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

2001/0270(CNS) - 29/11/2007 - Text adopted by Parliament after reconsultation

The European Parliament adopted a report drawn up by Martine **ROURE** (PES, FR) and made some amendments to the proposal on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The main amendments are as follows:

Recitals: new recitals state that legislative policy should reflect the fact that in a democratic society the criminal law is always a last resort, and should take into account all the values at stake, including the right to free expression and the right of all individuals to equal consideration and respect. The commission of a racist or xenophobic offence by an office holder should be treated as an aggravating circumstance.

Minimum level: a further new recital states that the Framework Decision establishes a minimum level of harmonisation and its effectiveness is limited by the derogations which it provides.

Scope: a Member State shall not exempt from criminal liability speeches or behaviour liable to stir up hatred. Respect for freedom of religion shall not hinder the effectiveness of the 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 (and not include the element 'likely to disturb public order' which was proposed by the Commission).

Liability of instigators: liability of a legal person will not exclude criminal proceedings against natural persons who are instigators, as well as perpetrators or accessories.

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). Member States may adopt or maintain a higher level of protection in the fight against racism and xenophobia than that arising from the provisions of this Framework Decision. Implementation of the Framework Decision shall in no circumstances constitute grounds for lowering the level of protection already ensured by the Member States in the areas governed by the Framework Decision. Nothing in the Framework Decision may be interpreted as affecting any obligations incumbent on the Member States under the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966. The Member States shall implement the Framework Decision in line with those obligations.

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.