp.184-189

⁷⁸ Blangiardo G.C. et.al., *L'immigrazione straniera in Lombardia. La prima indagine regionale*, ISMU Regione Lombardia, Milano, (2002)

⁷⁹ Istituto IARD Franco Brambilla (2002): op. cit p. 81. See also Provincia Autonoma di Trento (2002): *L'immigrazione in Trentino, rapporto annuale 2002*, p.27.

⁸⁰ Spanish National Focal Point Report 2002

⁸¹ See: http://europa.eu.int/comm/employment_social/equal/index_en.html

In the priority area for combating racism, 11 Member States were involved in a total of 76 development partnerships (DPs). Many EQUAL projects focus on providing language or vocational training courses to vulnerable groups among migrants and minorities (e.g. in Finland, Germany, Greece). Other EQUAL DPs aim at the involvement of relevant labour market actors (social partner institutions, labour market administrations, enterprises) in projects fighting and preventing racism at the workplace (e.g. in Austria, France, Finland), activities for training and promoting the labour market integration of asylum seekers, (Spain), job creation for specific minority groups (e.g. the project “*Acceder*” in Spain or the SUNRISE project in Portugal), while still others work on improving the quality and efficiency of Codes of Conduct in anti-discrimination and on preventing and combating discrimination in the workplace (e.g. the projects “The Award, the Code and the Monitor”, “Companies Care” and “Towards a Workforce Without Discrimination” in the Netherlands).⁸² In addition to the EQUAL projects there are many transnational projects co-funded from the Community Action Programme to Combat Discrimination, the aims of which are to improve the understanding of issues related to discrimination, to develop the capacity to tackle discrimination effectively and to promote the values underlying the fight against discrimination.⁸³ The programme has fostered national and transnational actions, amongst them smaller European networks of NGOs aimed at tackling discriminatory barriers. In May 2002, the Action Programme published the Study “Promoting diversity. 21 bodies promoting diversity and combating discrimination in the European Union”.⁸⁴ In the future the EUMC will follow up and report on the outcomes of these projects.

National and local governments

In many Member States special initiatives from the governments exist that aim to support the labour market integration of migrants and minorities. These range from the setting up of nation-wide support systems for migrants with the objective of aiding irregular migrants in the regularization of their status and the formal recognition of their skills in Portugal (*CLAI-Local Centres of Support to Immigrants*) to a targeted initiative aimed at reducing the wide gap between overall and ethnic minority employment rates in the UK (*JobCentrePlus*). A new policy paper (March 2002) of the Danish government aims for a “short cut

⁸² All projects are documented and accessible on the EQUAL Common Database (ECDB) website. See: www.europa.eu.int/comm/equal The goal of EQUAL is to test new ways of tackling discrimination and inequality experienced by those in work and those looking for a job. To this end, EQUAL co-finances activities in all EU Member States. The EU contribution to EQUAL of € 3,026 million EUR will be matched by national funding. The first of two calls for proposals for EQUAL projects in the Member States took place during the 1st half of 2001. Responsibility for the implementation of the Community Initiative programmes in the Member States lies with the national authorities.

⁸³ http://europa.eu.int/comm/employment_social/fundamental_rights/prog/index_en.htm

⁸⁴ http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisl/mslegln/equalitybodies_exec_en.pdf

to the labour market” for immigrants with a simple non-bureaucratic model of on-the-job training and a rapid introduction to ordinary employment. The goal of avoiding the “dequalification” of skilled migrants is the subject of two Swedish reports⁸⁵, which examine the experience of foreign teachers entering the Swedish school system. In Finland a national awareness-raising campaign to combat discrimination continued to be run by a partnership of ministries, equality bodies and NGOs.

Employers

There are also initiatives from employers which came to attention during 2002. For example, in France, a temporary employment agency has concluded an agreement with the state on anti-discrimination training for its employees.⁸⁶ In Germany, many big companies have made agreements between management and work councils against discrimination and racism (for example, at Ford, Opel, VW, Fraport, Thyssen, Jenoptik)⁸⁷. In the Netherlands, the Ministry of Social Affairs and Employment commissioned a survey that maps out company policies against discrimination (including many codes of conduct) that could serve as examples for other organizations.⁸⁸ In Ireland, a major hotel group, Jury’s, has launched a series of initiatives aimed to benefit their non-EU/EEA staff, including a poster campaign against racism.⁸⁹

Trade unions

Trade unions and workers’ associations have shown a heightened interest in equality and diversity issues and are now often involved in awareness-raising and counselling activities on immigrants’ rights at the workplace (e.g. Force Ouvrière (FO) in France, the Portuguese Workers General Union (CGTP) and the German Association of Trade Unions (DGB)). The Irish Congress of Trade Unions (ICTU), together with the Equality Authority and the Employers’ Federation, holds an annual “*Anti-Racist Workplace Week*”. In Greece, the “Multiethnic Union of Workers in Ikaria”, a small island in the Aegean, was formed in May 2002 by Albanian, Ukrainian, Bulgarian and Greek workers. In November 2002, the first conference of the *European Anti Racism Network*

⁸⁵ The National Agency for Higher Education, (1) *Från gräns till kateder - Introduktionsperiod och lämplighetsprov för lärare med utländsk utbildning (From the border to the teacher's desk - Introductory period and test in suitability for teachers with foreign exam)*, Stockholm, 2002 and (2) *Behörig att undervisa - Utländska lärare i svensk skola (Qualified to teach - Foreign teachers in Swedish schools)*, Stockholm, 2002

⁸⁶ Accord-cadre DPM-Fasild-Adecco Travail Temporaire visant à prévenir les pratiques discriminatoires (Framework agreement DPM-Fasild-Adecco on temporary work concerning the prevention of discriminatory practices). Paris, Adecco, 2002, (4p):
See: <http://www.social.gouv.fr/htm/pointsur/discrimination/accordadecco.htm> (17.4.2003)

⁸⁷ These agreements can be consulted on the home page of the trade union IG Metall (www.igmetall.de)

⁸⁸ De Vries, S. et. al. (2002), *Gewenst beleid tegen ongewenst gedrag: voorbeelden van goed beleid tegen ongewenste omgangsvormen op het werk (Wanted policy against unwanted behaviour: Examples of good policies against unwanted treatment at work)*, Hoofddorp: TNO Arbeid

⁸⁹ ICTU (2001), *Anti Racism. Indicative Action Plan. 2001-2003*

took place in Egmond, the Netherlands, aiming specifically at black and migrant trade unionists from different European trade unions.⁹⁰ As well as their normal activities for immigrants the two largest Spanish unions, the UGT and CC.OO, have been active in campaigning for central government transposition of the new EU Council Directives against discrimination.

NGOs

As in the past, NGOs are important actors in initiatives and projects promoting diversity and fighting racism in a variety of fields. Some of the more innovative projects aim specifically at counteracting the exclusion of youth (e.g. the project *Real Diversity* of the National Council of Swedish Youth Organizations or the project *“It will be Possible”* by SOS Racisme in France).⁹¹ There is also a growing number of migrant organisations aiming at the empowerment of migrant groups – and migrant women in particular (e.g. the credit cooperative *DIWATA* set up by Filipino women in Greece or the project *Simba*, initiated by African women for long-term unemployed migrant women in Sweden). A Portuguese project (*“Support to doctors”*), promoted by the Jesuit Service for Refugees in partnership with the Calouste Gulbenkian foundation, is directed at migrant doctors who wish to practice medicine again, but who are currently in jobs demanding lesser qualifications. Also in Portugal the Portuguese Council for Refugees provides a service helping asylum seekers’ insertion in the labour market.

2.4. Conclusions

There is an enormous variety between the Member States in their national reporting systems on discrimination, as well as their anti-discrimination legislation. In both the spheres of education and employment, it is clear that those Member States with better systems in place are characterised by more complaints from victims, and more cases of discrimination, which come to public notice. In other Member States, cases do not come to public attention, which tends to lead to the assumption, wrongly, that there is “no problem”.

The absence of systems to receive and register complaints and assist the victims puts a proportionately greater importance on the role of investigation and research. Often, it is only when investigations are carried out that processes of employment exclusion are discovered, such as bias in recruitment, or differential treatment in the workplace. Similarly in education there is a lack of data on racist and xenophobic incidents in schools and a lack of detailed statistics on the educational achievement distinguishing between different

⁹⁰ The report of the conference can be found on <http://www.fnv.net/host/eam/english/index.htm>

⁹¹ See: <http://www.sos-racisme.org> and *L'express*, 14/11/2002 « SOS RACISME, a gence pour l'emploi » (SOS Racism, agency for employment).

ethnic minority groups. There is a need for more research studies using qualitative methods to determine to what degree factors such as cultural and language barriers, socio-economic factors, and the educational background of the students' parents, as well as deficiencies of the educational system, or discrimination in its many forms, contribute to the variability in educational performance of minority groups.

In education ethnic minorities are segregated into some parts and excluded from others, sometimes by the accident of social forces, but also sometimes by deliberate design. In employment there is still a kind of segregation in practice – a concentration in some narrow sectors and types of work, and a virtual exclusion from others, with an over-representation in the least desirable types of work.

Migrants and ethnic minorities also have a more precarious hold on both education and work. The reports from 2002 show that the children of migrants and ethnic minorities have higher drop-out rates, spend fewer years in secondary schooling, and even experience higher rates of deliberate expulsion. In employment we also see a kind of higher “drop out” rate, in this sense reflecting the classic ‘industrial reserve army’ syndrome, with ethnic minorities still more likely to lose their jobs in an economic downturn.

The data show that not all migrants and minorities are equally exposed to racial discrimination on the labour market. Non-EU migrants and certain minority groups (e.g. Africans, Arabs, Pakistanis, Filipinos, Turks, Roma and Travellers, as well as Muslim, and black citizens) are shown to be more exposed than others.

There are some positive developments in both spheres. In most Member States there are signs of an increasing number of initiatives to further the equal integration of migrants and ethnic minorities into schooling and work and to combat discrimination. Many countries have made efforts to improve the schooling of ethnic minorities by developing special curricula and language programs. Some are starting to think about measures to counteract the trend of ethnic segregation in the field of education.

In the employment sphere, many of the initiatives described in 2002 take the form of awareness-raising, targeted at the majority population. Many others are directed at improving the human and social capital of the under-represented groups. Although these are important, it still seems to be the case that the good practice initiatives often work from an implicit “deficit model” of inequality, and neglect the continuing problem of the exclusionary practices and structures within the organisations of majority societies. In other words, the initiatives which are directly “anti-racist” or “anti-discrimination” in emphasis are still rarer than they should be. The focus continues to be on the language and qualifications deficit of the migrants and ethnic minorities. Whilst the importance of the various initiatives to improve these should not be

underestimated, they are considerably lessened in their value and potential effect if measures are not taken to address the fact that entirely unjustifiable language demands are set for jobs, or that dress codes are unreasonable, or that racism and prejudice keeps the doors shut no matter how well qualified the migrant or ethnic minority applicants are. There is a continuing need for more initiatives which take as their focus the actions of the majority population, organisational culture and organisational practices, rather than simply the human capital of the under-represented minorities themselves.

3. Racist and xenophobic violence and crimes in the Member States 2001-2002

The fight against racism and xenophobia has to take into account all the different forms that racism takes, whether it is physical attacks, hate speech, indirect discrimination, or denial of entry to a restaurant, or access to goods, services or employment, based on the grounds of a person's "race", ethnicity, religion, culture belief or national origin. This part of the report concentrates specifically on racist/xenophobic violence and crimes.

The proposed framework decision

The European Commission has made a proposal for a framework decision on combating racism and xenophobia⁹² replacing a Joint Action adopted in 1996⁹³. The framework decision aims at establishing a solid basis for harmonising criminal legislation against racism in the Member States with a view to providing effective and proportionate punishment and reducing obstacles to judicial cooperation. If adopted the framework decision would oblige Member States to criminalise a range of racist behaviour and to identify racist and xenophobic motives as aggravating circumstances in sentencing. The racist and xenophobic behaviour to be penalized by Member States include "public incitement to violence or hatred for a racist or xenophobic purpose", public condoning, denying or trivializing of crimes of genocide etc., and participating in the activities of racist or xenophobic groups (Art. 4). Art. 8 demands the establishing of xenophobic and racist motivation as an aggravating factor for any crime committed. Obligations relate to the introduction of a minimum penalty of two years imprisonment for serious cases of racist crimes (Art. 6) and corporate criminal liability (Art. 9). Judicial cooperation is to be improved through ensuring that racist crimes are not regarded as "political crimes" (Art. 14). Exchange of information would be facilitated through establishing operational contact points in Member States, as well as through an obligation to forward relevant data as regards storage of racist material, to be disseminated in other member countries (Art. 15).

The EUMC welcomes the proposal of this framework decision and will monitor its progress through Council negotiations. This section of the report presents a country-by-country overview of the situation and recent developments in relation to racist/xenophobic violence and crimes.

⁹² Brussels, 28.11.2001 COM(2001) 664 final, 2001/0270 (CNS): Proposal for a Council Framework Decision on combating racism and xenophobia.

⁹³ Joint Action 96/443/JHA of 15 July 1996.

3.1. Legislation against racist/xenophobic violence and crimes

Legislation in all Member States gives protection from racist crimes, but not all Member States consider the racist motive behind a crime an aggravating factor. In Belgium, Spain, Austria, Portugal, Sweden, and in the United Kingdom the Penal Codes have articles on “aggravated punishment” for crimes with racist motives. In Belgium aggravating circumstances has been introduced in a series of articles of the penal code by the anti-discrimination law of 25 February 2003 and can be applied to situations where there is a racist motive. The Spanish Penal Code gives in general extra punishment for a racist motive to an offence or a crime. The Austrian Penal Code Section 33 no. 5⁹⁴ provides that in cases of offences committed for racist or xenophobic reasons, the motivation is to be investigated in court and considered as an aggravating factor in determining the particular sentence. In Portugal according to article 132° and 146°, no.° 2 of the Penal Code, punishment for physical offences other than homicide can also be aggravated when racial hate is proved to be the motivation. In Sweden section 29 of the Penal Code prescribes that sentencing must take into consideration whether the crime against a person, ethnic group or some other similar group of people was motivated by “race”, colour, national or ethnic origin, religious belief or other similar circumstance.⁹⁵ According to this provision the sentencing court shall take it as an aggravating circumstance and increase the sentence of the perpetrator, if, for example, the offender on the basis of racist or xenophobic motives assaults a victim of non-European origin. And in the United Kingdom, following attacks on Muslim people and property after the events of September 11 2001, Part 5 (Sections 37-42) of the Anti-Terrorism, Crime and Security Act 2001 extended the category of racially aggravated offences to include ‘racially or religiously aggravated offences’. As with the Crime and Disorder Act, religious aggravation applies to a closed list of pre-existing offences – assault, criminal damage, public order offences and harassment. The Anti-Terrorism Act also increases the maximum penalty for incitement to racial hatred from two to seven years’ imprisonment and extends the prohibition on incitement to racial hatred directed against groups outside the UK. Additionally, section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 (replacing section 82 of the 1998 Crime & Disorder Act) imposes a duty on sentencing courts to treat evidence of racial aggravation as an aggravating feature, increasing the seriousness of the offence and the sentence to be imposed, in cases where offences are not specifically charged under the 1998 Act.

⁹⁴ Österreich, Strafgesetzbuch, BGBl 60/1974 (01.01.1975), amended version BGBl I 134/2002, (13.08.2002).

⁹⁵ SFS 1994:306

More Member States might follow. In Finland the Government submitted a draft law in 2002 aiming at reforming the general principles of criminal law.⁹⁶ A new aggravating circumstance – committing a crime on the basis of racist or equivalent motives – has been proposed in sentencing. According to the draft law “*an aggravating circumstance in punishment would be committing a crime against a person because of his national, racial, ethnical or equivalent group.*” In practice a racist motive might already lead to increased fines. In Denmark, during the last couple of years, individual cases illustrate that the racist motive of violence has in some Court cases been considered as an aggravating circumstance in sentencing.⁹⁷

The political experiences of nazi and fascist regimes in the past as well as the present experiences of neo-nazi and racist organizations have motivated some Member States to criminalise racist or fascist organizations in order to prevent their activities. In Member States such as Germany, Greece, Austria and Portugal racist and/or fascist organisations and parties can be prohibited. Such organizations are also observed by surveillance agencies in some Member States (in Germany, Austria, and Sweden by agencies for the Protection of the Constitution or secret services). In Portugal the punishment for establishing or participating in or supporting a racist or fascist organisation that organises propaganda which either incites or encourages discrimination, hate or religious violence, can be a prison sentence of between one and eight years.

Besides general norms punishing defamation, instigation to crime and threats, there is also special legislation against racist speech in most of the Member States, in line with the CERD. Hate speech laws usually prohibit racist or right-wing organisations and punish incitement to hatred on the basis of certain characteristics of the victim, the denial of the Holocaust, and the display or wearing of racist symbols. “Race”, religion, nationality and “colour of skin” are included in almost all of hate speech laws. Hate speech, racist propaganda or incitement to hatred or violence against minority sections of society are punished in Belgium, Denmark, Germany, Greece, France, Luxemburg, Netherlands, Austria, Portugal, Finland, Sweden and United Kingdom. In Austria, Greece, Netherlands, Portugal and United Kingdom, wearing neo-nazi symbols can also be punished under the incitement to hatred provision. In Germany, Austria, and in Sweden there are separate provisions prohibiting hate speech.

Recently the concept of ‘hate crimes’ has been adopted in some Member States, such as the United Kingdom, including racist crimes but also other crime

⁹⁶ The proposal was passed and the amendment to the Penal Code will be in force 1 January, 2004. See HE 44/2002, www.finlex.fi/esitykset.html

⁹⁷ Utrykt afgørelse fra Lyngby ret den 22. december 1998, BS 3-1211/97. Afgørelsen blev stadfæstet af Østre Landsret den 27. september 1999. Decision from the Court of Lyngby from December 22, 1998. The decision was upheld by the Eastern High Court on September 27, 1999 Utrykt afgørelse fra Østre Landsret af 21. oktober 1998, B-2732-97. Unwritten decision from the Eastern High Court of October 21, 1998.

categories. It does not follow automatically that hate crimes include racist crimes.⁹⁸ In Belgium law enforcers do not systematically register racial violence under the category of 'hate crime'.

3.2. Record keeping institutions

3.2.1. Police, Security Police and Specialised Bodies

In most Member States, racist crimes are registered by the police authorities. Governments normally make police statistics public by publishing yearly reports (with the exceptions of Belgium, Greece, and Portugal).

In Belgium there is no formal registration system for racist violence or crimes, and no official definition of these phenomena. The Centre for Equal Opportunities and Opposition to Racism is not obliged to investigate racist crimes, but complaints on racial discrimination. However a significant number of complaints relate to incitement to racial discrimination and hatred. In Greece where the police are similarly not obliged to keep records, the National Commission for Human Rights and the Ombudsman collect data and produce annual and ad hoc reports to other authorities, although not to the public. There is a similar situation in Portugal: no official statistics on racist crimes are published, though there are records kept by the Justice statistics, and information which is gathered and processed by the Commission against Racial Discrimination.

In some Member States with a focus on crimes committed by extreme right-wing groups, the (Security) Police keep records and publish annual reports on racist crimes. This is the case in Denmark, Germany, Ireland, Austria, and Sweden. In Denmark statistics on incidences of racial violence/racist attacks are produced by the Danish Civil Security Service (PET). Sometimes, however, the registration by PET and the registration by the Police may overlap - for example, racist graffiti painted on a wall may well be registered by the PET both as "racist threat" and "vandalism". It may also be registered by the police as an expression of racist statements. In Ireland the Gardai keep records on the activities of the extreme right-wing groups.

⁹⁸ http://www.gmp.police.uk/working-with/pages/hate_crime_1.htm A hate crime is any criminal offence committed against a person because of their sex, race, religion, disability or sexual orientation. A victim of hate crime does not have to be either a member of a minority group or someone who is generally considered to be a "vulnerable" person

In Germany, the registration and evaluation of right-wing extremist, xenophobic and anti-Semitic criminal offences lies, in principle, within the responsibility of state police authorities. Respective data are transferred by state authorities to the Federal Criminal Investigation Agency (*Bundeskriminalamt (BKA)*), which compiles the official federal statistics. Since 1st January 2001, a new and more detailed register for right-wing extremist, xenophobic and anti-Semitic criminal offences has been operational. The register is called Criminal Investigation Registration Service - Politically Motivated Criminality, and is based on the perpetrators' motivation.⁹⁹ The new system also enables authorities to register data concerning perpetrators, offences and victims. KPMD-PMK registers the following offences as politically motivated: first of all, offences with an unambiguously racist background (e.g. arson attacks on synagogues and desecrations of Jewish cemeteries). Other offences are registered if the circumstances or the perpetrators have revealed that victims have been targeted because of their nationality, ethnicity, "race", skin colour, religion, ideology, origin or because of their appearance or social status. Offences are classified as "politically motivated criminality – right-wing" if perpetrators have revealed nationalist, racist, Social-Darwinist or National Socialist motives. A subcategory comprises offences which are motivated by anti-Semitism. Anti-Islamic offences are not recorded separately.

Sweden has a system similar to the one in Germany. The Constitutional Branch of the Swedish Security Police (SÄPO) publishes annual reports on hate crimes under the title crimes related to the internal security of the nation¹⁰⁰. Statistics on hate crimes are divided into three categories: xenophobic, anti-Semitic and homophobic crimes and the three categories are further separated into crimes committed by perpetrators belonging to neo-nazi or "white power" organisations and by others. In Germany and the Netherlands, racist and xenophobic crimes fall into ten different crime categories, such as incitement to racial hatred; racist harassment; racist assault; racist vandalism; racist graffiti etc.

In addition to the police records of racist crimes, two Member States have specialised public bodies whose functions include conducting analysis of developments and trends regarding racist violence complaints and court cases. This is the case in Sweden and in the United Kingdom. In Sweden the Crime Prevention Council¹⁰¹ *inter alia* analyses crimes of a racist or xenophobic nature and looks closer at the convicted and their victims. A first publication on crimes related to the legislation prohibiting incitement to hatred against national or ethnic groups was published 2001¹⁰².

⁹⁹ Some xenophobic offences were committed without an extremist background. These offences had not been included in respective statistics until the new registration system was introduced in 2001.

¹⁰⁰ See Swedish Security Police RPS/Säkerhetspolisen, PCS Report, 2002. also available on <http://www.police.se>

¹⁰¹ <http://www.bra.se>

¹⁰² Hets mot folkgrupp, BRÅ rapport 2001:7, available on <http://www.bra.se>

In the United Kingdom, the Crown Prosecution Service's (CPS) Racist Incident Monitoring Scheme¹⁰³ provides information on the number of racist incident cases identified, makes decisions on whether to prosecute cases identified by the police, gives details of where a charge has been made and subsequently prosecuted, and details of charges dropped and outcomes of charges prosecuted in the magistrates courts, Crown Courts and youth courts. The publicly available data are organized by racially aggravated offence, so these include anti-Semitic offences although these are not identified separately. Since the introduction of religiously aggravated offences in 2001, Islamophobic offences have been recorded as religiously aggravated offences, but similarly are not identified separately from other forms of religiously aggravated offence.

3.2.2. National and International Non-Governmental Human Rights Organisations

In addition to the governmental recording systems, there are many non-governmental organisations keeping records on racist violence and crimes in the Member States. The focus and methods for record keeping by non-governmental organisations vary a lot. To illustrate the spectrum of NGOs, there are on the one hand organisations such as ZARA in Austria, an association counselling witnesses and victims of racism, which publishes an annual report describing cases of racism and discrimination¹⁰⁴. And on the other hand there are NGOs with a well-defined community base, such as the African Refugee Network in Ireland, which keeps records of racist incidents against Africans. (The EUMC published a booklet on organisations involved in the fight against racism in July 2003.¹⁰⁵)

The records kept by national NGOs are referred to by international organisations, such as the UN (CERD), European Commission against Racism and Intolerance (ECRI)¹⁰⁶, Amnesty International, Human Rights Watch, and International Helsinki Federation for Human Rights. Several of these international organizations keep not only records on crimes committed by individual perpetrators and racist or right wing extremist organisations but also on ill-treatment by law enforcement officers and on ill-treatment of asylum-seekers in detention centres or during forcible deportations.

Records on anti-Semitism are to a great extent kept by non-governmental organizations, such as the Jewish Community in Denmark (Det Mosaiske Troessamfund) and the Board of Deputies of British Jews. In the UK, data is based on interviews with victims but also taken from the press and from the

¹⁰³ Crown Prosecution Service (2003) Racial Incident Monitoring Scheme

http://www.cjsonline.org/news/2003/march/racists_prosecuted.html

¹⁰⁴ <http://www.zara.or.at>

¹⁰⁵ EUMC Internet Guide on organisations combating racism and xenophobia in Europe

¹⁰⁶ <http://www.ecri.coe.int>

police.¹⁰⁷ International records on anti-Semitism and anti-Semitic crimes are kept by institutes such as the Stephen Roth Institute for the study of contemporary anti-Semitism and racism at Tel Aviv University¹⁰⁸. The Roma Rights Centre in Budapest publishes records of racism against Roma people¹⁰⁹.

3.3. Acts of racist violence and crimes in the years 2001-2002

The EUMC has been collecting information about racist violence and crimes since 1999, and reported on the situation in the Member States in its Annual Reports of 1999 and 2000. For the years 2001 and 2002 data on racist crimes have been collected by the RAXEN National Focal Points. However the existing data on racist violence and crimes are not yet comparable across Europe. There are a variety of definitions, terminology and recording systems. This means that the conditions for gaining an accurate and comprehensive picture, which would require a certain degree of uniformity in recording systems, are not yet in place. It is important that tools should be developed by the Member States in order for the EUMC to monitor racist violence and crimes effectively. It is nevertheless also important for the EUMC to present existing information about those racist violent incidents and crimes of which the Member States are aware and are taking measures against.

3.3.1. Belgium

Measurements and descriptions of racist/xenophobic crimes from various sources

There is currently no official body recording racist and anti-Semitic offences, but the Centre for Equal Opportunities and Opposition to Racism (CEOOR) records complaints on racial discrimination, anti-Semitism and Islamophobia, and has observed an increasing number of complaints in the last years (919 in 1999 and 1,246 in 2001)¹¹⁰. A significant number of complaints on racism in 2001 were related to the behaviour of law enforcement officials and a high number of complainants have been young men from North Africa.

The major trend for the last years is that most complaints concern the public service sector (20% of total) and the second most concern the employment

¹⁰⁷ The Community Security Trust Anti-Semitic Report 2002

¹⁰⁸ <http://www.tau.ac.il/Anti-Semitism>

¹⁰⁹ <http://www.erc.org>

¹¹⁰ Annual reports from Centre for Equal Opportunities and Opposition to Racism, available on <http://www.antiracisme.be>

sector (10% of total). Complaints concerning the media sector have increased. This section includes racism on the Internet (propaganda). For 2002, complaints on racism on the Internet will be recorded separately.

There are numbers of anti-racist associations, such as Mouvement contre le racism; l'antisémitisme et la xénophobie (MRAX); and Jewish community organizations, such as Comité de coordination des organisations juives de Belgique (CCOJB) which keeps records. According to these records, the number of violent anti-Jewish incidents (violent physical attacks on individuals and properties, vandalism) has risen considerably since 2001¹¹¹. In the first five months of 2002, 25 violent acts were committed against individuals and property, compared to a total of 17 in the year 2001. According to NGO records, racism and discrimination against immigrants from Arab/Muslim countries, primarily from Morocco, has also increased in the last year.

In 2002 there were a number of important court cases with respect to instigation to discrimination, hate speech and violence, racism and holocaust denial. Here are some examples:

Two persons were sentenced for making the Nazi salute, and a disc jockey was prosecuted because he had played a song, which incites hatred and violence towards Moroccan people. In December the Magistrate's Court of Dendermonde sentenced a Chief of Police to imprisonment for 9 months with three years postponement for inciting his subordinates to beat up migrants. In November 2002 the Magistrate's Court of Veurne sentenced 5 extreme-right persons who had beaten up an Egyptian to a fine and imprisonment of one year (partly postponed), and in February 2002 the Magistrate's Court of Doornik sentenced a man for slander and incitement to racism. In Bruges a group of people was prosecuted for distributing racist pamphlets, and in Liege the leader of an extreme right movement was sentenced to four months imprisonment for incitement to racial hatred.

Preventive initiatives and other examples of good practices

In 2002 the Centre for Equal Opportunities and Opposition to Racism (CEOOR) took the initiative to alert the Federal Police, the college of public prosecutors, cabinet members of the Minister of Interior and the cabinet of the Minister of Justice about the importance of the registration of racial violence. It was agreed that statistical data on racial violence is urgent and indispensable, and that within the Department of Justice and the Federal Police new statistical data should be produced. The Inter-ministerial Conference for Migrant Policy later set up a working group to follow this up and look at the registration of hate crime. The results of this will take time; in the meantime it was suggested that all court decisions concerning acts violating the anti-racism law, the law of the

¹¹¹ Stephan Roth Institute, <http://www.tau.ac.il>

denial of the Holocaust and the future general anti-discrimination law should be transmitted to the CEOOR for monitoring purposes.

In a separate initiative, two medium-size towns, Mechelen, Flanders and La Louvière, Wallonia, have started a pilot project for the registration of racist violence.

3.3.2. Denmark

Measurements and descriptions of racist/xenophobic crimes from various sources

According to the Danish Civil Security Service (PET) there has been a steady increase of racist incidents from 1998 to 2001 (26 incidents in 1998, 33 in 1999, rising to 112 in 2001). After the end of 2001, the numbers of incidents dropped. In 2002 the Danish Civil Security Service registered 64 incidents. The decline may be explained by the fact that the great majority of cases in 2001 were reported from September to December 2001. The increase in the number of incidents in general reported after September 11, 2001 was undoubtedly due to the increase in the amount of racist motivated incidents during this period, especially incidents directed at members of the Muslim community in Denmark. CERD expressed concern in 2002 about a considerable increase in cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001 in Denmark. The Committee recommended the State party (Denmark) to monitor this situation carefully, and take decisive action to protect the rights of victims and deal with perpetrators.

In 2002, the police¹¹² received 36 complaints in connection with the Danish Criminal Code section §266b on racist speech, compared to 65 cases registered in the year before. Very few of the racist incidents reported in 2001 and 2002 have so far been brought to trial. An example of a convicted perpetrator was a 28-year-old drunken man who said to his friends, "I wanna do the USA a favour now!" and went down to a petrol station to buy a 2-litre bottle of petrol in order to set a Mosque on fire. Some members of the community who discovered him making Molotovcocktails prevented his attempt. This attempted attack occurred on September 14, 2001.

However, some of the convictions related not to the ordinary 'man-in-the-street' but to public figures connected with political parties. After September 11, several members of the Progressive Party were charged with making racist speeches against Muslims, many of these charges relating to statements made at the Annual Conference of the Progressive Party. So far none of the cases have been brought before a court. In October 2002 the City Court in Hvidovre sentenced members of the Danish Peoples Party (youth organisation) for

¹¹² <http://www.politi.dk> See annex 4

violation of section 266 b on racist speech. In 2001 they had placed an advertisement in a student magazine depicting three masked Muslims and proclaiming "Gang rapes, brutal violence, fear for your safety, suppression of women – this is what you expect from a multi-ethnic society". Two other members of the same party were charged with violations of section 266 b in relation to the party's national conference.

Preventive initiatives and other examples of good practices

In recent years, individual cases illustrate that the racist motive of violence has in some court cases been considered as an aggravating circumstance in sentencing.¹¹³ The Metropolitan Police Force in Copenhagen has consequently issued an instruction that in all cases of violence with a possible racist motive, the prosecutor must ask the court to consider this as an aggravating circumstance, according to section 80 of the Penal Code.¹¹⁴

At the end of 2001 PET updated its previous paper concerning the reporting of racially motivated crime, to be implemented in 2002. The aim of the update was to strengthen the system, by reminding the police districts around the country of its existence and by making several organisational changes.

The Ministry of Justice made a public statement that anti-Semitism is not acceptable, and neither is discrimination against any minority group.

3.3.3. Germany

Measurements and descriptions of racist/xenophobic crimes from various sources

The number of criminal offences with a "right-wing extremist" background recorded by the police has increased every year since 1995 until 2000¹¹⁵. Due to a new system of registration, which was introduced in January 2001, the data cannot be compared with previous years. When comparing the situation in 2001 with 2002, the trend is not clear. The total number of right-wing and xenophobic crimes has decreased from 14,725 in 2001 to 12,933 in 2002. However, out of these, the number of right-wing and xenophobic crimes categorised as extremist has increased from 10,054 in 2001 to 10,902 in 2002.

¹¹³ Utrykt afgørelse fra Lyngby ret den 22. december 1998, BS 3-1211/97. Afgørelsen blev stadfæstet af Østre Landsret den 27. september 1999. Decision from the Court of Lyngby from December 22, 1998. The decision was upheld by the Eastern High Court on September 27, 1999. Utrykt afgørelse fra Østre Landsret af 21. oktober 1998, B-2732-97. Unwritten decision from the Eastern High Court of October 21, 1998.

¹¹⁴ Hansen, N-E (2000), in B. Christensen, m.fl., "Udlændingeret", Cph, p. 64

¹¹⁵ For 2000, statistics recorded 15,951 criminal offences with a right-wing extremist background, 998 of which were violent crimes. Due to a new system of registration, which was introduced in January 2001, the data cannot be compared directly.

Two thirds of these offences are propaganda crimes. The proportion of racist violent crimes in relation to all criminal offences is around 6-8 % and has been the same since 1995.

In 2002 the total number of right-wing extremist, xenophobic and anti-Semitic criminal offences registered in the category “politically motivated criminality – right-wing”, was 12,933 (a drop from 14,725 in 2001), of which 940 (980 in 2001) were violent crimes. The number of right-wing and xenophobic crimes categorised as extremist under this category has increased from 10,054 in 2001 to 10,902 in 2002, of which 772 (709 in 2001) were extremist violent crimes (which, in turn, included 8 cases of attempted manslaughter¹¹⁶). 646 persons were injured in 2002. Violent crimes in 2001 comprised 9 attempted manslaughter incidences and 626 cases of grievous bodily harm. Thus, the number of right-wing extremist motivated crimes increased by 8,4%, the number of violent crimes with right-wing extremist motivation by 8.9%. The rise of the share of extremist crimes categorised as “politically motivated criminality – right-wing” in 2002 is an indication for an improved and more standardised application of the directives of the new registration system.

The number of right-wing extremists has decreased by 30% between 1993 and 2002. At the same time, however, the number of violent right-wing extremists has almost doubled¹¹⁷. 50% of the potentially violent right-wing extremists live in the Eastern part of Germany (whereas only 21% of the German population lives in Eastern Germany).

In contrast to the general trend on racist violence, there is no clear trend concerning anti-Semitic offences. Anti-Semitic offences continued to increase in 2001, but with the exception of violent acts of anti-Semitism. In total 1,629 offences were registered as anti-Semitic in 2001. In 2002 the number dropped to 1,594. The number of anti-Semitic crimes of violence, on the other hand, fell from 29 in 2000 to 18 in 2001 and increased again in 2002 to 28.

Analysis of the victims of xenophobic offences show that two thirds were foreign nationals. Almost half of victims of racist violence were asylum seekers. In addition, it has to be noted that persons who, because of their outward

¹¹⁶ Cf. Bundesministerium des Innern (BMI): Verfassungsschutzbericht 2002, Berlin 2003. (Federal Ministry of the Interior: Report on the Protection of the Constitution 2002); http://www.bmi.bund.de/Annex/de_24336/Verfassungsschutzbericht_2002.pdf .

However special reports compiled by the newspapers *Frankfurter Rundschau* and *Tagesspiegel* cited 5 cases of manslaughter with a possible right-wing extremist background which had not been included in the official statistics for the year 2002. For example, two ethnic German immigrants were beaten up by a group of youths in Wittstock/Alt-Dabern (a city in Brandenburg). The criminals threw a stone weighing about 20 kg on the stomach of one of the victims, resulting in severe internal bleeding which eventually caused the death of the victim on 23rd May 2002. The main perpetrator received a ten-year prison sentence for manslaughter; the other offenders received sentences between seven years in prison and one year on probation (*Frankfurter Rundschau* 6th March 2003, p. 2).

¹¹⁷ In 2002 Die Bundesamt fuer Verfassungsschutz (Federal Office for the Protection of the Constitution) mentioned 10,700 potentially violent right-wing extremists.

appearance, are “easily identifiable” as non-Germans (e.g. Turks, people of African origin, Sinti and Roma people, or Vietnamese nationals, particularly in Eastern Germany) are more likely to fall victim to right-wing extremist violence. Another 10% of victims are *Spätaussiedler* (ethnic German immigrants), who are often labeled as foreigners (“Russians”). Almost one fifth of the victims of racist violence were German nationals (excluding *Spätaussiedler*).

An analysis of police reports shows that the great majority of perpetrators are males between 15 and 24 years of age. Furthermore, their educational status is lower than the average of respective age groups in the total population. Most of the suspects or perpetrators had already been registered by the authorities because of politically motivated or other criminal offences. It can therefore be concluded that there is a significant overlap between general youth delinquency and politically motivated criminality.¹¹⁸

Preventive initiatives and other examples of good practices

Since the 1990s, measures against right-wing extremism, xenophobia and anti-Semitism have included both repressive (police and criminal justice) and preventive strategies. The goal of all these measures has been to counteract the spread of right-wing extremist and xenophobic attitudes and organisations, and to combat increasingly violent tendencies. In this struggle, the federal government, which took office in 1998, has focussed on the following areas: human-rights policy; fostering civic participation and the realisation of civic rights; promoting the integration of non-German residents into society; strategies addressing persons convicted of racial offences and their social background.¹¹⁹

Over the last years, there has been a significant increase in measures, initiatives and projects, both by the government and by non-governmental organisations, to fight right-wing extremism, xenophobia and racism, and foster Germany's democratic culture. One of these initiatives is an action programme entitled "Young People for Tolerance and Democracy - against right-wing extremism, xenophobia and anti-Semitism", working under the umbrella of the "Alliance for Democracy and Tolerance - against extremism and violence". The initiative

¹¹⁸ Cf. Wahl, K. (Hrsg.) (2001), *Fremdenfeindlichkeit, Antisemitismus, Rechtsextremismus. Drei Studien zu Tatverdächtigen und Tätern (Xenophobia, Anti-semitism and Right-wing extremism. Three studies on suspected perpetrators and perpetrators)*. Berlin; Landeskriminalamt Baden-Württemberg (2002), *Der politisch motivierte Gewalttäter in Baden-Württemberg. Eine tat-/täterorientierte Untersuchung der Jahre 1999 bis 2001 (The politically motivated violent criminal in Baden-Württemberg. A crime-/perpetrator-oriented study of the years 1999 to 2001)*. Stuttgart

¹¹⁹ *Bundesregierung (2002), Bericht über die aktuellen und geplanten Maßnahmen und Aktivitäten der Bundesregierung gegen Rechtsextremismus, Fremdenfeindlichkeit, Antisemitismus und Gewalt gem. Ziff. 21 des Beschlusses des Deutschen Bundestages vom 30. März 2001 (Drs. 14/5456)* (Federal Government (2002), Report on current and planned counter-measures against right-wing extremism, xenophobia, anti-Semitism and violence, in accordance with resolution No.21 of the *Bundestag* (German Parliament) 30th March 2001 (Printed Matter 14/5456)).

comprises three programmes: "XENOS - Plural living and working", "CIVITAS - Initiative against right-wing extremism in the new federal states", and "ENTIMON - Together against Violence and Right-wing Extremism". Furthermore, public (funded both by the federal and state governments) and private exit programmes have been set up for encouraging right-wing extremists to leave their organisations. Since 2001, the German Parliament (Bundestag) regularly allocates funds for discretionary hardship payments to victims of right-wing extremist offences, to be understood as an act of solidarity with the victims and as a signal of condemnation of such infringements.

3.3.4. Greece

Measurements and descriptions of racist/xenophobic crimes from various sources

There is no official body that records racist and anti-Semitic offences, although documents from different sources give a picture of extensive problems. In its second report on Greece, ECRI¹²⁰ stated that problems of exclusion and discrimination against Roma, immigrants and Muslims have persisted. According to the Greek government there are no serious problems of racial violence, but rather problems of persisting discrimination linked to existing inefficient legal provisions concerning immigrants and problems in the implementation of reforms and projects concerning the Roma.

Attention has been given to police ill-treatment of migrants and minorities. Public authorities, most notably the police and the Coast Guard, have been repeatedly criticized by national and international NGOs, like Amnesty International, for brutal behaviour towards Roma and alien immigrants. One example is the case of a police officer who shot and killed a Roma youth in October 2001 after he failed to stop at a police block in the Athens suburb of Zefiri. In October 2002 the Athens Prosecutor (Decision 471/2002) charged the police officer with premeditated murder with no mitigating circumstances. In a 2002 joint report Amnesty International and the International Helsinki Federation¹²¹ document the persistence of serious human rights violations in Greece mainly during 2001 up to the end of July 2002. The report presents numerous allegations of ill-treatment, in some cases amounting to torture, of detainees, generally during arrest or at police stations.

¹²⁰ ECRI: Second Report on Greece, 2001.

¹²¹ GREECE In the shadow of impunity: Ill-treatment and the misuse of firearms, AI-index: EUR 25/022/2002-24/09/2002, Issued jointly in September 2002 by Amnesty International (AI) and the International Helsinki Federation for Human Rights (IHF) available at <http://web.amnesty.org/ai.nsf/Index/EUR250222002?OpenDocument&of=COUNTRIES%GREECE> (15/03/2003)

According to the Ombudsman¹²² the number of complaints registered by foreigners (mostly migrants) rose by 33.5% from 2000 to 2001. The Ombudsman's cases refer mostly to Roma and migrants discriminated against or mistreated by public authorities and not to discriminatory or racist acts perpetrated by persons or private organizations. The Roma population seems to suffer most from incidents of racist violence and harassment directed against them primarily by the police and local authorities. There is also evidence that ethnic Greeks from the former eastern block and Albania and the immigrant and refugee population suffer from varying degrees of racist violence, harassment and discrimination, not so much by private individuals or groups but by indifferent public authorities and particularly by the police.

The Greek National Commission for Human Rights stressed in its Annual Report 2001¹²³: "The violent and shocking, for modern Greek society, acts of Greek citizens and police officers mainly against foreign migrants legally resident in Greece and also against members of the Roma community have made it clear that Greece must introduce new legislation for the protection from and the eradication of racial discrimination in Greece."

There has never been a prosecution on the basis of the anti-racist criminal law 927/1979 for any reason including the wearing of neo-Nazi symbols and/or hate speech. However ultra-nationalist symbols and covert hate or intolerant speech do appear in public, notably in broadcasts by a number of small television stations.

The absence of prosecutions under the existing anti-racist legislation means that in a strict sense, the extent of racist/xenophobic criminal behaviour cannot be established on the basis of existing jurisprudence. However there has been a number of cases with racist motives brought to court that were prosecuted on the basis of other provisions of the Penal Code. The most notorious case concerns a man convicted for the murder of two and the serious injury of seven alien immigrants in October 1999. He was finally sentenced to serve two consecutive life sentences by the Appeal Criminal Court of Athens in November 2002. Even in this case he was not charged with violation of the anti-racist law 927/1979, although the Court described him as a "racist murderer".

Preventive initiatives and other examples of good practices

There are no preventive initiatives or other examples of good practice specifically targeting racist/xenophobic violence. This absence is particularly noticeable as far as the Roma population is concerned. However, indirectly a number of EQUAL initiatives may be considered as contributing towards improving the situation concerning racism and discrimination in general.

¹²² The Anti-discrimination Ombudsman <http://www.ombudsman.gr> and the European Observatory of Discrimination in Secondary Education <http://www.observatory.gr> are not comparable to the public bodies Ombudsman, but bodies financed by EU as pilot projects

¹²³ National Commission for Human Rights Annual Report 2001

The Greek EQUAL Development Partnership "DREAM - Discrimination, Racism, Equality And Media"¹²⁴, is concentrating on intervention strategies in the media. A "Forum for social cohesion" is combining measures related to immigrants and refugees with awareness training and campaigns. Both projects started in 2002.

In Athens on June 15, 2002, 47 NGOs from 22 Euro-Mediterranean countries in the framework of the General Assembly of the Euro-Mediterranean Human Rights Network (EMHRN) issued a joint statement concerning the frequent and grave violations of foreign detainees' rights in Greece expressing "their great concern about the frequent and grave violations of the rights of thousands of foreigners who arrive or live in Greece as (potential) asylum seekers or (un)documented immigrants and are detained pending judicial or administrative deportation."

3.3.5. Spain

Measurements and descriptions of racist/xenophobic crimes from various sources

There is a trend of increasing racist violence since the mid 1990s according to the records from the Civil Guard. There has been in particular a rise in the number of bodily injuries, threats and assaults. The number of recorded incidents with racist or xenophobic motive is though relatively low¹²⁵. The data from the Civil Guard is organised into three sections: xenophobic acts against property, insults and threats, and physical aggression. Over half of the xenophobic acts corresponded to physical aggression in both years (33 out of a total of 61 in the year 2000 and 37 out of 66 in 2001). In two sections there has been a slight increase in this type of acts. Damage to property rose from 12 cases in 2000 to 14 in 2001. Physical aggression rose from 33 in 2000 to 37 in 2001. Insults and threats remained at a similar level (16 to 15). The total number of xenophobic acts registered by the Civil Guard increased from 61 in 2000 to 66 in 2001. This represents a rise of just over 8%.

In 2002 Amnesty International¹²⁶ published a report based on 321 cases of torture and ill treatment committed by police towards foreigners and ethnic minorities in Spain during the period 1995 to 2002. Out of the 321, six cases referred to deaths of foreigners under police guard and five cases to rapes or sexual assaults performed by the policemen. However, in the State report to CERD, January 2002, the report from Amnesty was not considered.

¹²⁴ <http://www.dimitra.gr/dream/default.en.asp>

¹²⁵ See Comisaria General de Informacion, Annual Reports 1996/1997/1998/1999/2000.

¹²⁶ published April 16, 2002

In addition to the official statistics, the national and regional press give a much more extensive picture of racist violent incidents in 2002. One NGO has monitored the local press in communities with a high immigrant population, such as Catalonia, Madrid and Andalusia. In comparison to 2001, a higher number of violent racist or xenophobic acts were reported in 2002. The fact that the methods for monitoring the press have improved might have had an impact on the increase in racist incidents.

To illustrate the type of incidents reported in the press in 2002, some examples are given from the areas Catalonia and Madrid, which are the regions with the highest proportion of immigrants in their populations. In January 2002 the media reported the beating of an Ecuadorian man by several bouncers at a Barcelona disco. It had an impact on public opinion because of the way the murder was committed and because of the video images which were broadcast on several television channels. A second example is the killing in February of a 24-year-old Moroccan, who was stabbed to death on the door of a Lanzarote disco after a fight commenced when the bouncers stopped the young man from entering the disco. Thirdly, in July, a 16-year-old Angolan died after receiving two knife wounds in a fight opposite a disco in Costa Polvoranca. And in August, two Colombian brothers aged 25 and 26 were victims of a brutal attack in Aguadulce, Roquetas de Mar (Almería), after trying to enter El Bribón de la Habana disco, where one of the bouncers had demanded to see their "membership cards".

Other violent acts and attacks are related to racist activities of certain extreme right wing groups. These organisations have had a more noticeable presence in 2002 and their actions have had appalling consequences for some immigrants. In May two youths in Arganda attacked without provocation a group of Romanian immigrants who were having dinner in a bar. In June a group of eight young skinheads became involved in an argument with two North Africans, tried to set the Moroccan's home on fire and then beat one of them up. The police caught them. Also in June a 17-year-old student, adopted by a Spanish family, was attacked by three youths, two girls and a boy, outside a school in Pozuelo de Alarcón (Madrid). As a result, the girl sustained head injuries and broken teeth. In press statements, she stated "for years now I have been insulted because of my skin colour". Other violent incidents have taken the form of attacks on Islamic buildings, mosques and shops, and in May, someone set fire to a Rumanian evangelical church in Arganda del Rey (Madrid), burning it to the ground. The large Rumanian community in the town had been threatened for some time with xenophobic graffiti and Nazi symbols.

Preventive initiatives and other examples of good practice

The Regional Office for Immigrants of the Community of Madrid (OFRIM) is an information bureau that functions as a bridge between on the one hand the regional and local administration in Madrid (capital and region) and on the other hand individual immigrants and immigrant self-organisations. OFRIM tries to raise awareness in public administration concerning the special needs as well as assets of immigrants. To this end OFRIM has specialists focusing on different areas such as health, the labour market and racism. Since 2000, above other things, OFRIM offers a telephone support hotline for immigrants and persons working for the public service in Madrid regarding all kinds of legal questions and cases of discrimination, including issues concerning the labour market. This telephone hotline is run by two lawyers working for OFRIM. Furthermore OFRIM is organising intercultural training courses for members of the public service, especially those working in the area of social welfare provisions¹²⁷.

3.3.6. France

Measurements and descriptions of racist/xenophobic crimes from various sources

According to the records from Ministère de l'Intérieur there has been an increase in the last two years of violent acts, such as threats, intimidations etc. The most alarming increase in 2002 is related to acts of anti-Semitism. Of a total of 311 recorded acts of racist violence, the number of incidents motivated by anti-Semitism was 193 in 2002, which is six times more than in 2001. Anti-Semitic violence constituted 62% of all violent acts committed in 2002, compared with 45% in 2001. Another observation from the year 2002 is the progression in the seriousness of racist violence, with a total of 38 injured and one dead, the highest casualty rate since 1995¹²⁸.

The level of media coverage of cases of incitement to racial hatred or of war crime denial linked to the publication of books, articles or editorials augmented considerably in 2001 and 2002. Subjects touched on in these publications included critical perspectives on Islam and the anniversary of the events in Algeria of 1962, all of which took place in the general context of a greater public vigilance around expressions of intolerance¹²⁹.

In the case of a number of violent incidents in France the perpetrators received prison sentences. For example, in April 2002, in Sangatte, three individuals in a car opened fire on three Iraqis, wounding them. The attackers were later

¹²⁷ <http://www.madrid.org/ofrim>

¹²⁸ CNCDH, *op cit.*, p 22-23.

¹²⁹ GELD, Rapport analytique sur la législation, Rax en 3, 2002, p22-23.

sentenced to five years in prison. A number of anti-Semitic incidents were punished – for example, for anti-Semitic graffiti sprayed on a business in Marseille the perpetrator was given two months imprisonment; for anti-Semitic insults at a magistrate and contempt of court the accused received five months imprisonment and a fine; for throwing Molotov cocktails which damaged a building next to a synagogue in Montpellier the three attackers were jailed for between two and four years, and for anti-Semitic graffiti and acts of violence in Bonneville, one of the accused received a sentence of six months imprisonment, and one three years¹³⁰.

The exacerbation of racist and anti-Semitic violence would seem to be linked to recent events in France and abroad (the September 11th terrorist attacks, war in Afghanistan). The increased levels of anti-Semitism may be considered as related to the exacerbation of the Israeli-Palestinian conflict, mainly during Spring 2002, and many anti-Semitic acts can be ascribed to youth from neighbourhoods sensitive to this conflict, primarily youth of French North African origins¹³¹. The CNCDH (Commission Nationale Consultative des Droits de l'Homme) has found that the percentage of these violent acts committed by elements of the extreme right to be 9% in 2002 (versus 14% in 2001 and 68% in 1994).

Preventive initiatives and other examples of good practice

As a result of increasing incidents of anti-Semitism related to the events of September 11 2001 and tensions in the Middle East since Spring 2002, in March 2002 the Minister of Justice decided to bring together the national leaders of the CRIF (Jewish representative council) to make them aware of the situation and to invite their input on proposed government measures. Two urgent ministerial instructions, on April 2 and April 18, were sent to public prosecutors to remind them of the necessity of a firm and dissuasive response directed at known perpetrators of these offences. Additionally, the ministerial circular spoke of the necessity of regularly making known the legal outcomes of these cases to the victims and to local Jewish organisations¹³².

To guard against rising tensions related to ongoing international events, the Minister of the Interior stated his intention to better protect sites of worship (especially mosques and synagogues) and religiously affiliated schools.

¹³⁰ There is a new circular from the *Garde de Sceaux* addressed to public prosecutors asking for stronger punishments to be applied for serious acts of anti-Semitism.

¹³¹ CNCDH, op cit., p 24-25.

¹³² CNCDH, op cit., p 61-62.

3.3.7. Ireland

Measurements and descriptions of racist/xenophobic crimes from various sources

Until October 2002, crime statistics collected by An Garda Síochána (the National Police Service) were not disaggregated in a way that would provide information on racist incidents, including racist violence, and these disaggregated statistics are unlikely to be available in the immediate future, due to the lack of direct legislation in those areas. However, the number of racist incidents reported to the Gardai show a considerable increase in the last two years from 15 incidents in 2000 to 97 in 2002 (49 in 2001).

A comprehensive system of recording crime motivated by racism was introduced in 2002 under the new PULSE System (police computerised data collection system). The PULSE recording system has a *modus operandi* which includes the following categories for crime motivation: racism, xenophobia, anti-Semitism, political and homophobia. It will take some time for this change to be effected and it is unlikely that statistics can be available until the 2003 Garda Annual report at the earliest (published in 2004).

Examples on incidents which took place in 2002 in Ireland are as follows: a Nigerian woman living in Dublin had her windows broken by three men shouting racist abuse; a man of Chinese ethnic origin and his Irish wife and family suffered months of racial harassment in a private housing estate in Dublin until they moved out; two women of Chinese ethnic origin on a professional visit to Ireland were attacked and kicked by four youths shouting racist abuse; a Bosnian woman single parent suffered regular broken windows and graffiti painted on her door by local youths, and several instances were reported of visibly pregnant black women in Dublin being verbally abused with taunts that they were only getting pregnant for citizenship purposes. Also, a 50 year old man of Vietnamese-Chinese ethnic origin was fatally assaulted in Dublin's central business district in August 2002. At the time the media reported that there may have been racist insults during the attack, but this was not confirmed and as the case had not yet come to trial it was not possible to gain an insight into any racist motivation.

Preventive initiatives and other examples of good practice

These are mainly indirect, rather than directly tackling violence and racist crimes as such. For example, the Garda Racial and Intercultural Office has been established by the Irish Police (Gardai). The office has developed a training video and resource booklets that inform members of the force about cultural diversity in Ireland. In March 2002, the Racial and Intercultural Office announced that 145 Garda Ethnic Liaison Officers were being appointed across the country who will be given training in dealing with people who have been the victims of racism and who will make proactive linkages with community

and voluntary groups working closely with minority ethnic groups in their areas.

As a core part of the training of new recruits to An Garda Síochána in Templemore and for Sergeants' and Inspectors' promotion courses there is a module regarding obligations under international human rights instruments including CERD. The Garda Racial and Intercultural Office have an ongoing anti-racism training programme for immigration officials (who are members of the force). Anti-racism awareness training is also being developed in the police training college in Templemore. Groups such as Pavee Point, NCCRI, Irish Traveller Movement, Amnesty International and Comhlámh support this awareness training. Anti-racism initiatives are also taking place in the prisons. The Director General of the Irish Prison Service introduced proposals for the development of a research and training project for staff and inmates of the prison system to increase their awareness of cultural diversity and aspects of racism that potentially exist in each prison.

3.3.8. Italy

Measurements and descriptions of racist/xenophobic crimes from various sources

Police records on racist crimes are based on court decisions¹³³. The number of cases processed in the courts has shifted very much over the last years, and ranged from 50 cases in 1996 to 3 cases in 1999. For 2001, the Ministry of the Interior reported a total of 75 racist crimes, which was a decrease from 2000, when 85 cases were recorded¹³⁴.

Half (52%) of all cases in 2001 were threats and insults, 30% were physical assaults, 10% were cases of arson and 8% involved other kinds of material damages. Cases of arson are reported to have been carried out using incendiary bottles and for the most part, to have been perpetrated by groups of persons linked to extremist groups and acting collectively and with some planning. Physical attacks are attributed to "ordinary citizens without any particular ideological inclinations" who are said to "act in such ways because irritated by certain behaviour of non-EU citizens, who are often considered as the main causes of crime in the country". Threats by way of letters or graffiti are said to target particularly places of worship, or reception centres, or Roma camps or businesses owned by either members of Jewish communities or non-EU citizens. These acts are attributed, for the most part, to young people aged between 18 and 25 years who display nazi symbols (for example, during sports

¹³³ Italy – State party Report to the UN 2000, Chapter 2

¹³⁴ Italy, Ministry of the Interior (2002): Direzione Centrale della Polizia di Prevenzione: EU – Osservatorio Europeo per il monitoraggio su razzismo, xenofobia e antisemitismo – richiesta dati, documento nr.224/B1/16285; pp. 2 – 8.

events) or paint them on their targets. According to government sources, all cases of racist crime recorded in the year 2001 occurred in the central and northern regions of the country, with Lazio, the region where Rome is situated, registering the highest number of cases, followed by Veneto, Toscana and Emilia Romagna respectively.

According to observers at the Stephen Roth Institute, Tel Aviv University, anti-Semitic manifestations increased to a peak in Italy as of autumn 2001, and incidents continued into 2002¹³⁵. About one hundred anti-Semitic incidents were reported, mainly relating to propaganda (in printed articles and on websites, graffiti on city walls, e-mail sent to websites dealing with Judaism, letters sent to Jewish institutions or individuals and leaflets). However, the aggressiveness of anti-Semitic expressions (such as death threats against Jews in graffiti on city walls) was translated into violence in only two cases in 2001, and one in early 2002.

The Italian mass media reported several severe racist crimes in 2002. At the same time racist violence gained more visibility in the mass media in 2001 compared to 2002 as many serious cases hit the headlines right across various media. However the media do not always follow the progress made, as the cases do not appear in official police reports on crime, with exception of the cases that end in court and go through at least one level of judgement.

The climate of opinion towards migrants was observed in a nationwide poll in May 2002¹³⁶. Results showed that 52% of respondents agreed with a statement that non-EU immigrants represent a threat to the Italian traditions and culture; 48% considered non-EU immigrants a threat to the Italian religious traditions and 34% considered the presence of non-EU pupils in schools a threat to the quality of education of their children.

A Member of the European Parliament from the Northern League Party was sentenced in October 2002 to 5 months jail term with a conditional suspension, for his involvement in a case of arson that destroyed the temporary shelter of some undocumented migrants in the city of Turin in the summer of the same year.

Preventive initiatives and other examples of good practices

A large number of good practices were reported by many NGOs, pressure groups and some public institutions right across the country, many related to the creation of good ethnic relations (see the chapter on education, Chapter 2).

¹³⁵ <http://www.tau.ac.il>

¹³⁶ Mannheimer R. (2002): Op. cit.

A youth theatre group called “*Compagnia giovani del teatro stabile delle Marche*”¹³⁷ presented in various cities a drama entitled “*Vernichtet – steminati: viaggio nel dolore dell’olocausto*” – Vernichtet – exterminated: a journey in the sufferings of the Holocaust - aimed at stimulating awareness on the dangers of revisionist and resurgent neo-nazi activities. In many cities throughout the country, the Day of Memory, January 27th, was marked by awareness raising initiatives on the Holocaust, targeted at pupils.

*UISP Emilia Romagna*¹³⁸, a regional sports organisation with experience in fighting racism in football, carried out a European-wide campaign against racism in European sports stadia (Campagna d’Azione contro il razzismo negli stadi europei). The campaign lasted from April to October and involved 22 fan clubs of teams in various divisions; the project, coordinated by Progetto Ultrà for the Mediterranean area, was also carried in France, Spain and Portugal. Among the activities carried out within the campaign was the display, during football matches, of a banner that read: “Divided by our loyalty to our teams and united against racism”. The aim of the whole project was to highlight the existence of racist and discriminatory acts in sports stadia and to raise awareness of fans on the subject.

3.3.9. Luxemburg

Measurements and descriptions of racist/xenophobic crimes from various sources

There have previously not been any acts of racist violence. However in the beginning of 2002, one act of violence caused public disquiet in the Grand Duchy. A young black person was killed in a quarrel at the exit of a discotheque. Although it was not expressly an act of racist violence – the perpetrator was also black - the death of this young man provoked a great deal of discussion on racism and violence.

Preventive initiatives and other examples of good practice

After the above killing of the black young man, Spencer, a Committee was created under the aegis of the Federation of Cape Verde Associations (OCL asbl). The Committee’s objective is to give educational support to strengthen the integration of young Cape Verde Islanders into Luxemburg society, and combat juvenile violence. Within the context of the International Day of Peace, on 21 September 2002, the Spencer Committee organised a rally to the centre of the Capital against violence and for peace throughout the world. By organising this rally the Spencer Committee wanted to make the public aware of the fact

¹³⁷ <http://www.stabilemarche.it> (20/03/03)

¹³⁸ <http://www.progettoultra.it> (20/03/03)

that violence is present in Luxemburg, and to pay particular homage to Spencer, a victim of juvenile violence.

The Foundation Caritas Luxemburg proposed activities against violence within the framework of its Fortnight 2002. Peace and violence are the subjects of a training course that is addressed to psychologists or sociologists who are interested in studying and testing practical methods that can reinforce the comprehension and practice of models of non-violent resolution of group conflicts. Caritas also offers a course to children from 8 to 15 years where they are encouraged to become aware of what prejudice, discrimination, rumour spreading and scapegoating mean.

Other initiatives were not directly aimed at racist violence, but operated indirectly to promote multiculturalism and diversity. Many schools initiatives are being taken against juvenile violence in general, both by teachers and by pupils; religious communities are increasingly opening their doors; survivors of concentration camps are trying to make young people more aware of the violence of the Holocaust and in general the theme of violence, which had perhaps tended to be under-estimated in peaceful Luxemburg, is now a subject dealt with at many round tables. The Police Grand-Ducale also makes efforts by introducing special courses about this subject in their training programme for young policemen.

3.3.10. The Netherlands

Measurements and descriptions of racist/xenophobic crimes from various sources

The records from the police suggest that there has been a substantial decrease in racist violence and violence incited by the extreme right for the years 1999, 2000 and 2001. However data from other sources (Rotterdam Anti-Discrimination Bureau, Kafka Anti-Fascist Research Group, and Anne Frank House) give another picture.

The Dutch Monitoring Centre on Racism and Xenophobia has reported developments and trends since 1996. They stress that there are some problems in coordinating the police data, as what is seen in one police district as a single case of intimidation, such as sending ten of the same threatening letter, might be counted in another district as ten separate cases of intimidation. Based on different sources, the Dutch Monitoring Centre in the Netherlands reports that racist violent acts have increased every year since 1996 to 2000. The number of incidents of racial violence and violence incited by the extreme right was 201 in 1996, 298 in 1997, 313 in 1998, 345 in 1999, 345 in 2000. In the year 2001, however, the data show a decrease to 316 incidents, mainly related to a decrease in reported racist graffiti incidents.

The records cover the following categories of violent acts: racist graffiti, threats, bomb scares, confrontations, vandalism, arson, assault and manslaughter. The most common incident has been the category of racist graffiti followed by racist threats. For 2001 the decrease of reported incidents related in particular to racist graffiti, from 157 acts in 2000 to 68 acts in 2001, while most other categories increased.

Violence committed by the extreme right has become more prominent over the years. More incidents are connected with asylum seekers. Not only are asylum seekers' centres frequent targets of violence, but individual asylum seekers are as well.

According to the Dutch Monitoring Centre these figures should be considered to be "the tip of the iceberg", due to heavy underreporting, not by the police but by the victims. The real number of racial incidents could be between 4 times and 40 times (between 1,600 cases and 16,000 cases in the year 2000). The EUMC study on the experiences of racism by selected groups of migrants and minorities in the Netherlands support the estimate of 16,000 cases.

Preventive initiatives and other examples of good practices

No special preventive initiatives, actions, campaigns or projects were initiated in 2002 with regard to racist violence and crimes. At the same time business went on as usual with regard to investigations, prosecutions, media coverage, research, anti-discrimination networking, and monitoring.

3.3.11. Austria

Measurements and descriptions of racist/xenophobic crimes from various sources

The numbers of criminal offences with extreme right-wing, xenophobic or anti-Semitic motivation have fluctuated over the 1990s. However, for the last three years these numbers practically remained the same, displaying only a slight decrease (2000: 336, 2001: 335, 2002: 326)¹³⁹, whereas the general crime statistics showed a decrease of 7.7 percent¹⁴⁰. Outstanding crimes with racist/xenophobic background which were reported to the police in 2002 include two attempts of arson directed against kebab stands and the defilement

¹³⁹ Austria, Federal Ministry of the Interior (2001) Verfassungsschutzbericht 2000. Staats-, Personen- und Objektschutz. (Report on National Security 2000. Security of the state, people, and objects). Vienna, pp.19ff. available at: <http://www.bmi.gv.at/downloadarea/staatsschutz/VerfSchutz2000-v4.pdf>, (16.03.2003); Austria, Federal Ministry of the Interior and Federal Ministry of Justice (2003) Sicherheitsbericht 2002 (Security Report 2002), p.203.

¹⁴⁰ Federal Ministry of the Interior, 2002, Facts and Data 2001, p.5. Available at: http://www.bmi.gv.at/downloadarea/daten_fakten/Fakten2001Englisch.pdf

of a Jewish graveyard. Furthermore, a number of anti-Semitic and xenophobic incidents were recorded, regarding the defacing of property.¹⁴¹ An increase with regard to hate speech was observed. In total, 56 cases of hate speech with a racist background were reported to the police in 2002 (2001: 39, 2000: 27)¹⁴². Compared to the year 2001, there has also been an increase in offences according to the Insignia Act (2002: 25, 2001: 16, 2000: 22). Internal statistics of the Ministry of Justice count nine persons who were found guilty of hate speech in court, and 20 persons who were found guilty of trying to revive National Socialism in 2002¹⁴³

Although the National Security Report 2001 states that there has been an increase in physically violent acts by right-wing extremists, no quantitative information about the number of violent crimes with a racist/xenophobic background is accessible¹⁴⁴. Altogether 72 juvenile offenders were involved in right-wing extremist crimes (2001:82).¹⁴⁵ Young people active as skinheads are described as particularly prone to violence.¹⁴⁶ In this regard alternative sanctions such as the attendance of seminars in history and democracy have already proved to be extremely efficient. One of the most significant developments in 2002 is the increase in internet crimes accounting for one third of all right-wing extremist crimes reported in 2001.¹⁴⁷

ZARA, a Vienna-based NGO counseling witnesses and victims of racism¹⁴⁸ has published three reports on single cases of racist offences so far. These reports are based on ZARA's own experiences with its counseling service, and on experiences of other NGOs¹⁴⁹. According to the NGO Forum against Anti-Semitism¹⁵⁰, 21 cases of anti-Semitic insult, 17 defamations and three assaults

¹⁴¹ Austria, Federal Ministry of the Interior and Federal Ministry of Justice (2003) Security Report 2002, p.204

¹⁴² Austria, Federal Ministry of the Interior (2002) Verfassungsschutzbericht 2001, p.35 and Austria Federal Ministry of the Interior and Federal Ministry of Justice (2003) Sicherheitsbericht 2002 (Security Report 2002), p.203.

¹⁴³ Austria, Federal Ministry of the Interior and Federal Ministry of Justice (2003) Security Report 2002, p.381.

¹⁴⁴ Austria, Federal Ministry of the Interior (2002) Verfassungsschutzbericht 2001, p. 29.

¹⁴⁵ Austria, Federal Ministry of the Interior (2002) Sicherheitsbericht 2001 (Security Report 2001), p. 241. Note that in 2000, the number was 86. Number for 2002: Austria, Federal Ministry of the Interior and Federal Ministry of Justice (2003) Security Report 2002, p.204.

¹⁴⁶ Austria, Federal Ministry of the Interior (2002) Verfassungsschutzbericht 2001, p.28.

¹⁴⁷ Ibidem, p. 30.

¹⁴⁸ ZARA (2003) Rassismus Report 2002. Einzelfall-Bericht über rassistische Übergriffe und Strukturen in Österreich. Schwerpunkt-Thema: Zivilcourage. (Racism report 2002. Single case report on racist assaults and structures in Austria. Special topic: civil courage).Vienna, available at: http://www.zara.or.at/download/rass_rep_2002.pdf (21.03.2003); an English version will soon be available, too.

¹⁴⁹ For the report on 2002 these are: Fair Play; FIBEL (Fraueninitiative Bikulturelle Ehen und Lebensgemeinschaften – Women's initiative bicultural marriages and partnerships); Forum gegen Antisemitismus (Forum against Anti-Semitism), Integrationshaus (Integration house); IMÖ (Initiative muslimischer ÖsterreicherInnen – Initiative of Muslim Austrians); Peregrina; Romano Centro and WITAF (Arbeitsassistenten für Gehörlose in Wien und Niederösterreich – Work assistance for deaf people in Vienna and Lower Austria).

¹⁵⁰ Forum gegen Antisemitismus, further information available at: <http://www.fga-wien.at> (22.03.2003).

on Jews have been reported in the year 2002¹⁵¹. The latest entry for Austria from the list of Amnesty International's "Concerns in Europe" covers the period January – June 2002 and reports about a Congolese national, who was allegedly ill-treated and racially abused by police officers¹⁵². The research foundation Documentation Centre of Austrian Resistance observes associations, parties and periodicals with extreme right-wing tendencies and publishes its findings under the title "News from the far right" ("*Neues von ganz rechts*")¹⁵³. The centre provides a sound insight into current developments of the right-wing extremist community in Austria and provides intelligence about persons active in this area.

Preventive initiatives and other good practices

Since July 2001 the Ministry of the Interior administers the database DAREX (*Datenbank Rechtsextremismus*) and collects information about sound recording media and print media with extreme right-wing content. The database, which was set up in 1998 by the German Federal Criminal Police Office Meckenheim, not only enhances the information exchange between Germany and Austria but also facilitates the assessment of confiscated music records and periodicals providing the police and public prosecutors with relevant information on racist songs and music groups.

Two University Departments in the Tyrol¹⁵⁴ and Upper Austria,¹⁵⁵ in cooperation with public prosecutors, have taken the initiative to organise seminars on history and democracy for young people who committed racist offences. Juvenile offenders who took part in these seminars either received the instruction to participate by the criminal court as a condition for a suspended prison sentence, or in less severe cases they had the possibility of avoiding criminal proceedings by attending the course. The effectiveness of these probation measures is indeed convincing as only one participant out of around 80 committed further racist crimes since these programmes were started.

¹⁵¹ ZARA, Racism Report 2002, p. 41.

¹⁵² See: <http://web.amnesty.org/ai.nsf/index/EUR010072002?OpenDocument&of=COUNTRIES/AUSTRIA#AUT>, (17.03.2002).

¹⁵³ Dokumentationsarchiv des österreichischen Widerstands, DÖW: http://www.doew.at/projekte/rechts/chronik/2003_03/content03.shtml (18.03.2003).

¹⁵⁴ Institut für Politikwissenschaft der Universität Innsbruck (Department of Political Science at the University of Innsbruck), <http://www.uibk.ac.at/c4/c402/>; personal communication with Prof. Dr. Reinhold Gärtner, (20.03.2003).

¹⁵⁵ Institut für Gesellschafts- und Sozialpolitik der Johannes Kepler Universität Linz (Institut for Social and Sociological Politics), <http://www.gespol.jku.at/>; personal communication with Prof. Dr. Irene Dyk, (20.03.2003).

3.3.12. Portugal

Measurements and descriptions of racist/xenophobic crimes from various sources

Since 2000 there has been a Commission for Equality and Against Racial Discrimination, presided over by the High Commissioner for Immigration and Ethnic Minorities, and one of the functions of this Commission is the collection of complaints on racial and ethnic discrimination. The Commission's work has given increased visibility to racist and discriminatory incidents, and mass media reports and the reports from various NGO's stress that the number of racist incidents has had a slight increase over the last years.

From the few cases of racist violence reported in Portugal the main victims of racist crimes are Roma and people of African origin. Right wing skinhead groups are the main perpetrators, (although discriminatory police abuse has also been noted). The most common offensive behaviour towards these individuals consists of racist insults or defamation, and harassment as well as discrimination in access to an array of goods and services (such as housing or free movement as in the case of Roma communities in a couple of northern villages in Portugal).

The Criminal Action and Investigation Department had eight ongoing investigations on the subject of racial discrimination in the period of 2000-2001, out of which five are still ongoing. One of these is connected to racist websites.

In 2002, the Governor of a small village who made a speech in which he described Roma people, and their activities, as mainly and naturally criminal was sentenced to nine months in prison for two crimes of racial discrimination under art. 240, no. 2 b) of the Penal Code, which was suspended for two years. The decision made by the judge in this case, by considering this a crime of racial discrimination, marks a difference from what has been the tendency of the Portuguese courts' rulings in previous similar cases that had been presented to the Attorney General. As for the "intention of inciting or encouraging racial discrimination", which is a prerequisite for the acts to be considered a crime under art. 240, no. 2 b) of the Penal Code, this was established because, contrary to the usual procedure in such cases, the defendant and his witnesses were asked to tell the court what the defendant's intention was when he produced those statements.

Preventive initiatives and other examples of good practice

The Government initiated instruction programmes within police forces in 2002, and the High Commissioner for Immigrants and Ethnic Minorities initiated a prize for media reports that promote the acceptance of diversity.

3.3.13. Finland

Measurements and descriptions of racist/xenophobic crimes from various sources

Statistics on racist crimes from the police authorities showed an increase from 1997 until 2000. In 2000 the police recorded 495 incidents. After that the number slightly decreased - in 2001 they recorded 448 racially motivated crimes, and in 2002 they recorded 364. The basis of the statistics has remained the same and police authorities have increased their skills in identifying and reporting racist crimes. Nevertheless, as these crimes are heavily under-reported by the victims, NGOs claim that the police figures should be doubled. The police authorities are obliged to record racist motives in their criminal reports but this is not always the case. More police training is required, according to NGOs.

The most typical racially motivated crime is physical violence, an assault in a public place. In most cases the aggressor is unknown. Among the known cases, perpetrators are mainly young men (17-18 years old) – just as for crimes in general. Interestingly, the proportion of skinheads among the perpetrators is quite low in Finland.

In addition to the police records, there are measurements of racism and discrimination via nation-wide victim surveys. The latest was published in 2002. According to the survey, the most vulnerable groups to racist violence are young Somali men (young black males in general), and Turkish men - or people who have features similar to theirs.¹⁵⁶ 43% of all immigrants felt that they have been insulted or harassed because of their ethnic background, and 26% said that their neighbours have harassed them. Moreover, one third have been victims of a racist act in the past year. It is notable, furthermore, that there are large differences among different immigrant groups in this respect.

During the year 2000, a total of twenty cases, and by the end of April 2001, six racially motivated offences, had been reported to the Prosecutor General's office. However, most of the offences concerned discrimination, such as the denial of access to restaurants for Roma or foreigners. The most serious offence was attempted manslaughter. In 2002 there were three court cases and three sentences on the charge of incitements against ethnic groups. There is no systematic monitoring of how these cases proceed, but according to lawyers involved, the number of racist crimes handled in courts has risen in recent years¹⁵⁷.

¹⁵⁶ "Racism and Discrimination in Finland" (Rasismi ja syrjintä Suomessa, by Jasinskaja-Lahti, Liebkind, and Vesala) was the largest ever carried out in Finland. Even by international standards, it is quite a unique study, because it covers the whole nation. In the survey, seven different ethnic groups were interviewed.

¹⁵⁷ Makkonen, T. (2000) Racism in Finland 2000, Helsinki: Finnish League for Human Rights, p 23, available at <http://www.ihmisoikeuslitto.fi/engframe.html>

Preventive initiatives and other examples of good practice

Since 2000, the Exit-project has been a part of Joensuu Youth Workshop Association. The aim of Exit is to prevent and reduce xenophobia and racial violence among skinheads, and to get skinheads out of the movement. The target group is students aged between 15 and 20 years. The target area was Joensuu, and the project was completed at the end of 2002.

Another significant project is the Non-fighting Generation. Its aim is to reduce racial violence among skinheads. In the beginning of the project in 2001, the selected target areas were Helsinki and Turku. During the years 2002 to 2003, the project will expand to cover the Metropolitan Helsinki Area. The method of reducing racial violence is to establish small group meetings and use pedagogic experience to let violent skinheads see their behaviour as a conscious choice with negative consequences.

3.3.14. Sweden

Measurements and descriptions of racist/xenophobic crimes from various sources

The records kept by the Security Police¹⁵⁸ separate four categories of crimes: crimes with racist/xenophobic motive, crimes with anti-Semitic motives, homophobic motives and crimes connected to the so called "white power world". The trend is not linear, but over a ten year period there has been a steady growth of "racially motivated crimes"¹⁵⁹. In the last five years, the number of racist/xenophobic crimes has increased from 1,752 to a total of 2,896 in 2000 and a decline in 2001 to 2,670 recorded incidents.

In the last ten years, the number of reported cases under the incitement legislation has increased markedly from 137 crimes in 1993 to 865 in 2001. Preliminary data indicate that the figure will remain high in 2002.

Out of a total of 2,670 racist/xenophobic crimes (excluding anti-Semitic and homophobic crimes), there were 25 acts of gross assault (i.e. crimes such as murder and attempted murder) 409 incidents of assault, 1038 incidents of harassment, 360 incidents of slander, 134 incidents of vandalism, 74 incidents of graffiti, 391 incidents of incitement, 160 incidents of illegal discrimination and 79 other racist crimes.¹⁶⁰

¹⁵⁸ Security Police: Crime connected to Sweden's security, available on <http://www.police.se>

¹⁵⁹ With regards to "extremely violent crimes", it should be noted that over a longer period the number of cases seem to achieve their peak in certain years such as 1999.

¹⁶⁰ Security Police.

The number of crimes with anti-Semitic motives increased every year from 1997 to 2000. However for 2001, the total number of recorded anti-Semitic crimes has slightly decreased from 131 recorded acts in 2000 to 115 acts in 2001.¹⁶¹ Statistics for anti-Semitic crimes in 2001 include one incident of attempted murder, 7 assaults, 41 incidents of harassment, 9 incidents of slander, 8 incidents of vandalism, 12 incidents of graffiti and 33 incidents of incitement, and 4 other racist crimes.

Records kept by the Jewish Community however show a continued slow increase in the number of anti-Semitic incidents in 2001, compared to the previous years. A total of 133 cases were reported from the Jewish congregation in Stockholm for 2001.

Preventive initiatives and other examples of good practice

There are a number of preventive initiatives taken both by city councils and by NGOs. Governmental initiatives have, to a large extent, been channelled through the Integration Board, which has launched a web site to become a data bank on racism and xenophobia, and begun forming local projects in co-operation with local city councils. A centre against racism and related intolerance, run by NGOs and funded by the Government, is expected to commence operations in 2003.

NGO initiatives range from the Exit project, helping individuals to leave extreme right-wing or neo-Nazi organisations, to measures in education, the establishment of a Teacher's Network on the initiative of Expo Foundation, and the activities of the local Crime Prevention Centre in the district of Värmland.

3.3.15. United Kingdom

Measurements and descriptions of racist/xenophobic crimes from various sources

The number of racist incidents both reported to and recorded by the police increased by 2% in 2000/01 to 54,351 compared to the previous year. Within individual police forces, there was a considerable variation in trends, with the number of such incidents more than doubling in some police forces, such as Lincolnshire, Staffordshire, West Midlands and North Wales, over the last two years.

Recorded racially aggravated offences increased by 20% to 30,113 cases in 2001/02 compared to 2000/01. Out of these recorded offences, 50% were harassment, 11% other wounding, 17% common assault and 21% criminal

¹⁶¹ *ibid*

damage. Harassment includes Public Order Act offences of threatening or disorderly behaviour.

In 2001/02, 72% of cases classified as a racist incident were prosecuted compared to 76% in 1999/00. Of the cases prosecuted 58% were for specific racially aggravated offences under the Crime and Disorder Act 1998 with the majority being racially aggravated public order offences.¹⁶² The conviction rate for offences classified as a racist incidents increased from 79% in 1999/00 to 83% in 2001/02.

Out of the cases which were not prosecuted, 43% (932) were dropped because of insufficient evidence, 25% because of difficulties with witnesses and 15% were not pursued on public interest grounds, the most common reason being that the defendant was being dealt with on more serious offences or was serving a long prison sentence.

The Annual Report of the Commission for Racial Equality indicates examples of the kinds of racist attacks that have been experienced in Britain, as reported by local media around the country. For example, there were attacks on three pizza shop workers in Durham, on overseas students in Gloucester, on a young black boy in south London, on an Asian taxi driver in Oldham, on 12 elderly Muslims on their way to a mosque in Llanelli, and on two Iranian asylum seekers, one in Sunderland and one in Glasgow. In the latter incident the man was assaulted by a gang of ten youths and stabbed twice in his stomach after being asked where he was from.¹⁶³

Preventive initiatives and other examples of good practice

In terms of preventive and good practice initiatives, multi-agency panels can provide an effective response to racist incidents. Such panels involve a range of local agencies, including police, the Crown Prosecution Service, local authorities, housing associations and community organisations. The best performing panels seek to strike a balance between responding to individual incidents and taking the more strategic role of countering local trends and patterns. A succession of reports has offered guidance to multi-agency panels. These include, *In This Together* (1998), the *Code of Practice on Reporting and Recording Racist Incidents* (2000) and the *Racial Crime and Harassment Toolkit* (2001)¹⁶⁴. The Home Office is currently evaluating the *Code of Practice*¹⁶⁵.

¹⁶² Home Office (2003) *Statistics on Race and the Criminal Justice System*. A publication under section 95 of the Criminal Justice Act 1991 <http://www.homeoffice.gov.uk/rds/pdfs2/s95race2002.pdf>

¹⁶³ Annual Report 2002, Commission for Racial Equality, page 40, http://www.cre.gov.uk/pdfs/ar02_main.pdf

¹⁶⁴ <http://www.crimereduction.gov.uk/toolkits/rh021805.htm>

¹⁶⁵ The *Code of Practice* –drafted along recommendations of the Stephen Lawrence Inquiry Report–provides for a common definition of a racist incident, establishes standard procedures for dealing with an incident at a local level and introduces a comprehensive incident recording system to assist police investigations.

RaceActionNet¹⁶⁶, launched in 2001, brings together expertise and practical experience in tackling neighbourhood racial harassment and racist attacks. The Race ActionNet website disseminates good practice guidance, and examples of innovation, and facilitates a growing network of practitioners and policy makers from organisations and agencies across the UK. Access to the RaceActionNet website is exclusively for members and is password protected, but a bursary fund jointly supplied by the Home Office, Housing Corporation, Department for Transport, Local Government and the Regions, and National Assembly for Wales meant membership was free throughout 2002 to all organisations with public responsibility for tackling racial harassment. The Scottish Executive also supports RaceActionNet and has commissioned legal materials, area reports and case studies of action being taken in rural areas in Scotland.

3.4. Conclusions

Racist violence is a criminal offence in all Member States. However, a racist motive behind a criminal act is not always considered an aggravating factor in legislation. So far only the Penal Codes in Belgium, Germany, Austria, Portugal, Sweden, and in the United Kingdom have special articles on aggravated punishment for a racist motive. However, there are more countries where the practice is ahead of the legislation (Denmark, Finland). Following the UN Convention on the Elimination of all Forms of Racial Discrimination, which all Member States have ratified, hate speech, racist propaganda or incitement to hatred or violence are considered criminal acts.

The police in most Member States keep records of racist incidents and complaints. However the records are not coherent and comparable. Acts of Anti-Semitism are for instance only specified in a few Member States. In addition there are contradictions between the records on racist crimes kept by the police and records kept by non-governmental organisations. One major difference is the fact that records by non-governmental organisations include violent acts committed by law enforcement officers. In Member States where there is a recognized problem with violence by extreme right-wing groups, (as in Denmark, Germany, Ireland, Austria, and Sweden) authorities keep records and publish annual reports on racist, xenophobic and anti-Semitic crimes committed by these groups.

The numbers of racist acts in the Member States are not yet comparable. Records in three Member States (Germany, Sweden and United Kingdom) show extensively higher numbers of racist crimes than the other Member States, which is related to differences in definitions, legislation and recording systems. However the trends for each country where records are kept give clear indications of the situation in the Community. The trend over the last few years,

¹⁶⁶ <http://www.raceactionnet.co.uk/>

until 2001 or 2002, for most Member States has been increasing racist violence (Belgium, Denmark, Spain, France, Ireland, Luxemburg, Portugal, Finland, Sweden and the United Kingdom). There is a possible trend break for Germany and Austria. When anti-Semitic crimes are concerned, the picture is unclear. In France and Germany there has been an increase in the last few years. And when non-governmental records are added, anti-Semitic violence and crimes have increased also in Belgium, Denmark and Italy in the last year. According to human rights organisations, ill-treatment, brutality and verbal abuse by the police towards minorities and migrants, especially towards Roma people, asylum seekers and refugees, has been serious for the last three years in Greece, Spain and Italy.

Available research and data demonstrate well-known problems of making valid and reliable estimate on the incidence, prevalence and the impact of racist violence. There are specific problems of non-reporting, over-reporting and under-reporting, as well as measurement, and these are related to a range of broader problems: for example, inconsistency in use of the concepts (race, violence, motivation), or issues of police training and relations between the police and public.

Governments in Member States are taking many kinds of preventive initiatives to improve the recording systems. In some Member States the Penal Code is being amended. In other Member States the police and prosecutors receive special training on how to register and record crimes with a racist motive, and bring cases to court in line with the legislation. Web sites and databases have been set up in Austria and in Sweden in order to keep records on perpetrators and racist crimes, while in the United Kingdom there is a web site for experts which details practical experiences in tackling neighbourhood racist harassment and attacks.

Other types of preventive initiatives in the Member States are directed towards young persons, to foster awareness of human rights, civil rights and diversity issues (Germany) or directed towards young perpetrators who are members or supporters of extreme right wing and neo-Nazi organizations to help them leave (in Germany, Austria, Finland and Sweden).

It is safe to conclude that only a multi-method and longitudinal approach to data collection, based upon self reported crime and victimization as well as on police statistics and a combination of qualitative and quantitative methods will generate appropriate information. In explaining levels of (reported) racial violence the political and social contexts in terms of local, national and international conditions and (relevant) events evidently play a crucial role. Low rates of prosecution and conviction are not necessarily specific to racially motivated offences, nor are other enforcement problems (e.g. resources and workload). Only truly comparative law enforcement data can provide a proper insight into the details of investigating, prosecuting and sentencing racial violence.

4. Conclusions for Member States and the European Commission

The European Monitoring Centre on Racism and Xenophobia (EUMC):

Recalling the EUMC's remit, under Article 2(e) of Council Regulation (EC) No 1035/97, to formulate conclusions and opinions for the Community and its Member States;

Recalling the legal obligations of all Member States to fully transpose into national law Council Directive 2000/43/EC and Council Directive 2000/78/EC;

Taking into account the information presented in this Annual Report and additional information collected and analysed by the RAXEN National Focal Points;

Recognising that by October 2003, only seven Member States had notified the European Commission of having adopted some form of legislation to transpose Directive 2000/43/EC;

Recognising that the European Commission will continue to monitor the transposition of the Directives and to take steps against those Member States who do not fulfil their legal obligations;

Recognising that certain Member States, despite many examples of good practice identified by the EUMC, still have much work to do to fulfil not only their minimum legal obligations under the Directives, but also to develop a practical culture of equality throughout their societies;

Recognising that many Member States, despite increasing activities in this area, do not yet have sufficiently robust and consistent systems of monitoring and reporting that would enable the EUMC to collect, analyse and compare relevant data to contribute to combating racism and xenophobia in Europe;

Concludes that the following action should be taken by Member States and the European Commission.

4.1. Implementing the Article 13 Directives

The EUMC urges those Member States who have not done so yet to transpose Council Directive 2000/43/EC, and, specifically with regard to religion, Council Directive 2000/78/EC and to consider going beyond the minimum legal requirements. The EUMC calls on Member States:

- to ensure that the equality body required by Council Directive 2000/43/EC is fully independent (guaranteed by statute) and adequately resourced, as recommended by European Commission experts in the March 2002 report on “Specialised bodies to promote equality and/or combat discrimination”,¹⁶⁷
- to ensure that the competencies of such a body include the power to carry out investigations and to promote policies and practices to foster equal treatment, as recommended by the European Commission against Racism and Intolerance (ECRI)¹⁶⁸
- to ensure that both potential victims and perpetrators of discrimination are fully aware of their rights and obligations under the legislation, and to ensure the full and meaningful implementation of Articles 11 and 12 of Council Directive 2000/43/EC on the involvement of stakeholders, NGOs, social partners and other civil society representatives in a structured, ongoing and inclusive dialogue.

The EUMC calls on the European Commission, when monitoring Member States’ compliance with the legal requirements for establishing an equality body (or bodies),

- to place particular emphasis on the requirement for such a body (or bodies) to act independently, and to ensure that a meaningful interpretation of independence prevails.

¹⁶⁷ http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/mslegln/equalitybodies_final_en.pdf

¹⁶⁸ ECRI General Policy Recommendations No 2 (adopted 13 June 1997) and No 7 (adopted 13 December 2002).

4.2. Legislation, data and statistics on racist crimes

To enable a comparative analysis at European level of racist crimes, specifically racist violence, and of the different groups of victims of such crimes, the EUMC calls on all Member States:

- to adopt a workable and sufficiently broad definition of a racist crime¹⁶⁹
- to adopt a workable definition of racism, which is broad enough to include religious hatred¹⁷⁰
- to ensure that the racist motive of a crime is considered an aggravating factor that increases the fine or sentence for such a crime
- to install a reporting and monitoring system for racist crimes that is clear, consistent and accessible
- to maintain statistics on the treatment of racist crimes in the criminal justice system, from the police to the courts
- to ensure that monitoring categories for victims are disaggregated by race and religion
- to publish annual reports on racist crimes
- to move towards agreement of the Commission's Proposal for a Council Framework Decision on Combating Racism and Xenophobia (COM/2001/664 final), which incorporates some of the above action points.

¹⁶⁹ An example could be the definition introduced in the United Kingdom in 1999, "a racist incident is any incident which is perceived to be racist by the victim or any other person", which is now legally recognised. This definition refers to racist violence and similar incidents only, as incidents of discrimination are dealt with under civil law.

¹⁷⁰ An example could be the definition used by the European Commission in its proposal for a Council Framework Decision on Racism and Xenophobia: "*racism and xenophobia*" shall mean the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups". Brussels, 28.11.2001, COM/2001/664 final, Article 3.a.

4.3. Indicators, data and statistics on migrants and minorities

Racial discrimination can be indirect and difficult to recognise. Descriptive statistics on the population that identify different population groups and provide – in the countries where such a process is legally permitted- data disaggregated by ethnicity or race, as well as religion, can highlight areas of discrimination to guide public policymaking, while respecting laws on privacy and data protection. The EUMC calls on all Member States:

- to collect, compile and publish yearly such statistics relating to the labour market, housing, education and training, health and social benefits, public access to goods and services, and civic and political participation.

The EUMC welcomes the progress made in incorporating the situation of migrants/minorities in the European Employment and Social Inclusion Strategies. However, the EUMC calls on Member States and the Commission to go further and

- to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in improving the situation of migrants/minorities. They should indicate steps being taken to achieve such targets in their National Employment Actions Plans and the National Action Plans for Social Inclusion.

The EUMC calls on the European Commission and Member States:

- to examine the feasibility of collecting data on the composition of the workforce of all Community institutions and bodies according to ethnicity, race and religion. The collection of such data, which should be published annually, will be subject to Regulation (EC) No 45/2001 on the protection and confidentiality of personal data.

4.4. Follow-up mechanisms

- Member States and the European Commission are requested to consider their responses to these action points and make them known to the EUMC in writing.
- The EUMC will act in conformity with its remit to monitor implementation of the action points.
- The EUMC's government liaison officers group could act as a feedback group for charting the progress of national action on the action points.
- Action at EU level will be observed by the EUMC.

EUMC Mission Statement

The European Monitoring Centre on Racism and Xenophobia (EUMC) is a thinking, acting and challenging network organisation, working in all sectors of society for equality and diversity, and against racism and xenophobia in the European Union - as a network of knowledge, a bridge-builder and a service organisation.

EUMC

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