

Proposed Council Framework Decision on Combating Racism and Xenophobia

Views of the European Monitoring Centre on Racism and Xenophobia¹

Vienna, 13 February 2007

1. Introduction

The EUMC was involved in the first consultation, when the Commission prepared its proposal for a Council Framework Decision in 2001, and a number of EUMC suggestions have been included into this proposal. Since then, all EUMC Annual Reports called for the adoption of the proposed act.

In June 2006 the EUMC together with the Austrian Ministry of Justice and the European Commission organised a seminar on the Framework Decision under the Austrian Presidency of the European Union.

A EUMC report of December 2006 concluded²:

The EUMC calls on the European Council of Ministers to adopt the Framework Decision (COM 2001/664) proposed by the European Commission in November 2001 on defining a common criminal law approach to racism and xenophobia in the EU and introducing, if adopted, a common framework for effective, proportionate and dissuasive criminal penalties.

2. Situation regarding racist crime in the EU and policy implications

Annual Reports of the EUMC and two comparative EUMC reports on racist crime³ have produced evidence that racist crime is a serious and constant problem in all Member States and that it remains under-documented by official data collection. EUMC reports into manifestations of Antisemitism and Islamophobia have corroborated this finding with regards to religiously motivated crime and violence⁴.

The European Crime and Safety Survey (EU ICS, February 2007)⁵, covering 18 EU Member States, includes, for the first time in a large-scale multi-country survey, a question on respondents' experiences of 'hate crime' (which includes racist crime). The study indicates that, on average, **over nine million people (3 per cent of all inhabitants in the countries covered) experienced racist crime in 2004**, the year covered by the survey.

¹ On 1 March 2007, the EUMC was replaced by the EU Fundamental Rights Agency, whose mandate is broader in scope but will continue the EUMC's work on racism, xenophobia and related intolerance. These comments are based on data collection and analysis undertaken by the EUMC.

² *Muslims in the EU: Discrimination and Islamophobia* (EUMC 2006), p. 111.

³ *Racist Violence in 15 EU Member States* (EUMC 2005). "Policing Racist Crime and Violence" (EUMC 2005).

⁴ *Manifestations of Antisemitism in the EU 2002-2003* (EUMC 2004). *Muslims in the EU: Discrimination and Islamophobia* (EUMC 2006).

⁵ EU ICS data set and research report *The Burden of Crime in the EU. A Comparative Analysis of the European Survey of Crime and Safety (EU ICS) 2005*. Available at <http://www.europeansafetyobservatory.eu>

One quarter of Member States currently have no criminal justice data publicly available on racist violence and crime. Offences with racist characteristics are either not reported to the authorities or, when reported, cases are often not recorded with the necessary details, which would allow monitoring how they proceed in the criminal justice system. The discrepancy between official and unofficial data on racist crime suggests that greater efforts should be placed on improving official criminal justice data collection on racist crime. At present, the mainstay of policy and practical responses to racist crime in the EU are not informed by good quality data on the extent and nature of the problem.

3. Existing legislation in the Member States

All EU Member States have legislation addressing the issues of the proposed Council Framework Decision on Combating Racism and Xenophobia to some extent. Variations in the relevant criminal provisions however are manifold. This diversity and variation highlights the need for the proposed Framework Decision to achieve approximation of criminal law in this area.

Furthermore, although relevant provisions exist in some Member States, the extent to which they are applied by law enforcement officials varies significantly. 14 EU Member States⁶ maintain criminal law provisions that consider racist or xenophobic motivation an aggravating factor in the determination of penalties for offences. In the Czech Republic, Finland, Portugal, Sweden and United Kingdom, information available to the EUMC demonstrates that legislation regarding racist and xenophobic motivation as an aggravating circumstance is applied by courts. For Denmark, France and Italy that have a provision according to which racist and xenophobic motivation counts as an aggravating circumstance, no information is available as to whether these provisions are applied or not. Concerning Austria and Spain, information available to the EUMC shows that these provisions have not been applied in past years, even though there were cases which would have permitted their application.

In sum, the information available to the EUMC suggests that offences that were committed with a racist and xenophobic motivation were not recognised and punished as such, even in some of those Member States, which disposed of relevant legislation.

4. Conclusion

The differences which exist in the legal systems of the EU Member States concerning criminal law measures to combat racism and xenophobia demonstrate the need to approximate the law in this area. The evidence available to the EUMC also indicates that existing criminal law measures to combat racism and xenophobia are sometimes not applied in practice, even though relevant legislation was adopted.

Approximation of criminal legislation is part of the solution to the problem of racist crime in the EU. The other essential element to address the problem is effective monitoring and data collection to ensure that legislation in this field is applied in practice and effective on the ground.

⁶ Austria, Belgium, Czech Republic, Denmark, Finland, France, Italy, Malta, Portugal, Romania, Spain, Slovakia, Sweden and UK