



**Speech by Pascale Charhon, Director of the European Network against Racism**

**European Parliament Public Hearing on the Framework Decision on Combating  
Racism and Xenophobia Framework:**

**The balance between freedom of speech and the condemnation of public  
incitement to hatred**

**Brussels, 19 March 2007**

*The European Network against Racism (ENAR) is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. Further information is*

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Dear Members of the European Parliament,

Let me first of all thank Ms. Roure MEP, Rapporteur on the Framework Decision on combating racism and xenophobia, and Mr. Cavada MEP, President of the Committee for Civil Liberties, Justice and Home Affairs, for inviting me to this hearing and giving me the opportunity to give the European Network against Racism's (ENAR) views on the Framework Decision on combating racism and xenophobia, and more specifically on the question of freedom of speech.

Every day ethnic minority groups face racist crime (i.e. criminal actions, either specifically racist actions which are or should be identified as criminal, or mainstream criminal offences motivated by racism) and violence (I use the term violence as referring <sup>2</sup>to all forms of violence including physical, verbal or psychological). 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, and Roma and Travellers. 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.

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. Consequently, 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.

It is also essential to take a comprehensive approach to dealing 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.

In a General Policy Paper adopted by the ENAR network in 2005, we identify a variety of activities and crimes that should be covered by criminal law:

- 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.

## **Freedom of expression and hate speech**

Let me now outline some basic principles with regard to the balance to be reached between freedom of expression and condemning hate crime and hate speech.

There is much debate today in Europe as to how to address the challenge of striking the right balance between the repression of racist discourse and freedom of speech.

Freedom of speech is a crucial element of European democracies and 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. There is also a danger that recently freedom of expression has been used to distract attention from the imperative of fighting racism and promoting integration and diversity.

International human rights instruments provide restrictions on the right to freedom of expression in order to protect various interests, such as the rights of others, and more importantly within this discussion, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (ICCPR Article 20(2)).

Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is also a crucial reference point as it condemns hate speech, incitement to violence and racial hatred and prohibits public authorities and institutions from promoting or inciting racial discrimination.

Indeed freedom of speech has never been defined as an absolute right and in European societies it has often been restricted for much lesser reasons than hate speech. The logic of freedom of speech is on everybody having a ‘voice’, but when it comes to hate speech the voice of vulnerable communities is silenced. 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, including the media, have a particular responsibility to refrain from using language that could justify or condone hate, while not necessarily amounting to hate speech our leaders must ensure that they do not create an atmosphere of acceptance. There is growing evidence that the hostile tone of public debate on issues such as immigration or the integration of minorities is fostering racism and xenophobia in European societies.

Hate speech undermines freedom of expression: not only are ethnic minorities often in vulnerable situations and unable to ‘respond’, but hate speech and incitement to hatred is deliberately intended to cause harm to these communities.

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

**Legislating against hate speech and crime: the Framework Decision on combating racism and xenophobia**

Let me now come to the rationale for adopting a legal instrument against hate crime and speech.

Despite the international human rights instruments in place that I mentioned earlier, in some European countries combating hate speech and hate crime is not provided for in law. Most EU member states have some legal protections in place to combat racist crime and violence, but the scope of the legislation and remedies varies considerably. Consequently the right to freedom from racial hatred is unevenly protected across the European Union.

For this reason, the adoption of a legal instrument as the proposed Framework Decision on racism and xenophobia is essential.

For too long the failure to adopt the proposed Framework Decision on Racism and Xenophobia has undermined the fight against racism in Europe. After five years of negotiations Europe can no longer afford to ignore its commitment, made in Tampere, to ‘step up the fight against racism and xenophobia’.

ENAR has welcomed the commitment of the German Presidency to place this issue back on the European agenda. All EU member states must now live up to their responsibilities and agree this instrument in the coming months. A third failed attempt to reach an agreement would send a disastrous message to the victims of racism, as well as to the perpetrators; and would have the potential to foster a growing sense of impunity for racist hate in Europe.

ENAR has however been dismayed by efforts to limit the impact of the Framework Directive by introducing exemptions, and in particular an overemphasis on the need to limit its scope in the context of freedom of speech.

Given these limitations, ENAR calls on EU member states to make sure that the following provisions are inserted into the Decision:

- A **non-regression clause**, to ensure that its implementation does not lead to the watering down of existing protections, such as that contained in Article 6 of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- Its implementation shall not affect any obligation under the **International Convention on the Elimination of All Forms of Racism Discrimination**, as contained in the 1996 Joint Action concerning action to combat racism and xenophobia.

The addition of these two provisions would enhance implementation and provide tools for monitoring the impact of the Framework Decision.

But the real value of the proposed Framework Decision will be in the actions taken to implement the letter and spirit of its provisions. The implementation phase will provide opportunities to respond to the realities facing ethnic and religious minorities in each of the member states. Key to the successful implementation of the provisions of the Framework Decision is the need to enhance monitoring of racist violence and crime.

Despite numerous calls to improve data collection by the European Union Monitoring Centre on Racism and Xenophobia (EUMC) – now the European Fundamental Rights Agency - the vast majority of member states have consistently failed to put in place adequate procedures. Without understanding racist crime and violence it is impossible to put in place effective policies and to evaluate their success.

It is also essential to establish effective mechanisms of consultation and partnership with NGOs and broader civil society in the implementation of the proposed Framework Decision, to ensure that its provisions respond to the specificities facing ethnic and religious minorities at local and national level. It is crucial that governments engage with those organisations working with the victims of racist crime and violence in order to enhance understanding of how to respond to it, and this engagement should be consistent, ongoing and structured.

To conclude, I would like to emphasise that while recognising the limits of the current proposal, ENAR strongly supports the instrument as an important step forward on the road to fully protecting the fundamental rights of ethnic and religious minorities in Europe. As to the debate on freedom of speech, I can only underline that the real debate is not about limiting rights, but rather how best to protect the rights of everyone living in the European Union.

Thank you.