

WRITTEN QUESTION E-1392/03

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to the Council

Subject: Implications of the creation of the offence of Racism and Xenophobia in the context of the European Arrest Warrant

The principle of double-criminality was abolished for thirty-two offences covered by the European Arrest Warrant including Racism and Xenophobia.

During recent debates in the U.K. Parliament it has been suggested by the British government that under the terms of the agreement reached in the Council of Ministers it will not be possible for a person who has committed a racist or xenophobic offence to be surrendered by one Member State to another if the offence was not committed in the requesting state. Thus, a Belgian or French magistrate would not have the power to request surrender of a British national for an offence committed in Britain which was not committed in Belgium or France. Does the Council accept this as an accurate representation of the legal position reached by the Council?

The Council has also agreed to special measures designed to protect the freedom of the press. What is the exact form of this protection and will it lead to differential standards of protection of freedom of expression as between ordinary citizens and journalists?

Finally, Article 10 of the European Convention of Human Rights reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Are the offences of racism and xenophobia confined to actions or statements which involve incitement to violence or the threat of violence or intimidation against the person or which threaten public safety and, if not, how are the proposals consistent with the European Convention on Human Rights?