

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

4895/95

RESTREINT

JUSTPEN 16

REPORT

from: Working Party on International Organized Crime

on : 10 February 1995

to : Steering Group III

Subject: Summary of and proposals relating to the German Presidency's report on the laws of the Member States of the European Union to combat racism and xenophobia

At its meeting on 10 February 1995 the Working Party on International Organized Crime examined the above subject on the basis of 4472/95 JUSTPEN 9.

In the light of the comments made by the delegations, the Presidency, in the course of the meeting and in collaboration with the delegations, prepared and presented the amended text annexed hereto.

Without prejudice to general linguistic reservations by several delegations (at the meeting the amended text was available in French only), all delegations signified their agreement to most of the text, namely the introduction, the general comments and comments according to group. However, at this stage the proposals under point III of the text (pp. 9 and 10 in the Annex) elicited the following comments:

- reservations by the Belgian, Danish, Irish, Swedish and United Kingdom delegations on the text under 1 ("Development of national laws"). They pointed out in particular that proceedings should centre on aspects relating to international cooperation, in line with the brief given by the Council. According to these delegations, national laws should be targeted only insofar as was necessary to improve international cooperation. They also remarked that the suggestions made did not seem to be derived from the information

contained in 9728/2/94 JUSTPEN 62 REV 2 on legal provisions against incitement to racism and xenophobia;

- a scrutiny reservation by the Greek delegation on the last sentence of point 1(b) (damages);
- a reservation by the German delegation on points 1(b) and (c). It also observed that the improvement of international cooperation was the most important point and that the order of points 1 and 2 should therefore be reversed;
- a reservation by the Danish delegation on point 2(a), concerning Article 5 of the Convention on Mutual Assistance in Criminal Matters.

The Working Party agreed to submit the dossier to Steering Group III.

WORKING PARTY ON INTERNATIONAL ORGANIZED CRIME

**Summary of and conclusions
concerning the Germany Presidency's report
on the laws of European Union Member States
to combat racism and xenophobia**

At the Franco-German Summit in Mulhouse on 31 May 1994 France and Germany agreed on a joint initiative to combat racism and xenophobia.

This initiative, which is a follow-up to the conclusions of the Council of Ministers of Justice and Home Affairs on 29 and 30 November 1993 concerning racism and xenophobia, was approved by the meeting of the Heads of State and Government held in Corfu on 24 and 25 June 1994.

Two steps were taken further to the Corfu European Council:

- a Consultative Commission was set up;
- the matter was referred to the various subordinate bodies of the Justice and Home Affairs Council.

At the K.4 Committee meeting on 27 and 28 July 1994 the work to be put in hand under the 3rd Pillar was apportioned between the working parties reporting to the Steering Group on Police Cooperation and those reporting to the Steering Group on Judicial Cooperation.

Specifically, in the Working Party on International Organized Crime various questionnaires were drawn up under the German Presidency in order to take stock of Member States' laws in this area.

The questionnaires concerned in particular offences relating to acts of violence committed for racist or xenophobic motives, production and dissemination of racist and xenophobic propaganda, incitement to racism and xenophobia, legal means of prohibiting the dissemination and export of racist material for propaganda purposes and all forms of intimidation.

The German Presidency prepared a descriptive summary of existing laws which was submitted to the Council of Ministers for Justice and Home Affairs on 1 December 1994.

The French Presidency has been called upon to use that summary as a basis, to pinpoint any lacunae between Member States' laws and to make any specific proposals deemed necessary.

That is the purpose of this report.

o

o o

The German Presidency's summary classifies offences in four main groups:

Group 1: legal provisions against incitement to racism and xenophobia

Group 2: legal provisions against propaganda activities

Group 3: legal provisions against criminal organizations, groups, etc.

Group 4: other legal provisions against racism and xenophobia.

I. General comments

Legislative reforms are under way in various Member States to make acts of racism and xenophobia specific offences, especially in the field of crimes against humanity.

II. Comments according to group

Group 1

In most Member States whose legislation is described in 9728/2/94 JUSTPEN 62 REV 2, incitement to racial hatred is a chargeable offence.

In some Member States, incitement to hatred in various forms, in particular racial or religious hatred, constitutes a specific offence. The offence may involve incitement to hatred directed at groups or individuals or both.

In many cases, such incitement must have taken place in public.

Excusing crimes against humanity also constitutes a specific offence in some Member States.

In those Member States which do not have specific legislation in this area, behaviour inciting racial hatred is nevertheless recognized as equivalent to a general offence covering deliberate insults or defamatory acts and remarks.

Group 2

While the terms vary greatly, most Member States prohibit the circulation and distribution of writings, illustrations or other media containing racist or xenophobic ideas.

It has to be noted, however, that the various national laws in this field, are far more divergent than in group 1.

In one Member State a chargeable offence of this nature does not exist.

Two Member States specifically classify national socialist propaganda as an offence.

The legislation of another Member State refers only to the transmitting of grossly offensive, obscene or threatening messages, without any reference to the racist nature of such messages.

Other States prosecute for statements made publicly or intended for publication which threaten, insult and denigrate a category of persons on account of their membership of a specific group.

Lastly, one State prohibits the fomenting of agitation against ethnic groups by any person who, by means of a statement or communication, which is not necessarily disseminated to the public, threatens or shows contempt for a group by allusions to race, colour, nationality, ethnic origin or religious beliefs.

The wearing in public of racist insignia or symbols is prohibited in six Member States. However, the definition of the offence varies from one State to another. Thus, in certain national laws no reference is made to the racist nature of such insignia. In one State, the symbols worn must belong to an unconstitutional organization. In another State, the insignia must be such as to threaten, insult or denigrate a group on the basis of race, colour, national or ethnic origin or religion.

Group 3

The laws of all the Member States authorize the prosecution of members or leaders of legal persons or de facto bodies seeking to foment racial hatred or incite others to racial violence, although there is a major difference between two groups of States:

- the first group does not have a specific offence relating to racist organizations, but ordinary criminal law relating to unlawful associations applies;
- the second group does have a specific offence relating to racist associations.

Furthermore, in some Member States it is possible to hold [...] the legal person liable, independently of prosecution of its leaders and members.

In some Member States the legislation makes specific provision for the possibility of dissolving such associations and even for temporary suspension of the activities of an association which is the subject of legal action.

In the Member States which have no specific provisions in the matter, their general legislation nevertheless permits the dissolution of associations with racist aims or which indulge in racist activities.

Group 4

Many Member States have legislation which penalizes acts of racial discrimination. Such legislation varies considerably from one Member State to another. It chiefly concerns the provision of goods and services, but also relates, in some Member States, to employment and other discriminatory practices.

Some Member States prohibit acts committed by representatives of the authorities, some penalize those committed by individuals, whilst others, apply penalties in both cases.

Furthermore, certain infringements of manifestations of freedom of religion are penalized in many instances. These are, in the main:

- desecration of burial places;
- disturbing a religious service;
- disparagement of the various religions.

Lastly, some national laws prohibit the collection of data based on criteria linked to race or religion.

III. Proposals

A comparison of Member States' legislation on racism and xenophobia shows that all the States of the Union have laws enabling them to combat those phenomena.

However, the factors which constitute an offence and the procedures applicable differ.

The Working Party therefore proposes, pursuant to the brief from the Justice and Home Affairs Council (11768/94 JAI 78 of 6 December 1994), to examine in greater detail the possibility of filling the gaps in Member States' legislation and in international instruments with a view to removing the obstacles to international judicial cooperation. The following aspects in particular will be looked at.

1. Development of national legislation

(a) It could be suggested that Member States introduce provisions into their domestic law permitting charges to be brought for:

- crimes against humanity and genocide;
- excusing and denying crimes against humanity;
- provisions based on race, religion and nationality taken by an individual or by the authorities;
- incitement to racial hatred or racial violence.

The definitions laid down in the 1948 Convention on Genocide might facilitate the introduction of such charges.

(b) In order to strengthen means of action against acts of racism, it would be useful to give anti-racist associations a prominent role in having criminal proceedings initiated or in taking civil proceedings. This right to institute legal proceedings should give them entitlement to damages.

(c) It would also be desirable to encourage emergency civil measures such as the seizure of documents, illustrations or other material of a racist nature

either by the judicial authority or the administrative authority or both.

- (d) Measures prohibiting certain publications which endanger the young owing to the prominence given to violence, discrimination or racial hatred and any form of publicity for such publications should be envisaged.
- (e) The dissolution of racist associations should be facilitated by granting that right to the administrative and/or judicial authorities responsible for combatting racism.

2. Improved international cooperation

- (a) In order to facilitate cooperation on the seizure of racist publications, States should envisage withdrawing, in the specific field of racism and xenophobia, any reservations they may have entered on Article 5 of the aforementioned Convention on Mutual Assistance in Criminal Matters at the time of ratification of that instrument.
- (b) To the same end, measures should be envisaged to allow the confiscation of racist publications through mutual assistance in criminal matters.
- (c) Member States could designate contact points responsible for collating and exchanging operational criminal information of interest to the judicial authorities responsible for criminal charges.
- (d) The Member States should no longer avail themselves of the provisions of Article 2 of the Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which allow refusal of mutual assistance on the grounds that racist and xenophobic offences are political offences.

=====