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

2001/0270(CNS) - 23/05/2002

The committee adopted the report by Ozan CEYHUN (Greens/EFA, D) broadly approving the proposed framework decision under the consultation procedure, subject to a fairly large number of amendments seeking to clarify difficult issues such as freedom of expression and information and the definition of intent. The committee wanted to ensure that people who distribute racist or xenophobic material are not prosecuted if they have a legitimate purpose (such as research or giving a history lecture), by specifying that they are only guilty of an offence if motivated by racism or xenophobia. On the other hand, it wanted to make it easier to prosecute denial or trivialisation of the holocaust by adding that this constitutes an offence not only if it is liable to disturb the public peace, but also if it is motivated by racism or xenophobia and is threatening, abusive or insulting. In order to avoid undue restrictions on privacy, the committee specified that the production of material containing expressions of racism and xenophobia should only be considered an offence if the intention is to distribute it, including unsolicited sending via Internet. The committee further stipulated that Internet service providers should be criminally responsible under the provisions of Directive 2000/31/EC (on certain legal aspects of information services). As to the scope of the framework decision, the committee adopted amendments making it clear that it is to apply to offences committed not only within one of the Member States but also elsewhere, if the offender is a national of a Member State, and that Member States shall punish offences committed by their own nationals outside their territory. As regards aggravating circumstances, the committee clarified the provisions in the proposal by stipulating that a sentence could be increased in cases where the perpetrator is acting an in official or professional capacity and owes a duty of care to the victim or to minors, where the victim of the offences is a child and where the perpetrator's activities are directed at those who are very easily influenced, such as children. The committee also changed the wording of the proposal slightly to clarify the definition of racism and xenophobia: the belief in race, colour, descent, religion and national or ethnic origin need not be the sole factor but may be even a partial factor determining aversion to individuals or groups. Finally, the committee introduced a new provision stipulating that the national contact points shall report comprehensively to the European Monitoring Centre on Racism and Xenophobia on incidents of racism and xenophobia, police reports, prosecutions and convictions, including details of the ethnic and cultural background of both the perpetrator and the victim.