



CEJI Policy Response

Framework Decision on Racism and Xenophobia

Brussels, April 20th 2007,

Europe Needs Strong Legal Instruments to Fight Racism

Introduction

On Thursday, the Justice and Home Affairs Council of the European Union adopted the Framework Decision on Racism and Xenophobia. The measure is a step towards ensuring that members of various groups enjoy protection under the law, and as such, this, the third attempt at creating such a tool, is a positive achievement.

Sadly, this step is still necessary in today's Union. We witness today a rise in antisemitic and other racist incidents, and many European citizens are still suffering from social exclusion. The Framework Decision will be one tool in the fight against discrimination, but there are many more steps that need to be taken, legally and otherwise.

We hope that the European Union and its Member States will use the legal instrument adopted yesterday as one of the tools in the creation of a more inclusive Europe. A European Union of openness and civic participation cannot be created by law alone – data monitoring of racist crimes, educational programmes and active measures to combat social exclusion are all necessary to create a unified Europe.

Coverage

The adopted Framework Decision leaves a number of groups unprotected under European law: while the text does discuss individuals and groups “defined by reference to race, colour, religion, descent, or national or ethnic origin”, issues such as gender, sexual orientation, disability and age are left behind. Protecting certain vulnerable groups from abuse but not others, creates the impression that diversity is a matter of taste rather than principle. All European citizens have the right to be protected from discrimination, as enshrined in the Treaty on a European Union¹ and the Treaty on the European Community². CEJI believes therefore that it is imperative that this decision be followed by similar protections for other groups.

Moreover, the refusal to mention specific kinds of hatred in the body of the decision is a failure to show to particular minorities that they can count on the European Union for the protection of their rights. Including words such as ‘antisemitism’ would have attested to the moral imperative behind the Framework Decision to stand up for minorities, no matter who they are.

The protection against discrimination based on religion will cover only those instances where religion is a pretext for hate based on the other factors mentioned in the text of the decision. Freedom of religion is a great good, and members of religious organisations have a right to

¹ Article 29

² Article 13

protected under the law from violent abuse. Moreover, the boundaries between religion, colour and ethnic origin are often unclear. This boundary needs to be more carefully defined, taking into account groups such as Sikhs and Jews that define themselves both in terms of religion and of ethnicity, and considering the fact that many Europeans are distinguishable not only by their faith, but also by their outward appearance.



Implementation

With the Framework Decision on the books, the next step is in the hands of the Member States of the European Union. As the European Commission does not have powers to initiate infringement procedures and the Framework Decision does not have direct effect, the implementation of framework decisions is a national matter. It is to be hoped that the Member States make good on the pledges they made in the Framework Decision to make incitement to hatred and denial of genocides punishable and to use criminal law to prosecute those who promulgate hatred on our continent.

Given, however, the weaknesses of the Framework Decision, we implore the national governments of the Member States to go beyond the minimum standards set out in the document, and urge them to enact strong national provisions to protect from racist abuse especially those citizens who are targets because of their race, colour, religion, descent, national or ethnic origin, gender, sexual orientation, disability or age.

Directive

The lack of European-wide enforcement, as well as the adoption process of the decision by the Council of the Union, weaken the Framework Decision, which is reflected in the text, a patchwork of compromises. Various Member States objected to proposals in the text, resulting in a law that essentially does little more than indicating the current lowest common denominator. The required minimum compliance is not much higher than the anti-racism criminal laws already present in the Member States.

We urge the European Commission to take up the Council's invitation to examine whether stronger measures are necessary. Solid tools are essential to the eradication of racist crime from Europe, and a directive on this topic would serve to robustly espouse the common values of the Union.

CEJI hopes that in order to reach the point where anti-racism law is indeed enforceable by the European Commission, a directive will soon take the place of the framework decision. We take heart from the precedent set by the European Court of Justice in September 2005³ which annulled a third-pillar framework decision⁴, ruling that the European Community indeed had competence to adopt criminal law instruments. While that case dealt with issues of environmental policy, CEJI believes that, as the rights of citizens have been clearly set out in the treaties, the Community has competence to deal with matters of racist crime in civil as well as in criminal law.

We urge the European Commission and the European Parliament to stand together as they did in the case on environmental crimes, to pave the way for a directive on racist crimes. Strengthened to the level of a directive, and complemented by the current Equality

³ 2005/C 315/03

⁴ 2003/80/JHA

Directives⁵, the Framework Decision on Racism and Xenophobia would be a real step forward to fighting incitement nationally and in cases of transnational crimes such as cyberhate. A stronger, enforceable measure on discrimination and incitement to hatred would be a clear signal that the institutions of the Union are willing to fight for an inclusive Europe.



Conclusion

The adopted Framework Decision on Racism and Xenophobia is a step in the right direction, but the final text reflects the Member States' fear of commitment to creating a safe Europe for all its citizens. While the decision-making process and consultations⁶ preceding yesterday's decision were laced with references to "Europe's history of bloodshed", including the Shoah, the final text is mediocre at best. It is high time that the European Union and its Member States face their fears, and deal decisively with the scourge of racism in Europe today.

There are many roads that lead to Rome: There is a need for better data monitoring, which we hope the European Union Agency for Fundamental Rights will address; diversity education and anti-racism training should be mainstreamed in school curricula across the Union. Strong legal measures against discrimination are but one way in which the European institutions and the Member States of the Union can show their resolve in dealing with issues of hatred, racism and discrimination. CEJI urges them to take all the necessary steps, in cooperation with each other and with civil society, to construct a truly inclusive Europe.

CEJI – a Jewish Contribution to an Inclusive Europe stands with individuals and organisations of all religions, cultures and backgrounds to promote a diverse and inclusive Europe. Our activities include delivering diversity education, facilitating and contributing to networks, advocacy at a European level, enhancing inter-faith and inter-cultural dialogue and facilitating Jewish participation.

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⁵ 2000/43/CE and 2000/78/CE

⁶ Notably the Public Hearing on the Framework Decision on Racism and Xenophobia of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, held on March 19th 2007.