



European Network Against Racism  
Réseau européen contre le racisme  
Europäisches Netz gegen Rassismus

## General Policy Paper No.2

**Racism as a crime**  
**April 2006**

### **Introduction**

Every day ethnic minority groups face racist crime<sup>1</sup> and violence<sup>2</sup>. Often this reality is at worst denied, and at best underestimated. The most pervasive racist violence in Europe is also perhaps the most banal and unorganised, however that is not to suggest that serious and organised racist crime does not exist. There are many examples of racist crime both existing and emerging, targeting communities including migrants,<sup>3</sup> and Roma and Travellers.

In its 2005 Annual Report the EUMC concluded that: 'Racist violence and crime continues to be a problem in EU Member States.' 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. The OSCE 2005 report on hate crimes found that 'hate crimes represent the most insidious manifestation of intolerance and discrimination'. In particular ENAR is concerned that the internet and other new technologies provide a particularly potent source of racist material.

ENAR believes that a comprehensive approach is needed to deal with the problem of racism in Europe. This includes strategies to overcome all manifestations of racism and discrimination; one aspect of which is the legal system, including both criminal and administrative provisions. More effective law will allow governments to deter, detect and punish racist crime. Experience to date, not least through the application of the 1996 Joint Action, demonstrates a clear need for a harmonised European approach to this issue.

In December 2001 the European Commission proposed a Framework Decision on Racism and Xenophobia. The Commission's proposal for a Framework Decision is based on Articles 29, 31 and 34 (2b) of the Treaty on the European Union (TEU). Article 29 sets out the objectives of the European Union, which is to provide citizens of the Union with a high level of safety within an area of freedom, security and justice, including preventing racism and xenophobia. Negotiations on the proposal proved difficult and stalled in 2003. During 2005 the Luxembourg Presidency once again took up the issue, however they did not succeed in overcoming the barriers facing the Framework Decision in the Council negotiations.

---

<sup>1</sup> In line with the language adopted by the European institutions the term 'racism as a crime' is taken to refer to criminal actions, either specifically racist actions which are or should be identified as criminal, or mainstream criminal offences motivated by racism. ENAR recognises that racist ideas or concepts are not themselves criminal, but may lead to criminal actions or behaviours.

<sup>2</sup> The term violence is taken to refer to all forms of violence including physical, verbal or psychological.

<sup>3</sup> For purposes of brevity the term migrants is used to refer to migrant workers, refugees, asylum seekers, and family reunification.

This policy statement is not an argument for the adoption of the proposed Framework Decision on Racism and Xenophobia, rather it seeks to demonstrate that a European instrument on racist crime is essential, and outlines some of the requirements of such an instrument. Consequently this paper is divided into five policy principles:

1. Harmonise criminal protections against racism at the highest level.
2. Racism must be widely defined in order to ensure an effective response.
3. Racism must be identified as an aggravating circumstance.
4. Hate crime cannot be excused on the grounds of freedom of expression.
5. Combating racist crime requires comprehensive and complementary strategies.

### 1. Harmonise criminal protections against racism at the highest level

Experts have demonstrated that there is rarely a structured or consistent approach to racism as a crime in the EU member states. In fact there appears to be a distinct lack of motivation when it comes to addressing this issue. In ENAR's view there is a clear need for a European approach that would facilitate cooperation between Member States and thus enhance best practice, implementation, and protection of victims.

In particular ENAR has witnessed worry trends with regard to cross border racism, whereby perpetrators take advantage of diverging EU standards. In an initial response to the need for a harmonised approach, the Council adopted the 1996 Joint Action however this has proved insufficient in securing adequate protections. In their 2004 report the EU Fundamental Rights Experts concluded that 'a study of developments... strengthens the case for the adoption of a framework decision to combat racism and xenophobia'.

There are a variety of activities and crimes that must be identified and named:

- Public incitement to racist discrimination, violence or hatred.
- Racist public insults or threats.
- Publicly condoning, denying or trivialising the Holocaust/Shoah and genocide.
- Public dissemination or distribution of tracts, pictures or other materials.
- Leadership or support of activities carried out by racist groups, political parties and movements.
- Racial discrimination in the exercise of public office.

***ENAR will continue to advocate for the adoption of a European instrument that recognises the need for a harmonised response to racist crime and violence. ENAR calls on all member states to support this approach.***

### 2. Racism must be widely defined in order to ensure an effective response

Any legal instrument must adopt a wide definition of racism in order to ensure that it responds to the complex nature of racist crime.

ENAR supports the definition proposed by the European Commission in 2001 which defines racism and xenophobia as: 'the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups'.

ENAR recognises that hate crime can also find expression on other pretexts, not least the other European anti-discrimination grounds such as sexual orientation or disability.

### 3. Racism must be identified as an aggravating circumstance

Crimes, which are specifically racist in form and manifestation, represent one side of the coin. Racist crime is more regularly and potentially more seriously expressed in mainstream criminal offences such as assault, murder or damage to property which are motivated by hatred.

Hate crimes have a much greater impact on the victim and their community. It has the effect of demonstrating the offence was not entirely random and that as a result of their ethnicity neither the victim nor other members of their community are safe from such attacks. Consequently it is essential that racist motivation is recognised as an aggravating circumstance in the administration of justice, in a clear and consistent manner across the European Union. Police officers must adequately respond to, and record, racially motivated crime.

There is nothing to prevent European member states recognising racist motivation as an aggravating circumstance in the administration of justice, despite the absence of a more general instrument on racist crime.

***ENAR calls on all member states to recognise the impact of racist motivation on the victim through the adoption of aggravated sentencing policies.***

### 4. Hate crime cannot be excused on the grounds of freedom of expression

The right to freedom of expression is a core foundation for diverse and intercultural societies, and must be protected as such. However freedom of expression does not extend to incitement to racial hatred or discrimination. As has been pointed out by legal experts Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (on hate crime) includes a reference to freedom of expression as stipulated under Article 19 of the Universal Declaration of Human Rights, demonstrating that the two are compatible.

The aim is not to criminalize opinion, or to undermine freedom of expression or association, but rather to protect it. The logic of freedom of speech is based on everyone having a 'voice', when it comes to hate speech the voice of vulnerable communities is silenced.

Hate is based on the false premise of racial superiority or negative stereotyping. Deliberately intended to cause harm, it represents one of the most unsophisticated and blunt manifestations of racism and xenophobia in European societies. Like child pornography, hate speech is not an expression of ideas or debate, and as such cannot be justified under the pretence that it represents freedom of expression. Politicians and other leaders have a particular responsibility to refrain from using language that could justify or condone hate.

ENAR recognises that there are power structures within societies that serve to determine what is acceptable discourse in the context of their own priorities, and that this can represent a threat to human rights and civil liberties. However combating hate speech does not represent such a subjective delineation, but rather a legitimate attempt to protect the fundamental rights of everyone living in the European Union.

***ENAR rejects the view that legislating against hate speech represents a threat to freedom of expression, protecting ethnic minority communities from hate speech is the foundation of debate and dialogue in intercultural societies.***

## 5. Combating racist crime requires comprehensive and complementary strategies

Legislation has an essential role to play in preventing, punishing and providing redress for racist crime, however it must be supplemented by other activities.

Enhanced **reporting and recording** of racist crime is important not only for promoting prosecution of such offences, but also in developing, implementing and monitoring policies intended to prevent racist crime from occurring. In parallel to developing strategies on anti-discrimination data collection, the EU must seek to enhance criminal data collection policies, which are sensitive to the particularities of racist crime.

Given the nature of racist crime it is essential that targeted **victim support** initiatives be put in place, either through mainstream service provision or if appropriate specific services dealing with racist crime. These services must be adequately supported to ensure the effective implementation of existing and new legislative provisions, and particularly in securing prosecutions.

In order to provide long term and sustainable responses the needs of ethnic minority communities must be **mainstreamed** throughout the administration of justice. This requires: **participation** of ethnic minorities in all sectors of the system; **training and awareness** to sensitise majority actors (police officers, lawyers and judges) to the needs of ethnic minority communities; and capacity building and empowerment of the communities themselves.

The EU and all its member states must continue to focus on the prevention of racist crime through **education and training**. Only by promoting intercultural societies through both the formal and informal education sectors will strategies to prevent racism and xenophobia be successful.

Where there are active **NGOs** there tend to be more effective strategies for dealing with racism as a crime. Consequently NGOs must be funded to provide alternative victim support services and complementary data collection mechanisms. In this very sensitive area it is essential that there are complementary and alternative means of accessing support.

***ENAR will promote complementary strategies for responding to, and preventing racist crime, while acknowledging that a harmonised legal instrument would act as an important driver for activity at the Member State level.***