Combating certain forms and expressions of racism and xenophobia by means of criminal law. Framework Decision

2001/0270(CNS) - 12/11/2007

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Martine **ROURE** (PES, FR) - in the framework of the **renewed consultation** procedure - amending the proposal for a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The report welcomes the fact that the Council has finally reached an agreement on the proposal for a framework decision on the fight against racism and xenophobia. However, the committee regrets the failure of the Council's text to rise to the political challenge posed by the fight against racism and xenophobia. It is aware of both the need and the difficulty of finding a compromise, but regrets that such a compromise has been reached to the detriment of the legal quality of the proposal for a framework decision. In spite of this, the committee is in favour of the Council’s text.

The following amendments have been made to the text:

Minimum level: MEPs insisted on the need to establish a minimum level of harmonisation and its effectiveness is limited by the derogations which it provides.

Scope: the committee believes that it is necessary to extend the scope of the draft framework decision to cover acts of racism based on religion. It calls for this form of racism to be subject to prosecution as the others are. The committee states that for the purpose of this decision, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin. A Member State shall not, however, exempt from criminal liability speeches or behaviour liable to stir up hatred. Respect for freedom of religion shall not hinder the effectiveness of this Framework Decision.

Public order: MEPs suggest that Member States may choose to punish only conduct which is either carried out in a manner which is threatening, abusive or insulting (as opposed to ‘likely to disturb public order’ which was proposed by the Commission). The concept of something 'likely to disturb public order' is too vague and should be removed.

Aggravating circumstance: according to the MEPs, the commission of a racist or xenophobic offence by an office holder should be treated as an aggravating circumstance.

Non-regression clause: the report includes a **new Article 7a** which provides for a non-regression clause to ensure that the implementation of the Framework Directive does not lead to a weakening of the existing levels of protection under Article 6 of the ‘race’ directive (Directive 2000/43/EC). It should also include a provision to the effect that its implementation will not affect any obligation arising from the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966. The Member States shall implement this Framework Decision in line with those obligations. This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction with the common fundamental principles of the Member States relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural

guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

Review clause: the report calls for the Parliament to be consulted over the review of the Framework Decision, and the opinions of the NGOs and of the European Agency for Fundamental Rights.

Lastly, the rapporteur regrets the circumstance that the scope of this Framework Decision on the fight against racism and xenophobia has been limited by the fact of its being subject to unanimity in Council and the mere consultation of Parliament. She stresses the need to move towards qualified majority voting and codecision for all third-pillar matters.