

EUROPEAN PARLIAMENT
Committee on Civil Liberties, Justice and Home Affairs
Public Hearing

Summary

**The Framework Decision
on
Combating Racism and Xenophobia**

19th March 2007

OPENING

Jean-Marie Cavada (Chairman of the Committee on Civil Liberties, Justice and Home Affairs)

- The public hearing highlights the importance of the debate. It is a sign that we might push ahead, as it has been on the agenda for the past five years. In the real world, events have occurred that we thought had disappeared with totalitarianism, especially Nazism.
- Thanks the German presidency for putting the issue back on the table. Due to their history, they know what they are talking about. However, every member state must feel concerned.
- This is a morally indefensible issue, but also thorny to deal with politically. Having put it back on the table is thus doing something profoundly courageous. Gives the German presidency certain responsibilities at a difficult time.
- We have the view that the EU needs to approximate legislation in this area.
- Regretful that the EP only has a consultative role. Due to the knowledge of history, this issue cannot be removed from democratic scrutiny and accountability.

Mathias Hellmann (Federal Justice Minister, representing the German Presidency)

- One of the top priorities of the German Presidency in the criminal law area. Our history, and the period of Nazi tyranny has engendered great concern in the area of racism and xenophobia. Crime began with words, and began as the population were roused against Jewish countrymen. We must act by pre-empting, and must ban incitement to racism and animosity. Historical experience places onus on the German Presidency.
- However, the decision to resume negotiations on the Framework Decision not just to do to do with German history, but the future of Europe as a whole.
- Peaceful relations between different groups of the population are needed now in Europe more than ever before.
- Legal immigration a major plus and has led to new areas of potential with respect to different peoples.
- We must ensure that whatever colour or creed, people can live safely in society. The Framework Decision would be an important signal in that respect

- **Present state of play:** 25th of January, went to Committee 36. On the 15th of February 2007 first exchange of views of the Ministers at Council level. Will go to the JHA on the 19th and 20th of April in 2007.
- Welcomes ideas put forward.

Martine Roure (European Parliament's rapporteur on the Framework Decision on racism and xenophobia):

- Thanks the German Presidency for promoting the adoption of the Framework Decision.
 - Back in 2001, sought to approximate legislation in the member states. The Framework Decision got stuck for a number of years at Council level. Member States could not agree on behaviour that would constitute racism, or on punishment terms.
 - The 2006 EUMC report: racist attacks increasing to 25% depending on the member state concerned. Highlights the need for proportional deterrents.
 - This Framework Decision brings with it the need to get balance between freedom of expression, free speech and racist discrimination.
 - We know all Member States have legislation covering racist utterances, but they diverge.
 - Recent events in Assembly, and the Polish publication, remind us of the need to ban this historical trivialisation, as it encourages anti-Semitism.
 - Need another instrument on discrimination in its entirety based on article 13 of the treaty. There is a need to beef up legislation in this area.
 - EP wants to be reconsulted on the Framework Decision on racism and xenophobia. We have demonstrated our political maturity, and proved our abilities within this area.
 - Bad message if Council falters again.
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ORIGIN AND CONTEXT OF THE PROPOSAL

Peter-Jozsef Csonka, Head of the Criminal Justice Unit, Justice, Freedom and Security DG

Presentation of the Framework Decision on combating racism and xenophobia and background to the proposal

- We are at an appropriate moment. Proposal came from the Commission almost six years ago. We do realise time is running out and progress must be made. Negotiations for discussions are going on, and there will be a follow up when the time is right.

Background:

- The Treaty of Amsterdam introduced a new Article 13 in the EC Treaty, and for the first time gave the Community the power to tackle discrimination. As a consequence, the Commission's proposal does not deal with discrimination.

- The legal basis for a legislative proposal in third pillar is Article 29 of the TEU, which explicitly mentions the importance of preventing and combating racism and xenophobia.
- The Vienna Action Plan of 1999 referred to combating racism and xenophobia as one of the issues to be best combated by a common EU approach.
- The European Council in Tampere 1999 concluded the fight against racism and xenophobia had to be stepped up.
- The Hague Programme recalls the European Council's firm commitment to oppose any form of racism, anti-Semitism and xenophobia.

The Joint Action (1996):

Although a short document, it covers significant grounds and:

- Aims to ensure effective legal cooperation between Member States in combating racism and xenophobia.
- Stresses the need to prevent perpetrators of such offences from benefiting from the fact that they are treated differently in the Member States.
- Requests Member States to ensure that a number of racist and xenophobic actions outlined in the Joint Action be punishable as criminal offences, or failing that, to derogate from the principle of double criminality.
- Other provisions contained in the Joint Action refer to the seizure and confiscation of racist and xenophobic material.

The Joint Action refers to the following racist and xenophobic behaviours

- (a) public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin;
 - (b) public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations;
 - (c) public denial of war crimes and crimes against humanity insofar as it concludes behaviour which is contemptuous of, or degrading to, a group of persons defined by reference to colour, race, religion or national or ethnic origin;
 - (d) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;
 - (e) participation in the activities of groups, organisations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.
- A first report on the implementation of the Joint Action of 1996 was produced in 1998, and according to it, the Joint Action had been implemented to a very relevant degree. However, the scope, content and enforcement of legislation concerning racism and xenophobia differ significantly from one Member State to another.
 - Therefore, we are at an appropriate moment. Proposal came from the Commission almost six years ago. We do realise time is running out and progress must be made. Negotiations for discussions are going on, and there will be a follow up when the time is right.

Background:

- The Treaty of Amsterdam introduced a new Article 13 in the EC Treaty, and for the first time gave the Community the power to tackle discrimination. But the reference to Article 13 is no longer there.
- The other basis for a legislative proposal is Article 29 of the TEU, which explicitly mentions the importance of preventing and combating racism and xenophobia.
- The Vienna Action Plan of 1999 involved how best to implement the provisions of the Treaty of Amsterdam in an area of freedom, security and justice and explicitly referred to combating racism and xenophobia by a common EU approach.
- The European Council in Tampere 1999 concluded the fight against racism and xenophobia had to gain impetus had to be stepped up.
- The Hague Programme recalls the European Council's firm commitment to oppose any form of racism, anti-Semitism and xenophobia.

The Joint Action (1996):

Although a short document, it covers significant ground and:

- Aims to ensure effective legal cooperation between member states in combating racism and xenophobia.
- Stresses the need to prevent perpetrators of such offences from benefiting from the fact that they are treated differently in certain member states.
- Requests member states to ensure that a number of racist and xenophobic actions outlined in the Joint Action be punishable as criminal offences, or to derogate from the principle of double criminality.
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- (d) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;
- (e) participation in the activities of groups, organisations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.

- A first report on the implementation of the Joint Action of 1996 was produced in 1998, and according to it, the Joint Action had been implemented to a very relevant degree.
- However, the scope, content and enforcement of legislation concerning racism and xenophobia differ significantly from one member state to another, and there are some areas where harmonisation is needed.
- Taking the current political situation into account, the Commission is of the opinion that it is time to achieve further progress in this area and in November 2001 adopted a proposal for a Framework Decision aiming to harmonise member states' legislation.

Commission's Proposal:

- The proposed instrument defines a common EU criminal approach and provides that the same intentional racist and xenophobic conduct would and should be punishable in all member states.
- However, in comparison to the Joint Action, where there is a choice to incriminate these forms of behaviour or to derogate from the principle of dual criminality, a uniform obligation is imposed on member states to criminalise and punish such activities.
- The proposed Framework Decision aims to criminalise intentional conduct such as incitation to violence or hate towards a group of people, or a person belonging to a group, defined on the basis of race, colour, descent, religion or belief, national or ethnic origin, as well as the public denial or gross trivialisation of crimes against humanity and war crimes.
- The four outlined offences resemble those in the 1996 Joint Action with some notable differences:
 - the public dissemination or distribution of tracts, pictures or other racist or xenophobic material is to be punished as well as the directing, supporting or participating in the activities of a racist or xenophobic group
 - the sanction should be increased when the perpetrator is acting in the exercise of a professional activity and the victim is depending on this activity
 - racist and xenophobic motivation should be regarded as an aggravating circumstance in the determination of penalty
 - the proposal provides also for the liability of legal persons
- COM's proposal contains provisions on jurisdiction and mutual assistance. Certain elements contained in Article 8 are necessary so member states can balance freedom of expression and certain codes of conduct. Area where most difficulty has arisen in the past.
- The Commission was of the opinion that it was time to achieve further progress in this area and in November 2001 adopted a proposal for a Framework Decision aiming to harmonise Member States' legislation.

Commission's Proposal:

- The proposed instrument defines a common EU criminal approach and provides that the same intentional racist and xenophobic conduct would and should be punishable in all Member States.
- However, in comparison to the Joint Action, which gives MSs the choice to incriminate these forms of behaviour or to derogate from the principle of dual criminality, a uniform obligation is imposed on member states to criminalise and punish such activities.
- The proposed Framework Decision aims to criminalise intentional conduct such as incitation to violence or hate towards a group of people, or a person belonging to a group, defined on the basis of race, colour, descent, religion or belief, national or ethnic origin, as well as the public denial or gross trivialisation of crimes against humanity and war crimes.
- The four outlined offences resemble those in the 1996 Joint Action with some notable differences:
 - the sanction should be increased when the perpetrator is acting in the exercise of a professional activity and the victim is depending on this activity
 - racist and xenophobic motivation should always be regarded as an aggravating circumstance in the determination of penalty
 - the proposal provides also for the liability of legal persons
- COM's proposal contains provisions on jurisdiction. Article 8 of the current draft, dealing with derogations to incrimination and containing a territoriality clause was added by the Council during the discussion. It was not in COM's proposal. COM has always opposed the insertion of Article 8 and of any other provision aiming to limit the scope of criminal offences.

Niraj Nathwani, Fundamental Rights Agency (FRA)

The importance of monitoring the application of legislation on racist crime under the Framework Decision

The FRA, a successor to EUMC, came into being on the 1st March, 2007, and shall continue the work on racism and xenophobia.

- The EUMC has been involved with the Framework Decision since June 2001.
- The participation of the FRA is thus the continuation of long standing involvement and commitment to the Framework Decision, and the FRA supports the proposal.
- The EUMC set up the RAXEN network (main information tool of the EUMC). Deals with, for example, the application of existing law.
- RAXEN collected mainly complaints data (i.e. how often was legislation applied by the authorities and courts). Areas where analysis has occurred includes: racist motivation and incitement to racial hatred.
- Key findings concerning provisions covering racist motivation provided by the RAXEN network:

- 14 Member States maintain criminal law provisions that consider racist or xenophobic motivation an aggravating factor in the determination of penalties for offences.
- In 5 Member States, the provision has been applied in sentencing.
- In 2 Member States, the provision is never or very rarely applied in sentencing.
- For the remaining Member States, no information was available on the application or non-application of this provision.
- Key finding concerning provisions covering incitement to racial violence and hatred:
 - 27 Member States dispose of relevant provisions
 - In 14 Member States, the provision is applied
 - In 4 Member States, the provision is never or very rarely applied
 - In the remaining Member States, no information on the application or non-application of the provision was available.

Conclusions derived from RAXEN data:

- 1) Need for approximation of criminal legislation regarding racism and xenophobia.
- 2) Need for legislation that is effective, and therefore monitoring of application of legislation is required to detect where legislation is not or very rarely applied.
- 3) Need for data collection concerning the application of relevant legislation (how many procedures were initiated; what was the outcome of these procedures). Only if such data are collected, can effective monitoring be performed.

The FRA could assist the Commission in monitoring the effectiveness of the framework decision. In Article 17 of the Racial Equality Directive of 2000, the Commission was asked to take the views of the EUMC into account when it reports on the application of the directive. A similar model could be used to involve FRA for the monitoring of the framework decision.

Jo Goodey, Fundamental Rights Agency (FRA)

The extent and significance of racist crime and violence in the EU: addressing the current paucity of official criminal justice data collection

- Information is required to support the need for a Framework Decision in this area. Data collection is a core activity of the FRA.
- EUMC/FRA publications include the 2005 report on racist violence, and the forthcoming report on trends and developments in racism and discrimination in the EU, which includes a section on racist violence.
- There is an on-going pilot survey on minorities' experience of crime, which is vital due to the paucity of member state data on the phenomenon.
- The Council Regulation establishing the FRA outlined the imperative need for data to inform policy.

Data not directly comparable between member states

- different legislation
- approximation of law in this area is underdeveloped
- depends whether racist or xenophobic crimes are prioritised in legislation
- reporting procedures
- differences in recording practices at different stages of the criminal justice system

Tables utilised by Jo Goodey during the presentation:

- Table 1: Some Member States have extensive data collection on racist violence and crime (for example, UK), while others have very limited data collection – figures for 2005 provided. Even though one member state may have a high number of publicly reported incidents, it does not tell us that high figures mean the member states have more problems. Rather, it tells us they have good data collection methods.
- Table 2 illustrates trends in officially recorded racist violence and crime over a six year period (2000-2005). Of 11 Member States for which there is sufficient data collection, 8 show an overall trend increase in recorded crime. Available data highlights that racist violence and crime remains a problem.
- Table 3 categorises Member States according to the quality of their data collection mechanisms in 2005 – with only the UK and Finland having ‘comprehensive’ data collection mechanisms on racist violence and crime, and six Member States having no publicly available data for this year (Cyprus, Greece, Italy, Malta, Portugal and Spain). The other categories for Member State data collection classification being ‘good’ and ‘limited’.

The mechanisms for recording are inadequate, and NGOs involved in this area all see a problem that is not disappearing.

How can the issue of inadequate data be resolved?

- Legislative change just one step.
- It is imperative to record incidents.
- There has to be a focus on assisting victims during the reporting procedure.
- Learn from good practice in other member states.
- Develop alternative measuring instruments.

Conclusions:

- Public reporting and accurate data collection methods have to be improved at both the national and EU level.
 - Absence of data on racist violence and crime hampers responses at national and EU level.
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Comments from the floor following the "Origin and Context of the Proposal" included the following:

- Criticism regarding the Council's role in this realm.
- How easy it has become for mainstream political parties to make racist comments.

- People are not aware of the existing laws concerning racism and discrimination.
 - Decision to set up Migrant Detention Centres a de facto criminalisation of the foreigner, and thus leads to xenophobia.
 - There is a need to look at the effects of legislation, not just the actions of individuals.
 - We do not have data from the countries that suffer most from migratory flows, namely Southern Europe.
 - Rise in homophobia. How will the Commission address this issue?
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Panel Response to remarks from the floor:

Peter-Jozsef Csonka:

- Joint Action of 1996 must be implemented by the member states, not the Commission.
- Political parties: When there are legal persons who incite hatred (covered by the 1996 Joint Action) they should be subject to liability.
- "Affective Judicial Cooperation" covers mutual assistance and extradition. It is in Article 8, so in theory it is not excluded.
- Homophobia: not covered by the Framework Decision, and will not be in the text in Mr. Csonka's opinion.

Mathias Hellmann:

- For effective implementation of legislation against racism and xenophobia the work between central and local authorities has to be streamlined. Local authorities play an important role.

Jo Goodey:

- Lack of data in a number of Member States, in particular southern European countries: A 'culture' of data collection has to develop over time. For example, the UK – which has the most comprehensive data collection mechanism in the EU – developed its system over a period of time. Change cannot take place over night, but needs to be supported by political will and resources for recognising and recording 'racist' crime. Good practices in data collection can be utilised from one country to the next.
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PANEL 1 – BALANCE BETWEEN FREEDOM OF EXPRESSION AND CONDEMNATION OF SPEECHES INCITING HATRED

Dr Isil Gachet, Executive Secretary, ECRI (Council of Europe)

Presentation of the case law of the Court in Strasbourg

The issues contained in the draft Framework Decision are central to the Council of Europe's concerns in general, and of ECRI (CoE's independent human rights

monitoring body specialised in combating racism and racial discrimination) in particular.

There is a question of balance between freedom of speech on the one hand, and the condemnation of hate speech on the other hand

Some key points:

- Case law has shown that freedom of speech and the need to protect human dignity are not incompatible.
- Article 10 (ECHR) provides the right to freedom of expression, subject to certain restrictions that are "prescribed by law" and "necessary in a democratic society".
- Restrictions must serve a legitimate purpose, as stipulated in the Convention.
- Another limit on the freedom of speech results from Article 17, since it stipulates that nothing in the Convention, including article 10 on freedom of expression, may be interpreted as implying for any person the right to destroy any of the rights and freedoms set forth therein.

Points regarding the Framework Decision:

- In a number of cases, the Court has held racist speech does not enjoy the protection of Article 10, by using sometimes article 17, and other times paragraph 2 of article 10.
- Elements taken into account include:
 - the intention of the author of statements
 - the content of the statements
 - the context (was it a public or political debate, what was the function of the person, etc.).
- Case law of the Court is reflected in other instruments of the Council of Europe
 - The Council of Europe Cybercrime Convention and its additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The EU has always been in favour of the preparation, signature and ratification of this convention and its Protocol, which are now part of the "acquis communautaire".
 - **The Protocol is, to date, the only international treaty in this field. Its purpose is twofold: firstly, harmonising substantive criminal law in the fight against racism and xenophobia on the internet and, secondly, improving international cooperation in this area.**

ECRI's General Policy Recommendation No7 on National Legislation to Combat Racism and Racial Discrimination:

- The Recommendation presents the elements which ECRI considers essential in drafting effective national laws to combat racism and racial discrimination. The Court is using these recommendations.
- Freedom of speech and freedom of assembly may be restricted with a view to combating racism. These restrictions must be compatible with the ECHR and must therefore meet several conditions.

- The law should expressly provide that racist motivation constitutes an aggravating circumstance applicable to all common offences
- Regarding sanctions, the law should provide for effective, proportionate and dissuasive sanctions for criminal law offences. ECRI recommends that these sanctions include ancillary or alternative sanctions, such as community work, participation in training courses, deprivation of certain civil or political rights or the publication of all or part of a sentence.

Link to the debate on the future of the draft Framework Decision:

- From ECRI's perspective, its general recommendations and country-specific recommendations contained in its monitoring reports are naturally in favour of many provisions contained in the draft Framework Decision. However, the insertion of a non-regression clause to prevent back-tracking in States which already provide a higher level of protection is important. The analysis of the situation in Europe shows that now it is not the time to move backwards in terms of standards aiming to protect individuals against racism.
- In its approach, when dealing with incitement to hatred, ECRI includes the ground of religion among the other grounds related to racism, such as colour, national or ethnic origin. When it is effectively "incitement to hatred" and not just criticism (even vehement) of a religion, it is not possible to let this hatred spread out. It will be to the judges to fix, in accordance with criteria established by the case-law of the European Court of Human Rights, the limits between incitement to hatred against a group identified by its religion and the right to freedom of expression.

Pascale Charhon, European Network Against Racism (ENAR)

An NGO's point of view

- Experts have demonstrated that there is rarely a structured or consistent approach to racism as a crime in the EU member states. There is the need for a European approach to facilitate cooperation between member states and enhance best practice, implementation, and the protection of victims.
- A comprehensive approach should include strategies to overcome all manifestations of racism and discrimination; one aspect of which is the legal system, including both criminal and administrative provisions.

A General Policy Paper adopted by the ENAR network in 2005 identified a number of activities and crimes that should be covered by international 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 other activities carried out by racist groups, political parties and movements
- Racial discrimination in the exercise of public office

Freedom of expression and hate speech:

While freedom of speech is a crucial element of European democracies, freedom of expression does not extend to incitement to racial hatred or discrimination.

- International human rights instruments provide restrictions on the right to freedom of expression in order to protect various interests, such as, "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (ICCPR Art. 20(2)).
- Politicians and other leaders, including the media have a particular responsibility to abstain from using language that could justify or condone hate. There is increasing evidence to suggest 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.
- The ENAR rejects the view that legislating against hate speech represents a threat to freedom of expression, as hate speech in itself undermines freedom of expression.

Legislating against hate speech and crime. The Framework Decision on combating racism and xenophobia:

- In some European countries, combating hate speech and hate crime is not provided for in law. The scope of legislation and remedies among member states varies considerably.
- All EU member states must live up to their responsibilities and agree on this instrument. A third failed attempt would send a disastrous message, and could have the potential to foster a growing sense of impunity for racist hate in Europe.
- However, ENAR has been disappointed 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 the freedom of speech.

The ENAR calls on the EU member states to make sure the following provisions are inserted into the Decision:

- A **non-regression clause** to ensure that its implementation does not lead to the dilution of existing protection.
- Its implementation shall not affect any obligation under the **International Convention on the Elimination of All Forms of Racial Discrimination**, as contained in the 1996 Joint Action concerning the 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.

Concluding remarks:

- Key to the successful implementation of the provisions of the Framework Decision is the need to enhance monitoring of racist violence and crime
- Also essential to establish effective mechanisms of consultation and partnerships and broader civil society in the implementation of the proposed Framework Decision.
- It is crucial for governments to engage with organisations working with the victims of racist crime

Comments from the floor following Panel 1 included the following:

- The EP must respond to the crime factor, and be up to date, or else the EP will be left behind.
- Right if individual extends to where others' rights are affected. People must be educated as to when they are over stepping the mark.
- The Council and the Commission, along with the Member States, are responsible for fighting racism and xenophobia.
- We are very tolerant of political and religious leaders inciting hatred against homosexuals.
- If the Framework Decision had been in place during the controversy concerning the cartoons of the prophet, what decision would have been taken regarding the cartoonist's rights, versus peoples' religious freedom.
- How does one identify racism in a mass context?
- Agreeing to the terms of the Framework Decision will not be easy, but has to be done. Judgements must be made in this final consultation.
- John Mann, House of Commons (RE: recent anti-Semitism report):
 - When drafting the report, they looked at what improvements needed to be made to legislation, plus the implementation of existing legislation.
 - Conclusions: appropriateness the key. Many issues they are working on are below the threshold of their own legislation (i.e. racist chanting in football grounds-remote chance of prosecution).
 - What is considered as acceptable behaviour needs reflection (this also applies to politicians from all political parties).
 - Need to challenge people on their behaviour, and then legislate.

Response from panel to remarks from the floor:

Mathias Hellman:

- Typical examples for incitement to violence or hatred are “hate songs” from some right wing skinhead bands. Mohammed caricatures did not incite to hatred and would therefore not fall under the Framework Decision. Much depends on the concrete circumstances in each case.
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PANEL 2 – DENIAL OF GENOCIDE AND INCITEMENT TO RACIAL HATRED

Bernard Jouanneau, lawyer and President of Mémoire 2000, France

Denial of genocide and incitement to racial hatred

France has passed many laws on the subject of racism, with probably the weakest results. However, this is not the only paradox.

- The United Nations Convention against Racism (1965/New York Convention). The Convention concentrated on the elimination of all forms of racism. Many countries have adopted many laws. However, many laws refuse to detect any kind of racism. Therefore, even though there are the best of intentions and a whole legislature and regulating arsenal is built with praiseworthy intentions, there can be scant results.
- Incitements to racial hatred back with a "bang".

Negationism:

- Becoming stronger (i.e. see Ahmadinejad's recent remarks).
- At the same time, intellectuals and historians reacting against memorial laws (i.e. Armenian genocide recognition).
- It is imperative for a democratic society that believes in democratic values, to adopt instruments to fight the resurgence of racism and hatred.
- Europe has to invent a new effective instrument to fight anti-Semitism. It must declare negationism itself as racist or anti-Semitic, that it is not a feature of freedom of speech.
- **Key point:** If you deny genocide, you are making it more effectively accomplished.

Genocide:

- Decision is taken by government or society to eliminate people, because they want to. Denying genocide is an accomplishment of genocide itself. But someone will never be put in prison for denying genocide.
- In the hierarchy of values, the Charter of Fundamental Rights states that human dignity must be respected. Judges and lawyers have to strike a balance between values, and freedom of speech. Human dignity has to come before freedom of speech.
- Denial of genocide=denial of the person.
- On reading the Framework Decision, fears there are seeds of discrimination within it. Member states may decide it is not negationism if denied by a decision of an international court.
- It is unjust to make negationism a crime because it impedes dignity, and then limit it to Jewish genocide.
- International Conventions and legislatures must decide on genocide

How negationism should be dealt with:

A certain amount of imagination is needed

- the issue being presented in front of a judge, and issuing an order against the servers (applies to French law)
 - right of reply
 - citizens initiatives need to be encouraged
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Response from the floor to Panel 2 presentation

- The courts must be utilised to attack negationism
- Not convinced negationism is an extension of genocide itself. It is more correct to see it as part of the framework of historic revisionism

Panel response to remarks from the floor:

Bernard Jouanneau:

- When one takes the Jewish, Armenian, Yugoslav and Rwandan genocides into account, the perpetrators prime concern was to hide their actions. Thus, there is a link to denying genocide itself.
- Negationists are seeking to eradicate the traces of the crimes

Peter-Jozsef Csonka:

- Article 1(para. 2) member states may refer such crimes to a national and/or an international court.

Pascal Charhon:

- The very purpose of the protection of human rights must balance dignity and freedom of speech
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Comments were made by the following Members of Parliament:

Marco Cappato

Michael Cashman

Giusto Catania

Sophia In't Veld

Stavros Lambrinidis

Claude Moraes

Inger Segelström