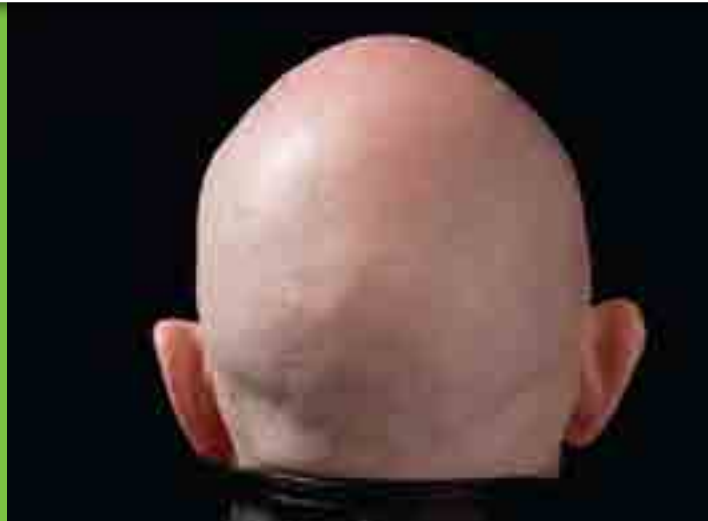




Combating Racist Crime and Violence: Testimonies and Advocacy Strategies



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Table of contents

| | |
|---|-----------|
| 1. Introduction | 3 |
| 2. Testimonies and case studies | 5 |
| Harassment and violence..... | 6 |
| Hate speech | 8 |
| Racism in the media | 9 |
| Racism in politics | 10 |
| The impact on individuals, families, communities and society..... | 12 |
| The response of authorities (police, criminal justice agencies and housing) | 14 |
| 3. Responding to racist crime and violence | 16 |
| 3.1 The Human Rights framework on racist violence and crime | 17 |
| Introduction | 17 |
| The international context: standards and tools developed by the United Nations ... | 18 |
| The European regional framework..... | 21 |
| What is a hate crime?..... | 25 |
| 3.2 The European Union legal and policy framework on racist violence and crime ... | 26 |
| The Framework Decision on combating racism and xenophobia | 27 |
| Why do we need a Framework Decision?..... | 29 |
| How can NGOs lobby for stronger protection for victims of racist and xenophobic crime using the Decision?..... | 32 |
| Other instruments | 33 |
| Institutions of the European Union..... | 35 |
| 3.3 Strategies for achieving change | 36 |
| Legal and advocacy strategies | 37 |
| Working at a local level..... | 38 |
| Media and campaigns | 39 |
| 4. Conclusions and recommendations | 40 |



1. Introduction

Europe continues to experience hate crime and violence directed towards religious and ethnic minorities. These experiences have a devastating effect on the victim and those individuals who then fear becoming victims. The European Union Fundamental Rights Agency (formerly the European Monitoring Centre on Racism and Xenophobia (EUMC)) reports that the data available continues to show a rise in the occurrence of racist violence and crime across Europe¹. This trend highlights the need for action at all levels: racism must be confronted in all its manifestations. Therefore any tool that is developed has to approach the issue from all perspectives: legal, policy and social.

This booklet is an examination of the racism experienced by communities throughout Europe by compiling individual testimonies and drawing on the 2007 ENAR Shadow Reports on racism in Europe. The intention is not to sensationalise the horrific experiences that people have endured but to underscore the need for more robust action. Raising awareness will serve to equip advocates with strategies for challenging racist violence and crime and an evidence base to motivate authorities to adequately address issues of racism on all levels. This is particularly relevant considering the adoption of the *Framework Decision on Combating certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*², where effective transposition and implementation will require legislators and policy makers to address concerns around the vague language used and the need for effective support to victims. It is imperative when considering the damage caused by racism that initiatives addressing the issue are durable. Policies must be developed in a consistent manner founded on human rights and equality principles.

The booklet explores a range of experiences and it is hoped that it will serve to empower victims to speak out and demand effective support, thus influencing policy and lawmakers and directing the implementation of adequate measures for protection. In this same character the compilation and collection of the testimonies was done with every consideration given to the sensitive and personal nature of each story. We have also endeavoured to cover as wide a range of groups and issues as possible to give visibility to those considered invisible in our societies or even in the fight against racism. Each selection has been made with a clear purpose and objective so as not to be gratuitous. As much as possible, anonymity was ensured and informed consent was sought by all those who chose to submit testimonies so that they were aware of the contribution they were making and the purpose of the booklet.

1 2007 Annual Report on Racism and Xenophobia in the Member States of the EU, EU Fundamental Rights Agency.

2 http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srn=25&md=400&yp=Simple&cmsid=638&ff_TITRE=Proposal+for+a+Council+Framework+Decision+on+combating+racism+and+xenophobia&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_REUNION

A black and white, close-up photograph of a person's face, looking downwards. The person has short, dark hair and is wearing a collared shirt. The lighting is soft, highlighting the texture of the skin and the hair. The background is dark and out of focus.

2. Racist violence through the lens of the victims: testimonies and case studies

This chapter gathers a range of testimonies on different issues relating to racist violence and crime, including not only those that illustrate the problem, but also those that illustrate methods for effectively addressing the problem. The sources of the testimonies are mainly ENAR members and partners who provide direct support to victims of hate crime and document their experiences.

Every day ethnic minority groups face racist crime and violence. Often this reality is at worst denied, and at best underestimated. Despite the lack of data and information on racist crime and violence there is no doubt that they are serious concerns in the European context. ENAR's 2007 Shadow Reports on racism from a number of countries report an increase in racist violence and crime including Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg and the UK.

Despite problems of data collection, some generalisations can be noted with regard to the victims of racial violence within the EU. Some groups are particularly vulnerable to racist violence and crime. These include asylum seekers, refugees and undocumented workers which are often used as scapegoats for a country's political, social and economic situation and the tone of the political debate on immigration in many EU member states is a concern in this respect. In addition, the temporary status of asylum seekers and refugees and the lack of status of undocumented workers makes them less likely to report victimisation.

Anti-Semitic violence continues to be a reality in many member states, whether it is physical violence, vandalism and damage of property. While manifestations of anti-Semitism violence are often linked to neo-Nazi and extreme right activities, other reasons are more complex and linked to the instrumentalisation of the Middle East conflict.

The Muslim community is since September 11 and in the aftermath of the London bombings a key target of racial violence. Even if mechanisms of unofficial data collection on Islamophobic incidents are in their infancy across the EU, monitoring mechanisms by NGOS confirm increasing cases of verbal and physical assaults against Muslims, in particular targeting Muslim women wearing headscarves; and cases of vandalism against Mosques or desecration of Muslim graves.

The Roma experience racist violence and crime throughout the EU, but their victimisation is noted most often in central and eastern Europe and in southern European member states where there is a sizeable Roma population

The direct testimonies of victims of hate crime can act as a powerful complement and direct, focused evidence of the need and effectiveness (or ineffectiveness) of law and policy to tackle hate crime. Equally importantly, speaking out can be an important route to empowerment for victims of hate crime and present an opportunity to take back control.

Harassment and violence



One of the biggest issues when dealing with the support of victims who have been subjected to racist harassment and violence is the absence of a clear definition of hate crime. As the legislation varies from state to state the experiences of the minority population are hard to quantify. Despite this variance however, the majority of the ENAR Shadow Reports on racism in Europe testify to the rising trend of racist harassment and violence. While several states do not have a formal reporting system through government with regard to race hate crimes that produce official statistics, the experiences brought forward to NGOs provides a good qualitative basis to advocate for further monitoring in this area.

“I am 23 year old Bangladeshi Muslim studying in Cyprus. I was beaten up without provocation while I was walking in the street very early in the morning in the tourist area of Limassol by one Cypriot. Two other Cypriots, friends of the perpetrator, were watching and laughing. I then went to the police to report the incident and I was taken by the police to the hospital. I suffered serious dental injuries. The police kept the medical report given by the hospital and no report was given to me.

After seeking assistance from an NGO to follow up my case, it was found that though the crime was registered by the police there was no indication given on whether it had been registered as a racist crime. I was asked to give a second statement to the police.”¹



There are persistent themes throughout all of the reports when addressing this area, regardless of how extensive the equality legislation of a state. This in itself has proven a difficulty as some states have quite thorough legislation but a lack of implementation and political willpower renders it ineffective. This inadequacy has led to under reporting in many states as victims do not trust the system or the authorities that are meant to protect them. This is intensified by the denial of police and authorities to record incidents as racially motivated hate crimes and the victims becoming the focus of investigation. Further, some states report the participation of security forces, or members therein, in the carrying out of attacks and violence against minorities.

The increased activity of far right extremist groups and the participation of politicians in these groups have also highlighted a disturbing trend. The voracity of these groups in expressing these views is disquieting, particularly with regard to the frequency of verbal abuse experienced by minorities and the encouragement of the majority population to indulge in this behaviour that makes witnesses of these incidents reluctant to come forward. Further to this, the majority

1 Testimony provided by KISA-Action for Equality, Support, Antiracism, Cyprus.

perception that racist harassment and violence are justified if a crime has been committed by an individual from the minority community puts additional pressure on victims not to speak out.

"I am a 29 year old Jewish woman of Belgian origin. In September 2008, I was accosted as I got out of my car by two young men in their early twenties. One of them asked me "Can we meet up? Have a drink?" Not responding to the overture, I remained silent and went on my way. As the man saw my necklace with a Star of David he called me a "dirty little Jew". As his companion laughed, he called me a "prostitute" and a "fat whore". He then approached me and touched my buttocks while taunting me. I continued walking fast, and asked to be left alone. When I returned to my car, a short while later, I discovered a scratch all along its driver's side, which had not been there when I left the vehicle. I was convinced the two men damaged my car. I filed a complaint with the police."²



More general societal trends show a rising pattern of racist incidents and slogans at sports events particularly, as the reports state, at football games. Poland reports aggressive assaults addressed to foreign football players taken on by Polish clubs as well as the hanging of racial, anti-Semitic and fascist slogans and posters.³ This concern is also evidenced in Italy where there were 56 racist incidents recorded during the 2006-2007 season. The majority were committed by fans and included the display of racist banners.⁴ In Lithuania fans at one event were shouting racist slogans urging to kill a black player of the opposition team.⁵ Slovakia reports that incidents at football events included mockery towards a black football player, arrangement of fans in the form of a swastika, and fans marching under a Nazi flag.⁶

"I am a 90 year old Russian woman and have been living in Estonia since 1946, since my husband, a Soviet Army Officer was sent here to serve. I have four children, three of whom were born in Estonia and are Estonian citizens. I live in a block of flats, the same place for more than 40 years. I have never done anything bad to my neighbours, however the Estonian family living in the opposite flat started to insult me in a number of ways and sometimes would physically attack me. The woman uses obscenities and pushes me when we meet in the stairway. She constantly tells me to leave her country, or die. Lately, this woman has also started to attack my children and grandchildren. It is beyond my understanding why she does it or who can stop her."⁷



2 Testimony provided by CEJI-A Jewish Contribution to an Inclusive Europe, Belgium.

3 ENAR Shadow Report 2007, Poland, p. 14.

4 ENAR Shadow Report 2007, Italy, p. 23.

5 ENAR Shadow Report 2007, Lithuania, p. 19.

6 ENAR Shadow Report 2007, Slovakia p. 17.

7 This testimony shows the damage caused not only by physical abuse but also by consistent verbal harassment and intimidation. Testimony provided by Legal Information Centre for Human Rights, Estonia.

Hate speech



This area is one of the most difficult to tackle as perpetrators hide behind their right to express themselves as a license to degrade others. It is also important to recognise, as the testimonies will reflect, that hate speech, especially if it is consistent, is just as harmful and damaging as a physical attack. In some cases even more so as having to deal with

emotional pain increases the stress of the individual and as a consequence can result in the breakdown of the family unit.

The mayor of the Ostrava district who was at the time Vice-Chair of the Senate Human Rights Committee commented at a public meeting: "I have to deal with the Gypsies. Unfortunately, I am a racist. I do not agree with the integration of Gypsies, that they should be able to live throughout the district. Unfortunately, we selected Bedriska [quarter], so that is where they will be living - with a high fence, an electric one for all I care, I'll tell the whole world that."⁸



Additionally, the use of racist language is often a red flag indicating potential escalation to physical attacks, as the language contributes to the devaluing of groups as less than human and therefore acceptable to harm. Hate speech has a wide range of expressions and, as is also evident in the two following sections, occurs at all levels of society. Balancing freedom of speech and the rights of citizens with what is acceptable expression of one's ideals is a conundrum when states are developing measures to combat racism in this form.

In 2007, a mayor in a village in Brasov County, in Romania, erected a wall between the Hungarian/Romanian community and the Roma community, also blocking their access to schools and shops (they have to walk an extra 1.5 km). The mayor declared to the press: "Only I know how much of a handful they are. Here you must know when to punish them and when to caress them. I even told the police officer once that I am the one who gives them social help, the one who helps them, the one who kills them". (...) "Another time I caught one stealing from me, I took him, I beat him up and I told him I won't give him to the police, but I will forgive him if he comes to work for me for free. And the guy did his best, I hired him a short while after and he continues to work for my wife's firm to this day."⁹



⁸ ENAR Shadow Report 2007, Czech Republic, p. 24.

⁹ Case reported in January 2009 in the Romanian Press (see: www.romanioliberal.ro/a144392/dezbaterile-r-l-la-brasov-zid-antiromi-ca-in-cis-jordania.html). Information provided by the CRJ – Centre for Legal Resources, Romania.

Racism in the media



The media continues to have a major influence on the perceptions of minority communities. While media reports have gone some way to raising awareness of racism and racist incidents, there are too often occurrences of biased and inaccurate reporting which serves only to scapegoat the minority community and scaremonger within the majority. The conspicuous lack of minority representation in all forms of media also creates a misperception, especially when the only representation is negative stories and stereotypes. News stories will often identify the ethnicity or origin

of those perpetrators who are foreign or belong to a minority community, in contrast to when a member of the majority population commits a crime.

With the rise of new technology comes new ways for groups and individuals to express their prejudice and racism. The inability to effectively police internet chatter and sites has led to a proliferation of racism and hate speech easily accessed by all on the web. While the ENAR Shadow Reports suggest there have been attempts to consistently monitor forums etc., there is a rising movement of neo-Nazi and fascist groups using internet to promote racism/xenophobia.

On 2 March 2009, an article in a prestigious newspaper presented a legislative initiative supported by the newspaper (which was itself owned by a politician) which proposed to replace the name Roma with that of Gypsy so as not to confuse Roma with Romanians (because of what is currently happening in Italy). About 300 messages followed on the newspaper's forum, 99% supporting the initiative and some of them including hate speech.¹⁰



There are ongoing debates that see any attempt to moderate media outlets as political correctness gone amok. The infamous cartoons of the Prophet Mohammed which appeared in a 2005 Danish publication are a good example of the complexities of dealing with racism in the media. Another example that sparked international controversy was an incident on the UK reality TV show Big Brother when some of the Caucasian British participants racially abused and bullied another participant of Indian origin.¹¹

10 This example from Romania relates to the lack of moderation of fora of media outlet websites, paving the way for unmoderated expression of racist comments. Information provided by the CRJ - Centre for Legal Resources, Romania.

11 ENAR Shadow Report 2007, United Kingdom, p.25.

Racism in politics



Racism in politics can be acutely damaging as the figures of the political arena set the tone and standard for a country as a whole. With the acceptance and promotion of racism by those who are meant to represent the feelings and beliefs of the “common man”, there is a direct attack on the cohesion of a community. Further it undermines the faith of those members of the target groups in the ability and willingness of the state to protect them.

A councillor from the Northern League Party in the town of Treviso, Italy, declared during a meeting of the Town Council that ‘it would be right to teach them [non-EU immigrants] how to behave using Nazi methods. For every citizen of Treviso disturbed or damaged by immigrants, we should punish 10 non-EU immigrants’.¹²



These beliefs being propagated by politicians can also lead to a general belief that racist attacks and violence are acceptable and may even be condoned or rewarded. Additionally, it threatens to drastically undermine any legislation or protection laws and render them ineffectual in practice. As with verbal harassment in society, the occurrence of such speech at this level may often go unchallenged.

A politician in the Czech Republic, who had previously evicted Romani tenants en masse in his constituency when he was mayor, responded to a question in a tabloid concerning how other people besides the Roma could get state subsidies: ‘You’ll have to go get a suntan somewhere, and then you and your family should make a mess, set fires on the town square – then some politicians might stand up for you and say, “The poor guy.”’¹³



¹² ENAR Shadow Report 2007, Italy, p. 24.

¹³ ENAR Shadow Report 2007, Czech Republic, p.23.

In 2007, Romani CRISS filed a complaint against Noua Dreapta (New Right) Organisation for articles published on their website which contained degrading, humiliating and offensive language about the Romani community and incited to racial hatred. One article contained the following: "You stayed away and witnessed the Gypsy aggressions. You witnessed the violence, effrontery and delinquency of this ethnic group which prejudices dignity and endangers the majority population. How long will you put up with this humiliation?" Another article included further hate speech: "The Gypsy community constitutes an explosive criminal potential. Burdened by their condition, impulsive, united in evil, the Gypsies represent a foreign community, impossible to integrate. This is why it is the duty of the people holding the power to act".¹⁴ Despite this evidence, Romani CRISS did not manage to have a criminal investigation initiated for incitement to discrimination and violation of certain provisions of the Government Emergency Ordinance 31/2002 which forbids organisations and symbols with a fascist, racist or xenophobic character and the promotion of the cult of persons guilty of crimes against peace and humanity. All internal remedies have been exhausted.¹⁵



A Greek-nationalist politician and author published a book entitled "Jews - The Whole Truth" in June 2006. Sold as "an appraisal of Judaism and Zionism", the book is anti-Semitic and states at the beginning "I declare from the outset that I am a Nazi and a fascist, a racist, anti-democratic and an anti-Semitic." [The author] openly calls the Holocaust into question while justifying the actions of the Nazis, given that in his opinion, "Ridding Europe of the Jews is necessary because Judaism poses a threat to the freedom of the Nation" (p.432). To this he adds, "I constantly blame the German Nazis for not ridding our Europe of Jewish Zionism when it was in their power to do so" (p.1,221). The Jewish Community of Greece and Greek Helsinki Monitor took [the author] to court for incitement and religious intolerance. He was convicted of "incitement to racial violence and hatred and for racial insults" and sentenced to a suspended sentence of fourteen months imprisonment, confirming the anti-Semitic nature of his book and of other statements he has made.¹⁶



14 See: www.nouadreapta.org/actiuni_prezentare.php?idix=176

15 Information provided by the CRJ - Centre for Legal Resources, Romania.

16 This testimony provides a good example of the positive that can happen when such racism is challenged. Testimony provided by CEJI-A Jewish Contribution to an Inclusive Europe, Belgium.

The impact on individuals, families, communities and society



When one examines the impact that racism has it is clear why it is an issue that must take precedence and have a focused strategy at all levels of society to confront and eradicate it. When individuals experience racism there is a ripple effect; not only does the individual have to deal with the hurt and isolation but everyone who shares that person's identity becomes a potential target. This community then has a shared fear and sometimes expectation that they

are vulnerable to harassment and violence because of their identity. On a wider scale this serves to isolate and polarise groups creating tensions within the fabric of that society.

"Two days after the attack on me I was sore all over and found it difficult to get out of bed... Since the attack on me I feel very scared of people. I have lost every hope of living in this community. After the attack I went to Nigeria for four weeks... I came back for the sake of my marriage... I feel very annoyed and angry about the attack and at times I feel depressed. It has affected my relationship with [my wife] and it has made our marriage difficult. My wife understands how I feel and when I returned to Nigeria she was very upset. I have tried to get back to my studies [but] I have since pulled out of the course as I wasn't able to concentrate."¹⁷



¹⁷ This is the testimony of a Nigerian refugee living in Northern Ireland who was attacked one evening on his way home. Testimony provided by the Northern Ireland Council for Ethnic Minorities, United Kingdom.

"I was walking with my daughter... What bothered me so much, after hearing people call me a monkey, or that my skin is black... is that my daughter was right there! She was asleep, and she was too young to understand what was said... but there was this total disregard of the fact that my child was there. And so... if people are that callous to completely disregard the fact that my child was there... to show their act of racism... then I can say that that bothers me more than anything."¹⁸



The feeling of isolation also reinforces the sense of victimisation at the time of the incidents and afterwards. Many times, attacks take place without witness, but what hurts even more is the fact that, when there are people around, they usually do not intervene. Victims feel that they have to deal with their fate completely by themselves, without support available because society in general seems to be indifferent to their experiences.

"I am waiting there, and sitting on this bench. And three young people come up: "What are you doing?" And they are looking and asking "Why? Why you are here? And why are you looking at me?" I say, "I am sorry, I am not looking, I am waiting for my child. He is coming, in five or six minutes." But they ask (me): "Why you are here?" And they start beating me and after that... I fall down. And I ... I don't remember ... what happened? After that, I want to stand up, but I can't. I have ... like ... it is dark inside. And my mind is only thinking: "My child is coming now, in two or three minutes". And I want to stand up, but I can't. Three times. And people, people, they are standing ... But no one helping. No one helping. Not one."¹⁹



¹⁸ This testimony demonstrates the impact of hate speech on family life and children. Idem.

¹⁹ Dr. Inta Dzelme, Psychological effects of hate crime – individual experience and impact on community (Attacking Who I Am), Riga: Latvian Centre for Human Rights, 2008.

The response of authorities (police, criminal justice agencies and housing)



This section of testimonies provides greater detail of how authorities respond to racist violence and harassment. As reflected in the previous sections the importance of how state authorities respond to incidents cannot be overemphasised. The consequences of an inadequate or inappropriate response reach far beyond the individual. The loss of confidence in authorities undermines their effectiveness to prevent and protect and

fosters trepidation in vulnerable communities with long term repercussions.

The criminal justice system and policing

Many ENAR Shadow Reports stated that in many criminal justice systems there is a resistance or more overt denial of racist motives in violence and harassment. Reports to NGOs evidence not only a lack of support but times when victims became the subject of investigation when reporting their attacks or made to feel that the harassment is self provoked given that a failure to integrate causes anger and frustration in others.

“I am a Muslim woman who was denied access to a hostel in France in 2006 because of my religion. After this incident, I lodged a complaint against the owner of the hostel for religious discrimination in access to this service. Following the complaint, judiciary authorities conducted an investigation to check whether I was not taking part in a situation testing. My husband and I were also questioned by the intelligence department; in the meantime, I was receiving numerous hate and intimidation emails and death threats for which I also lodged a complaint. In the end, the discrimination was recognised by the competent court in 2008 and the owner was given a suspended prison sentence of two months and a fine of 5,000 Euros.”²⁰



The effectiveness of police investigation is pivotal in dictating how the rest of the criminal justice system responds, and an inadequate investigation will thwart any prospect of further prosecution of perpetrators. There is still a problem with racial profiling of visible minorities

²⁰ This testimony illustrates the fact that victims become the subject of investigation when reporting the violence or the discrimination they have been victim of or made to feel that their harassment would be self provoked. Direct testimony by the victim.

and the Muslim community by security services and is often reported as disproportionate; this was shown in the shadow reports especially in states exercising stop and search powers.

An Indian man in his early thirties was killed in an attack by two local men. Witnesses at the scene heard the perpetrators shouting racist abuse and using racist language to describe the victim. The family believed that the motivation behind the attack was racist, however, while the police acknowledged the use of racist abuse during the attack they felt that the primary motivation was linked to a previous incident wherein the victim had shouted at child relatives of the perpetrators. Despite strong protests from the family and witness accounts, this conclusion was passed on to the Public Prosecution Service. There is legislation in place that allows the judge to increase a sentence if the motivation of a crime is racist, however the racist element of the attack was not considered to be the primary motivation and was therefore ignored.²¹



Housing

With regard to housing there was great concern about the vulnerability of minority communities, in particular third country migrants and refugees, to exploitation in the housing market, both in private rental and ownership. In addition, the weak or non-existent monitoring of the landlords has allowed inadequate housing conditions, including issues of overcrowding and properties in disrepair. The formation of ghettos has reportedly been one of the many results of this continued discrimination. Further, the fear of being evicted has been reported as a reason for not complaining about meagre accommodation. Additionally, in some states there is a special issue around adequate facilities for Roma and Travellers and forced evictions of these groups. Restrictions around social housing, largely dictated by legislation and regulations around allocation, have created a particular vulnerability to homelessness for non-EU migrants and refugees. For all these reasons, minority communities who are victims of discrimination in housing are more vulnerable to violence. Indeed, when they face attacks and violence in their accommodation, they are left with pitiful few housing options and are therefore also reluctant to lodge a complaint. This can be further complicated if the police are not supportive or do not acknowledge the threat that individuals face.

Due to the extreme vulnerability of the victims of racial discrimination or violence in housing, testimonies have hardly been gathered as individuals fear to complain because of the possible retaliation of landowners. On the other hand the perceived lack of support from law enforcement authorities or the lack of trust in them, specifically for irregular migrants that might fear to be arrested for repatriation if they officially complain, makes it very difficult to identify quotable testimonies.

²¹ This case study from Northern Ireland illustrates that even with strong legislation the response of the criminal justice system can fall short. Case study provided by the Northern Ireland Council for Ethnic Minorities, United Kingdom.



3. Responding to racist crime and violence



3.1 The Human Rights framework on racist violence and crime

Introduction

The purpose of this chapter is to provide a practical reference guide to the key Human Rights provisions and arenas for advocacy relevant when examining racist violence and crime. The foundational principles of the Human Rights discourse provide a lens through which to examine and effectively strategise in relation to the testimonies presented within this booklet. We look at both the international and European contexts in this chapter.

When domestic institutions fail to uphold the law and are in some cases the violators of the law, it may be possible or necessary to seek redress beyond national boundaries. Victims may claim their rights and seek redress at a regional or international level providing that all national remedies have either been exhausted or deemed inefficient.

The term racism refers to prejudice based on a person's or a group of people's colour, race, nationality, ethnicity or national origin. Racial discrimination is not normally practiced openly. The vast majority of discrimination within society is much more subtle and ingrained. Although not all racism may involve violence, most racist violence starts with discrimination and/or prejudice which then escalates into a physical manifestation. International and European law addresses racism, discrimination and violence separately as well as violence motivated by racism itself.

The international context: standards and tools developed by the United Nations

This section outlines the key sources of United Nations law. As with the section on European law it is not a definitive list; there are other treaties, declarations and conventions which may be relevant to the particular facts of an individual case study.

State parties are obliged to submit regular reports to the UN treaty bodies on how the rights contained within such conventions are being implemented. It is useful for NGOs to submit shadow reports highlighting their governments' failures in implementation. The relevant committee examines both the governmental reports and the NGO shadow reports. For states that are party to the relevant UN conventions failure to implement and adhere to their international obligations may result in specific state based recommendations from the relevant international treaty body.

The Universal Declaration of Human Rights (UDHR)



www.un.org/events/humanrights/udhr60/index.shtml

The UDHR was adopted by the General Assembly of the United Nations in the aftermath of the Second World War in 1948. The UDHR recognises that if people are to be treated with dignity, they require certain basic rights including the protection of physical integrity and equal protection norms defined in racial, religious, gender and other terms. Article 2 states that everyone is entitled to the rights enshrined within the UDHR “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The UDHR is not a treaty; however it is a fundamental constitutive document of the United Nations. It was adopted for the purpose of defining the meaning of “fundamental freedoms” and “human rights”. This terminology appears in the United Nations Charter, which is the constituent founding treaty of United Nations and is binding on all member states. The UDHR is considered as a key part of customary international law and is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles¹. Following on from the UDHR, the body of international law expanded upon its terminology, refining the definitional parameters of racism and racist violence and creating structures and mechanisms to ensure adherence. The UDHR is not legally enforceable in the way in which the proceeding pieces of law are, rather it sets out the foundational overarching principles that at the heart of binding treaties.

¹ Customary international law consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way (Rosene, *Practice and Methods of International Law*, p. 55).

The International Covenant on Civil and Political Rights (ICCPR)



www2.ohchr.org/English/law/ccpr.htm

The ICCPR was adopted in 1966 and sets out the protection of minority rights including protection based on gender, religious, racial and or other forms of discrimination (see specifically article 2).

The treaty also requires governments to prohibit by law any “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (article 20). The ICCPR also stipulates that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (article 26). Minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (article 27).

The ICCPR is monitored by the Human Rights Committee. State parties are required to submit reports on measures taken to give effect to the undertakings of the covenant and on the progress made in the enjoyment of covenant rights. States which have ratified the optional protocol to the Convention give authority to the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of the covenant by state parties. The Committee will then forward its views to the relevant individuals and states.

The Convention on the Elimination of Racial Discrimination (CERD)



www2.ohchr.org/english/bodies/cerd/

This treaty entered into force in 1969. This is the most comprehensive treaty concerning the rights of racial and ethnic minorities. It lays down the measures which are required by states to prevent racial discrimination and violence.

The CERD states that government policies based on racial superiority or hatred violate fundamental human rights, endanger friendly relations among peoples, cooperation among nations, and international peace and security. It thus outlaws racism at a horizontal level from the state (for example from the police or the justice system) towards its citizens as well as at a vertical level between citizens.

Article 4 of the CERD obliges States to adopt “immediate and positive measures” to combat racism. It requires states to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of

another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof". The CERD also requires that states declare illegal and prohibit organisations which promote and incite discrimination, and outlaw the promotion or incitement of racial discrimination by public authorities.

The relevant Committee body for this treaty encourages the passing of laws which punish the dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination including racist propaganda encouraging violence, as well as acts of violence and assistance to racist activities. Under article 14 individuals may lodge complaints to the committee on their relevant country. State signatories to the convention are required to submit periodic reports for examination to the committee. State parties who are signatories to the ICCPR and the CERD are obliged to create specific criminal legislation directed at bias-motivated conduct including brutality and violence.

The World Conference Against Racism, Xenophobia and Related Intolerance in 2001²



www.un.org/WCAR/

The Durban Declaration and Platform for Action arose out of the World Conference Against Racism, Xenophobia and Related Intolerance in 2001 (WCAR). Broadly speaking it envisages a holistic approach to combating racist crime. The WCAR applies to all the member states of the EU, and contains important commitments for both the legislative and the practical levels. These include measures relating to the police force, to reduction of racist violence, including through education, community involvement, a multi-agency approach, strong enforcement of laws, monitoring and collection of data, and assistance to victims.³ In addition, the Programme for Action "urges States to adopt effective measures to combat criminal acts motivated by racism"⁴, including in relation to sentencing, and calls upon States to promote measures to deter the emergence of and to counter neo-fascist, violent nationalist ideologies.⁵

² This paragraph was adapted from p.29 of the 2003 ENAR publication "European Strategies to combat Racism and Xenophobia as a crime".

³ Paragraph 74 of the Durban Programme of Action 2001.

⁴ *ibid* Para 84.

⁵ *ibid* Para. 86.

The European regional framework

In light of such international precedent, this section addresses the European regional framework in consideration of the European Convention on Human Rights, the recommendations of the Council of Europe's European Commission against Racism and Intolerance (ECRI) and the work of the Organisation for Security and Cooperation in Europe (OSCE).

The European Convention for the Protection of Human Rights (ECHR)



www.echr.coe.int

The ECHR was adopted in 1952. In its preamble it is stated that the fundamental freedoms, which are the foundation of justice and peace in the world, are maintained through a common understanding and observance of the Human Rights on which they depend. All Council of Europe member states are party to the Convention. Any person whose rights have been violated under the ECHR by a state party can take a case to the European Court of Human Rights. Decisions of the Court are not automatically legally binding, however the Court does have the power to award damages.

Rights with particular significance in the fight against racism and racist violence include the right to be free from torture or inhuman or degrading treatment or punishment (article 3). Article 8 states that everyone has the right to respect for his private and family life, his home and correspondence. Article 10 holds a particular significance as the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The right to freedom of expression is not an absolute right, which means that it is restricted by certain duties and responsibilities. Such limitations justify the intervention of public authorities to prevent crime and protect public safety or the rights of others. The European Court of Human Rights has frequently found restrictions on freedom of speech in relation to racist activity to be justified because of the effects of such activity on a democratic society and the rights of those who suffer because of such activity.⁶

Article 14 articulates equal protection norms defined in a non-exhaustive list including racial, religious, gender, linguistic, political and other terms. Any claim brought under Article 14 must be linked to a right or freedom guaranteed by another article in the convention. It does not prohibit all inequalities as to do so would prohibit affirmative action or temporary special measures which enable favourable treatment to an underrepresented group. Article 14 is significant in light of violence at the hands of state agents. State authorities have a duty to take all reasonable steps to establish whether any racist motivation was involved in the

⁶ For further information on this area, please refer to the relevant section on freedom of Expression and racist speech in Chapter C of the 2003 ENAR publication on "European Strategies to combat racism and xenophobia as a crime".

circumstances surrounding a crime. A failure to recognise and efficiently handle the difference in the way in which racist situations essentially differ from those without racist bias may meet the requisite threshold for unjustified treatment irreconcilable with Article 14. Unfortunately the reality is that article 14 is not evoked as frequently as it should be if it were to adequately reflect the situation of racist violence in Europe. Frequently the Court does not determine whether there has been a violation of Article 14 if it has already considered that there has been a violation of the substantive right pleaded in conjunction with Article 14, rather it is the practice of the Court to consider first if there has been a violation under the substantive article alone.⁷

Sufficiently proving racial motivation will often be extremely difficult in practice. Under the law of the ECHR, the respondent State's obligation to investigate possible racist overtones to a violent act is not mandatory (see *mutatis mutandis*, *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, ECHR 2001 III). However the Convention states that the authorities must do what is deemed reasonable in that situation; they must endeavour to collect evidence and investigate all practicable means of discovering the truth.

Protocol No. 12

In response to criticism of the weakness of Article 14 of the Convention, Protocol No. 12 was introduced on 4 November 2000⁸. It was intended to extend the prohibition of discrimination to the enjoyment of rights granted under national law, rights inferred from public authority obligations under national law, public authority discretionary power and any act or omission by public authorities. This extended the prohibited grounds for discrimination significantly. It is hoped that Protocol No. 12 will increase the European Court of Human Rights' focus on issues of equality and will pave the way for more forceful jurisprudence on discrimination. The protocol came into force on 1 April 2005.⁹

The European Commission against Racism and Intolerance (ECRI)



www.coe.int/t/e/human_rights/ecri/

The ECRI is a body of the Council of Europe established in 1993. It is comprised of 46 independent expert members, one from each member state of the Council of Europe. ECRI's programme of activities is dedicated to work on general themes of particular importance to combating racism, xenophobia, anti-Semitism and intolerance. ECRI's work consists mainly of the adoption of general policy recommendations and the dissemination of examples of "good

7 For further information on this area, please refer to the relevant section on Article 14 in Chapter C of the 2003 ENAR publication on "European Strategies to combat racism and xenophobia as a crime".

8 The text of the main substantive article reads, as follows: "Article 1 - General prohibition of discrimination:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

9 This paragraph was adapted from the section entitled Protocol No. 12 in the 2003 ENAR publication on "European Strategies to combat racism and xenophobia as a crime".

practices". It has limited influence in that its role merely encompasses the undertaking of studies and the submission of proposals, not the monitoring or enforcement of policy or legislation.

At the European Conference against racism in 2000, the Council of Europe underlined "the importance of combating impunity, including for crimes with a racist or xenophobic motivation, also at international level."¹⁰ Responding to this appeal, the European Commission against Racism and Intolerance (ECRI) adopted the *General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination* on 13 December 2002. Calling for the strengthening of legal tools against racism at national level, the measures suggested by Recommendation No. 7 include the prohibition - sanctioned by criminal penalty - of a range of activities characterised as "racist".¹¹

The recommendation also defines racism as "the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons."¹² However caution should be exercised as although the recommendation endorses a strong anti-racist stance it is difficult for courts to prosecute on the grounds of ambiguous concepts such as "racism"; it is more effective to define unlawful conduct as opposed to unlawful belief systems.

The Convention on Cyber Crime



<http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>

In its Shadow Report on racism in Europe in 2005, ENAR noted that "the use of the internet as a tool for the dissemination of racist sentiment, crime and propaganda is particular worrying given that internet crime is not often recorded and the legal difficulties that have been experienced in challenging internet-based criminal activity"¹³

As the explanatory report of the Council of Europe's Convention on Cyber crime states, the rise of internet based technology challenges existing legal concepts. Information flows more easily around the world and as such borders are no longer boundaries to this flow. Those who wish to disseminate racist and xenophobic material are increasingly located in places other than where their acts produce their effects. As domestic laws are generally confined to a specific territory, it is necessary to turn to international law and adequate international legal instruments than can resonate beyond territorial boundaries.

10 EUROCONF (2000) 7 final, General Conclusions of the European Conference Against Racism, Strasbourg, 16 October 2000, paragraph 7.

11 This paragraph is taken from the 2003 ENAR publication on "European Strategies to Combat Racism and Xenophobia as a crime", chapter C, page 17.

12 See paragraph 1 of the Recommendation.

13 See letter from ENAR to the Members of the EP Committee on Civil Liberties, Justice and Home Affairs regarding the Framework decision on Racism and Xenophobia, 2007.

The Convention on Cyber crime was drawn up by the Council of Europe in Strasbourg with the active participation of the Council of Europe's observer states Canada, Japan and USA. The Convention entered into force on 1 July 2004. As of 11 March 2009 23 member states had signed, ratified and acceded to the Convention, while a further 42 member states had signed the convention but not ratified it. On 1 March 2006 the Additional Protocol to the Convention on Cyber crime came into force. Those States that have ratified the additional protocol are required to criminalise the dissemination of racist and xenophobic material through computer systems, as well as of racist and xenophobic-motivated threats and insults.

The Organisation for Security and Co-operation in Europe (OSCE)



www.osce.org/odihr

The OSCE is the world's largest security-oriented intergovernmental organisation comprising of 56 member states across Europe and North Africa. It was created during the Cold War as an East-West forum in order to establish a comprehensive framework for peace and stability in Europe, and its mandate incorporates human rights, crisis management and post-conflict rehabilitation. It is a purely political body and consequently does not have any jurisprudence.

As ethnic conflict is one of the main sources of large-scale violence in Europe today, the OSCE plays an important role in identifying and seeking early resolution of ethnic tensions before they escalate into violence. The OSCE sets standards for the rights of persons belonging to minority groups in order to aid the prevention of racist violence.

The Office for Democratic Institutions and Human Rights (ODIHR) is the specialised institution of the OSCE dealing with elections, Human Rights, democratisation, tolerance and non-discrimination and rule of law.

How to distinguish between racist violence and hate crime?

"Hate crime" is a broad-based concept which encompasses race/ethnicity/religion, as well as gender, disability and sexual orientation. This approach is increasingly being adopted by member states and there have been recent moves in some jurisdictions to punish racist crime and violence under the generic heading of "hate crime". A working definition on hate crime was developed by the ODIHR, with input from law enforcement experts. This definition was designed to take national differences into account in terms of legislation, resources, approach and needs, and thus allows each state to amend the definition as it sees fit. Hence, a hate crime can be defined as:

(A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group as defined in Part B.

(B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.

In addition, the ODIHR's 2009 handbook on hate crime laws notes that hate crimes are "criminal acts committed with a bias motive". The second element means that the perpetrator intentionally chose the target of the crime because of some protected characteristic, i.e. a characteristic shared by a group such as "race", language, religion, ethnicity, etc.



www.osce.org/odihr/item_11_36671.html

In most EU member states legal definitions of violence are limited in the sense that they do not always include reference to the racist motivation. Most jurisdictions do not have a definitive legal classification for racist violence. The European Monitoring Centre on Racism and Xenophobia (EUMC) (which preceded the European Union Agency for Fundamental Rights) reflects the variety of interpretation of "racist violence" amongst member states through its analysis of the term. Although there may be much disparity between individual member states, the EUMC has stated that NGOs and social scientists usually define racist violence as "racially motivated criminal acts against the person and/or property, and include public insults and defamation, threats, and incitement to racial violence, hatred or discrimination, etc."



www.fra.europa.eu

In an analysis of whether an incident can be perceived as a racially motivated crime, generally speaking the NGO best practice experience will use the perception of the victim as the guiding indicator. In 1999, an inquiry in the United Kingdom headed by Sir William MacPherson examined the original Metropolitan police investigation into the murder of black British teenager, Stephen Lawrence. The report states that "A racist incident is any incident which is perceived to be racist by the victim or any other person".



www.archive.official-documents.co.uk/document/cm42/4262/4262.htm

A wooden gavel is positioned vertically on a stack of books. The background is a blurred European Union flag, featuring a blue field with yellow stars. The scene is lit with soft, natural light, creating a professional and legal atmosphere.

3.2 The European Union legal and policy framework on racist violence and crime

This chapter forms a basic reference text of the key standards within the European Union legal and policy framework. It will contribute to enabling NGOs to influence the current legal and political context at a national level and support the effective transposition and implementation of EU standards, most notably surrounding the transposition of the recently adopted Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (the Decision) into national law and practice.

Firstly the chapter looks at the Decision, taking into account those aspects which are to be welcomed and the areas in which the Decision falls short of providing adequate protection. Following on from this the chapter briefly looks at other instruments which can be used by NGOs as advocacy tools for more effective protection at the domestic level, namely the Racial Equality Directive and the EU Charter of Fundamental Rights. The chapter finishes by briefly outlining the EU institutions which can support effective protection as outlined by the legislation.

The Framework Decision on combating racism and xenophobia

The Framework Decision on combating racism and xenophobia provides an estimation of the laws and regulations which member states should adhere to regarding offences involving racism and xenophobia. The Decision advocates that such behaviour must constitute a criminal offence in all member states and be punishable by effective, proportionate and dissuasive penalties. The main focus of the Decision is on the prevention of public incitement to violence and hatred against persons on the grounds of racism and xenophobia.

The Decision aims at harmonising the criminality of racist conduct throughout all the countries of the EU. Provided that member states adopt and implement it fully, it will ensure that the various national anti-racist laws are sufficiently comprehensive and severe and that effective judicial cooperation can be developed EU-wide.

Background to the Decision

Following the need for greater protection on the grounds of discrimination the Article 13 provision was introduced into the EU Treaty by the 1999 Treaty of Amsterdam. This new Article enabled the EU to take greater action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. European Union policy against racism and xenophobia is most associated with the actions taken under the auspices of Article 13. In terms of influence, it paved the way for the adoption of the Racial Equality Directive, which entered into force on 19 July 2003 and of the Employment Equality Directive, which entered into force on 2 December 2003.

In addition to Article 13 the Treaty of Amsterdam also added Article 29 to the EU Treaty, which charged the Union with the objective of “preventing and combating racism and xenophobia in the field of police and judicial cooperation in criminal matters”. Article 29 of the EU Treaty resulted in a European Commission proposal on 28 November 2001 for a Framework Decision on combating racism and xenophobia¹.

After extensive discussions on the Commission proposal, the Justice and Home Affairs Council was unable to reach agreement on the proposal at its meeting of February 2003. Discussions were then resumed in 2005, followed by another failure to reach agreement at the Council meeting of June 2005. Finally, after five years of stalled negotiations within the EU Council, the German Presidency of the EU committed to place this issue back on the European agenda and ensure its adoption in 2007. A political agreement was thus reached by the EU Justice and Home Affairs Council in April 2007. However, it was only formally adopted in November 2008, as a number of parliamentary reservations had to be lifted.

Since its submission the Commission’s proposal has been altered substantially. The initial proposal was gradually watered down during the years of negotiations. Much of the content of the original proposal has been removed, and many escape clauses have been introduced to allow member states to circumnavigate their responsibilities.

The impact of a Decision

Although generally matters of criminal law do not fall within the European Community’s remit, the Council of the European Union can determine minimum rules relating to the elements of criminal acts and their accompanying penalties. As such “Framework Decisions” are binding on member states as to the result to be achieved but leave it up to national authorities to decide on the forms and methods through which to achieve these results.

A Decision is one of the binding instruments provided by secondary EU legislation. Due to the inherent nature of a “Decision” as opposed to a “Directive” which has direct effect, the Framework Decision is weaker than the Racial Equality Directive (which shall be referred to in greater detail later in the chapter). According to Article 34(2) (b) of the treaty of the European Union: “Framework Decisions shall be binding upon the member states as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.”

The first part of this definition is self-explanatory and similar to the roles found within a directive. The exclusion of direct effect from the framework decision is the significant difference. Direct effect is the legal principle that, once the time limit for implementation

¹ This paragraph is taken from the 2003 ENAR publication on “European Strategies to combat Racism and Xenophobia as a Crime”, page 31 chapter D.

of the Directive has expired, those provisions of the Directive that are clear, precise and unconditional can be enforced directly by individuals in their national courts against emanations of the State.² This has the important practical advantage of allowing individuals to enforce rights conferred by Directives even where member states have not implemented the Directive or have failed to do so correctly. In addition the European Commission has no power to initiate infringement proceedings in respect of measures adopted under a Decision.

Why do we need a Framework Decision?

The Framework Decision on combating racism and xenophobia is needed to strengthen inadequate laws around racism and xenophobia and to ensure European Union wide cooperation in the fight against such crime. With the rise of new technologies and greater information sharing in the early nineteen nineties there had been clear evidence of difficulties arising within the EU internal market linked to differences in the substance of member states' criminal law provisions on racism and xenophobia. Inconsistencies with regard to the laws of member states led to scenarios whereby, for example, racist literature could be published in a country where it was not an offence to do so with the objective of dissemination in a state where it was an offence. The initial response to such cases was for the European Council to issue a "Joint Action concerning action to combat racism and xenophobia" in 1996.³ The Joint Action was a weaker predecessor of the Framework Decision instrument; it had the objective of encouraging judicial cooperation in relation to a range of offences linked to racism and xenophobia. This measure was particularly weak because the European Court of Justice has no jurisdiction to interpret a Joint Action. It also failed to specifically address the distribution of racist material via the internet.

The Framework Decision was proposed with the desire to remedy some of these shortcomings. The 1999 Treaty of Amsterdam enabled more comprehensive measures thus allowing such proposals to evolve into stronger instruments. The proposal made up part of a wider package of measures designed to construct the EU Area of Freedom, Security and Justice. The initial proposal put forward by the European Commission in 2001 was much stronger than the Framework Decision that was eventually adopted in 2008. Importantly, the proposal required member states to establish extraterritorial jurisdiction in specific cases, particularly with regard to offences committed via information systems.

² See further P Craig and G de Búrca, *EU law – text, cases and materials* (Oxford: OUP, 3rd edition, 2002).

³ [1996] OJ L185/5.

Specific strengths of the Decision⁴

Despite their weakness as an instrument of EU legal apparatus, the significance of Framework Decisions is that they do represent an overt political commitment between states to take the actions specified. A Framework Decision is an intergovernmental legal instrument, in this case dedicated to combating racism and xenophobia, binding on member states as to the result to be achieved. In that respect, this Framework Decision provides an additional means to put pressure on member states to amend their legislation in light of the common objective of combating racism and xenophobia by means of criminal law.

The content of some of the provisions of the Framework Decision contain definite strengths which are to be welcomed. Article 2 encourages member states to amend their criminal legislation to punish the act of assistance in racist or xenophobic activities. Article 4 encourages member states to amend their criminal legislation to identify racist and xenophobic motivation as an aggravating factor in the determination by the courts of penalties. As referred to previously the law of the ECHR confers a duty on authorities to take all reasonable steps to unmask any racist motivation for a crime, however this duty is not mandatory and the Framework Decision can help to ensure that it becomes so.

Specific weaknesses of the Decision

Despite original intentions at the conception of the Decision, the text is a significantly watered down version of the original as intended by the European Commission in 2001. It is therefore essential for NGOs dealing with victims of racist crime to lobby for the greater protection of the original text in their national implementation as the current text does not provide sufficient motivation for member states to implement the recommended amendments to their relevant criminal legislation.

Outlined below are some specific areas of weakness:

- **Types of activities targeted**

The Framework Decision does not provide an accurate definition of the types of racist and xenophobic activities and or behaviours which it seeks to target. In 2001, the original European Commission⁵ proposed a general definition of “racist and xenophobic activities and behaviours”.

- **Public incitement/public dissemination**

The scope of public incitement/dissemination is not addressed in the Framework Decision. Article 1 criminalises public forms of incitement/dissemination to hatred without

⁴ Most of this section was adapted from the European Roma Rights Centre legal analysis of 15 April 2007 on the proposal for a framework decision to combat racism and xenophobia and ENAR policy analyses. It does not necessarily represent the position of NICEM on these issues.

⁵ European Commission, Proposal for a Council Framework Decision on combating racism and xenophobia. COM(2001) 664 final. http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0664en01.pdf

providing a definition of the public sphere. As a result, it is difficult to identify the type of conduct which is the object of criminalisation in the absence of such a definition. In addition to this, although the Decision refers to activities and behaviours which result in public disturbance, it does not address activities and behaviours which constitute a threat for private individuals and as such further clarification of such terminology would be beneficial.

- **Public figures and representatives of state authority**

In its resolution of 29 November 2007, the European Parliament noted that public figures and representatives of authorities should be punished with more severity, due to their status, when found to have engaged in racist and xenophobic activities and behaviours. This requirement was not incorporated into the final decision. Given the status and influence of public figures and representatives of authorities, when such persons are found to have engaged in racist and xenophobic activity punishment needs to be of a more stringent and deterring nature than the Decision currently pertains to.

- **Non-regression clause**

The Decision does not contain a non-regression clause. Such a clause was initially included in the 2001 proposal. This issue was raised by ENAR who insisted that such a clause is necessary to ensure that member states whose legislation provides for a higher level of protection abide by the standard of their obligations and do not fall below these.

- **Provision on international obligations**

The Decision should include a provision reminding member states of their international obligations concerning the criminalisation of racist and xenophobic activities and behaviours. Such a provision would highlight the existing binding obligations of the international community on combating racism and xenophobia in international standards such as those contained in CERD.

- **Mutual assistance**

ENAR suggested that the provision on mutual assistance raising the issue of cross-border racism should be reinstated in the Framework Decision. However, a reference to the obligation of mutual assistance binding on member states could be the object of a paragraph in the Preamble since there is already a Convention on this issue: Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty of the European Union, the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*⁶.

- **Monitoring the implementation**

The Decision should include a provision establishing a mechanism and reiterating the need to monitor the implementation of the Framework Decision by member states. In

6 OJ C 197 of 12.07.2005.

its Resolution of 29 November 2007, the European Parliament noted that the Council together with the Commission should ensure the effective monitoring of the transposition and implementation of the Framework Decision by each member state and set up a mechanism of revision of the provisions of the Framework Decision three years after the time limit for its transposition, but this was not included in the final Decision.

- **Specific omissions**

Specifically the Framework Decision does not address the following ever more dangerous areas of racist and xenophobic activity:

- **Cyber hatred:**

Given the ever increasing usage of web based technology the Framework Decision does not provide strong and comprehensive guidelines in this area, thus missing an opportunity to put the use of the internet as a tool for dissemination of racist sentiment prominently on the EU agenda.

- **Racist violence targeting particularly vulnerable groups:**

Particularly vulnerable groups, including Jews, Roma and Muslims, are not expressly mentioned in the Framework Decision.

How can NGOs lobby for stronger protection for victims of racist and xenophobic crime using the Decision?

The Decision should have provided an opportunity to establish a common European minimum standard with regard to racist crime and violence, however it fails to achieve this to the extent expected by Human Rights activists. The Council of the European Union reduced the range of offences addressed by the Decision. Many such reductions were the product of legitimate concerns by the European Parliament and NGOs regarding the need to define clearly any new criminal offences and also to give due regard to freedom of expression, yet such wide and ambiguous exceptions may threaten to undermine the minimum standards that the Decision was designed to accomplish.⁷ Therefore it is important for anti-racist civil society to continue to campaign and lobby on a national and European level for the highest attainable standards of protection and to ensure that weaknesses can be strengthened in the national transposition of such legislation.

This Decision is indeed the expression of a European agreement on minimum common standards. Nothing prevents member states from adopting a higher level of protection in the course of the two-year implementation period following the official adoption of the Decision on 28 November 2008. NGOs will have a crucial role to play in lobbying their respective national governments to transpose into national law and implement the Decision in the most

7 As adapted from the 2003 ENAR publication "European Strategies to combat Racism and Xenophobia as a Crime", p.40.

consistent and effective way to ensure the protection of minorities against potential hate crimes - and even to offer protection beyond the minimum Decision requirements⁸.

In a second phase, NGOs will have also a key responsibility in monitoring the very transposition in national law and implementation of the Decision, and in reporting failure or success to umbrella organisations such as ENAR that will undertake transversal advocacy activities on these issues at European level.

Cooperation and exchange of information between national NGOs and pan-European networks such as ENAR will be vital to the development of a coordinated answer based on sound monitoring and informed analysis of the national transposition and implementation process of the Decision with the view to further level up those European standards in the future.

Indeed, NGOs such as ENAR believe that the Framework Decision is fundamental in that it has the potential to complement and radically influence current EU standards - but it remains only a first legal step, not the end of the European legislative process in the area. It is now up to NGOs and all Human Rights activists across Europe to mobilise in a coherent way to get the best out of the transposition and implementation of this tool in a first phase, then advocate for an improvement of the new current standards in a few years if they have proven to fail to provide an adequate legal response to hate crimes at grassroots level.

Other instruments

- **The Racial Equality Directive (Council Directive 2000/43/EC implementing the principle of equal treatment irrespective of racial or ethnic origin)**

Discrimination based on grounds of “race” is addressed in detail by the EU Racial Equality Directive. It can be useful to look at definitions of racial discrimination when examining the area of racially based crime as discrimination is often the basis from which violence escalates.

EU directives are binding on states as to the objectives to be achieved, but the exact method of how such laws are to be transposed into national legislation is left up to the discretion of member states themselves; as discussed above Directives are stronger legal mechanisms than Decisions. The Directive (Articles 1 and 2) expressly prohibits both “direct” and “indirect” discrimination, and this legislation applies to both the public and private sectors. The Directive explicitly allows legal persons, including NGOs, to engage in proceedings in support or on behalf of victims of race discrimination in Europe. The

⁸ For concrete tips about lobbying and campaigning at national level, see ENAR Toolkit on successful campaigning (<http://cms.horus.be/files/99935/MediaArchive/pdf/Campaigning%20Tool%20Kit%20text-final-EN.pdf>).

Directive includes a chapter on remedies and enforcement which is designed to combat difficulties around proving discrimination as well as incomplete follow up by enforcement agencies and disproportionately low numbers of complaints.

Although the Directive is primarily concerned with discrimination as opposed to specifically hate crime, it does have overarching ramifications in that it provides a useful basis for strengthening the largely weak discrimination jurisprudence of the European Court of Human Rights as well as the legal protections of the Council of Europe and beyond.

- **The EU Charter of Fundamental Rights**

The EU Charter of Fundamental Rights was signed and proclaimed by the Presidents of the European Parliament, the Council of the European Union and the European Commission at the European Council meeting in Nice on 7 December 2000. It is a non-binding document. It applies to EU institutions and states when implementing and interpreting the law. Although it is currently purely inspirational, it may be referred to by lawyers and judges seeking to discern the content of evolving European norms and standards in particular fields. Article 20 notably prohibits discrimination on the grounds of race.⁹

Article 11 of the Charter protects freedom of speech as a basic right. However, this is not an absolute right, and may be subject to certain limitations so as to justify the intervention of public authorities in order to protect inter alia the public safety or the rights of other people.

⁹ However, the new EU Lisbon Treaty incorporates the EU Charter of Fundamental Rights, which will give it binding legal effect if and when the Treaty is ratified by all EU member states.

Institutions of the European Union

This section provides a general outline of the EU institutions that can support the implementation of legislation to protect against hate crime. The most important institutional targets for advocacy and sources of information regarding standards are the European Commission, the European Parliament, and the EU Fundamental Rights Agency. The homepages of EU institutions and the most up to date information regarding relevant legislation and policy can be accessed via the EUROPA server (<http://europa.eu>).

- **European Commission**

www.ec.europa.eu

The European Commission is the executive branch of the European Union. This body is responsible for proposing legislation, implementing decisions, upholding the Union's treaties and the general day-to-day running of the Union. The Commission ensures the effective monitoring of the transposition of EU legislation by each member state. The department of the Commission that deals with anti-discrimination is the Directorate-General for Employment, Social Affairs and Equal Opportunities and the one that deals with criminal justice and the Framework Decision is Directorate-General for Justice, Freedom and Security.

- **European Parliament**

www.europarl.europa.eu

The European Parliament is the only directly elected parliamentary institution of the European Union. It is composed of 785 MEPs (Members of the European Parliament). Together with the Council of the European Union it forms the highest legislative body within the EU.

- **Council of the European Union**

www.consilium.europa.eu

This is the principal decision making institution in the EU and is made up of ministers from each member states. The presidency of the Council is held for six months by each member state on a rotational basis.

- **EU Fundamental Rights Agency (FRA)**

www.fra.europa.eu

The FRA collects information and data on fundamental rights, provides advice to the EU and its member states and promotes dialogue with civil society in order to raise public awareness of fundamental rights. The FRA works closely with other institutions and bodies at the national and European levels. It is not intended to intervene in individual cases as that is the remit of the European Court of Human Rights; rather it investigates broad issues and trends.



3.3 Strategies for achieving change

When addressing issues during training and facilitating discussions about the devastating impact of racism on individuals and across Europe it is easy to be discouraged. This is why it is important to recognise the extraordinary level of work that is ongoing in order to combat racism and its effects. The work that is being carried out is happening on many different levels and across a diverse number of organisations with different capacities. Examples such as these can provide inspiration for action in meeting the new legal obligations under the Framework Decision on combating racism and xenophobia. It is important to acknowledge that the following examples are just a sampling for the purposes of this booklet and not meant to be an exhaustive representation of the work that is being done.

Legal and advocacy strategies

Estonia: The Legal Information Centre for Human Rights oversees a hotline for victims of police actions. The project is aimed at any individual who has been unlawfully detained or against whom the police used excess power during the Bronze Night events. Project activities include: telephone and internet consultations, in-house provision of legal aid for those who wish to take legal action, support by addressing various state institutions with enquiries and complaints where necessary.¹

Poland: Association Otwarta Rzeczpospolita (Open Rzeczpospolita) is engaged in regular surveys of efficiency of Polish legislation and adequacy of justice agencies in the aspect of fighting anti-Semitism, xenophobia and discrimination, and it is taking steps by applying to relevant authorities thus reacting to incidents with anti-Semitic, racial and xenophobic character, or due to other forms of discrimination.²

Austria: "Asyl in Not" is an organisation combining legal and social needs of individuals with the political struggle against the restrictive asylum policy of the government. Appealing to the constitutional court, "Asyl in Not" reversed the detention rulings which had been passed for nearly every single applicant of asylum by the independent administrative senate in Traiskirchen.³

1 ENAR Shadow Report 2007, p. 24.

2 ENAR Shadow Report 2007, p.15.

3 ENAR Shadow Report 2007, p.30.

Working at a local level

Malta: As part of its 8th Campaign Against Racism, the Malta Football Association took its campaign into local schools encouraging youngsters to fight racism at every opportunity. The president of MFA, the Minister responsible for Education and Sport and members of the National Football Team visited a number of schools to promote the message "No to Racism - One Community One Sport".⁴

The Netherlands: In November 2007, Art.1 and Bureau Discriminatiezaken Hollands Midden en Haaglanden organised a conference named "Goedeburen.nl" ("good neighbours") about combating discrimination in neighbourhoods. In workshops participants discussed problems and methods to tackle intolerance and discrimination in neighbourhoods. A website, www.goedeburen.nl, was launched, which was meant for local policy makers and social workers.⁵

⁴ ENAR Shadow Report 2007, p.17.

⁵ ENAR Shadow Report 2007, p.12.

Media and campaigns

Cyprus: In 2007, Action for Equality, Support, Antiracism (KISA), the Cyprus Family Planning Association and the Association for the Prevention and Handling of Violence in the Family conducted a Public Awareness Raising Campaign to Combat Trafficking in Women for Sexual Exploitation, with the production and circulation of leaflets, billboards and TV and radio spots.⁶

United Kingdom: A DVD tackling the issue of racism in Northern Ireland was produced in a partnership between Craigavon police, Craigavon Community Safety Partnership, the District Policing Partnership and Craigavon Borough Council. The DVD helps police officers and professionals in community safety and youth services, by educating and informing young people and community groups in an effective manner about hate crime. The initiative was developed to help reduce the number of victims of racist incidents through education and discussion. It comes with an additional resource of key messages for debate in the classroom in order to challenge attitudes in a safe environment and discuss potential positive options.⁷

⁶ ENAR Shadow Report 2007, p.16.

⁷ ENAR Shadow Report 2007, p.24.



4. Conclusions and recommendations

When considering the testimonies and the information gleaned from the ENAR Shadow Reports serious concerns arise regarding EU member states' response to discrimination and racist violence. As mentioned previously in this booklet there is a profound issue with the use, or lack thereof, of the legislation. Currently victims are left feeling isolated and in some cases experience further victimisation when reporting. There must therefore be pressure on member states to effectively implement existing legislation that protects victims and the rights of minorities. One of the first steps should be an acknowledgement of institutional racism and measures adopted to address this. Further, until member states adopt a cohesive definition of hate crime there is little chance that sufficient resources will be made available to those who work against it. Until authorities are proactive in addressing the inequalities that exist in their respective countries, support networks for victims will continue to be put under strain and will therefore be sporadic.

The following recommendations are not a static list but a reflection of some of the overarching concerns arising from the contributions and the ENAR Shadow Reports:

- ✓ **Policies should acknowledge the diversity of ethnic minority groups and responses to racism should be targeted and focused based on the group and the type of discrimination.**
- ✓ **Aggravated sentencing on the basis of racist motive should be introduced in all EU member states.**
- ✓ **Enhanced reporting and recording of racist crime is important not only for promoting prosecution of such offences, but also in developing, implementing and monitoring polices intended to prevent racist crime from occurring.**
- ✓ **Research by NGOs and academic researchers on the extent and nature of racist crime and violence should be promoted. In-depth quantitative and qualitative data collection, from a range of sources, can help to paint a more accurate picture of the situation.**
- ✓ **Governments should provide adequate support and resources to NGOs to encourage capacity building and facilitate more effective and targeted victim support services for groups that face high levels of discrimination, as well as alternative data collection mechanisms (such as victim surveys).**
- ✓ **EU member states should ratify the Additional Protocol to the Council of Europe Convention on Cybercrime to combat racism and xenophobia on the internet.**
- ✓ **There should be better cooperation between governments, NGOs, and civil society organisations to combat the rising activity of extremist groups and politicians.**

- ✓ A training programme for police and criminal justice institutions to provide better understanding of the needs of victims of hate violence and harassment and address issues around racial profiling and violence in the security services should be considered, with the involvement of NGOs working in the field.
- ✓ Particular attention must be paid to the vulnerability of migrants especially in the areas of employment, health and education. The impact of counter terrorism measures, especially on Muslim communities, should be reviewed to ensure they comply with Human Rights standards.
- ✓ Standardised EU and national “good practice” criteria should be established and implemented, in order to measure the implementation and “success” of different criminal justice and non-criminal justice initiatives that aim to monitor, combat and respond to racist crime and violence.
- ✓ Good practices responses on combating hate crimes on the basis of gender, sexual orientation, disability, “race” and ethnic origin should be cross-fertilised between all stakeholders in the field (NGOs, public authorities, foundations, social partners...).

Notes

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ENAR is a network of more than 600 NGOs working to combat racism in all EU member states and acts as the voice of the anti-racist movement in Europe. ENAR aims to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality between EU citizens and third country nationals, and to link local/regional/national and European initiatives.



Visit ENAR's website:
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