

CIVIL SOCIETY PREPARATORY MEETING
OSCE HIGH LEVEL CONFERENCE ON COMBATING DISCRIMINATION
AND PROMOTING MUTUAL RESPECT AND UNDERSTANDING
BUCHAREST, 6 JUNE 2007

Moderation Beate Winkler

Working Group 9:

"How is legislation on hate crimes implemented? How are the commitments related to data collection implemented?"

Introductory comments by Beate Winkler, Interim Director
European Union Agency for Fundamental Rights

All participants are asked to switch off their mobile phones

I. WELCOME AND IMPORTANCE OF THE ISSUE

Dear Excellencies (?), dear experts, dear colleagues, dear friends,

It is a great pleasure and honour for me to moderate the session "How is legislation on hate crimes implemented? How are the commitments related to data collection implemented?"

To address legislation to tackle hate crime, I would like to raise three points:

1. **April 2007 – a groundbreaking general approach was agreed by the Council of the EU, after several years of discussion, concerning the Framework Decision Combating Racism and Xenophobia (COM (2001) 664 final).**

Background

For more information see:

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/93741.pdf

At a Council of the European Union meeting on Justice and Home Affairs, 19-20 April 2007, a general approach was reached concerning the 2001 proposed Framework Decision on Racism and Xenophobia, the text of which will be adopted pending the lifting of some parliamentary scrutiny reservations.

Among other things, the Framework Decision text establishes that the following intentional conduct will be punishable in all EU Member States; namely:

*Publicly inciting to **violence or hatred**, even by dissemination or distribution of tracts, pictures or other material, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.*

The text also addresses publicly condoning, denying or grossly trivialising:

Crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Crime Court ... directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, and

Crimes defined by the Tribunal of Nuremberg ... directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

and adds:

Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

With conduct described in the Framework Decision punishable by criminal penalties of a *'maximum of at least 1 and 3 years of imprisonment'*.

The EUMC/FRA was involved in discussions in the run up to this decision, including the organisation of a working group on data collection on racist violence and crime as part of a seminar on racism and xenophobia held under the Austrian Presidency of the EU (June 2006), and at a public hearing on the Framework Decision at the European Parliament (March 2007).

2. Related to the adoption of the Framework Decision is the **need to monitor the implementation and application of legislation in practice**. Only monitoring the practical application of laws can show whether they are being effectively applied in practice.

3. **The police and other criminal justice agencies – including examining magistrates and judges - need to be informed about new legislation combating**

racism and xenophobia, and need to be instructed that its practical application is a priority. This should be done to: (a) punish offending, (b) send a message to offenders and society that racist and xenophobic offending will not be tolerated by the State, and (c) send a message out to victims and vulnerable communities that their experiences of racism will be taken seriously by the State.

II. AIM

The aim of our working group is

- 1) to identify key issues
- 2) to discuss country situations and experiences
- 3) to discuss good and bad practices
- 4) to draw concrete recommendations from our discussions and information from people's experience and knowledge which will be presented at tomorrow's Conference. This is a very specific task given to us by the organisers and we will give our best to fulfil it.

III. ORDER OF THE SESSION/CONTENT OF DISCUSSIONS

- a) Working sessions are intended to be based on civil, free flowing discussion.
- Participants are to be strongly discouraged from reading prepared statements. Participants will be reminded that prepared statements can be submitted to OSCE conferences, who will distribute them to all participants.
 - Every participant should have the opportunity to speak, to ask questions and to comment. Generally, participants should be encouraged not to speak for too long on any one point. While people are discussing their own experiences, they may

need a longer speaking time. When it comes to concrete recommendations, speaking time may be shorter.

- Unlike at the Human Dimension Implementation Meeting or other OSCE forums, a speakers' list is not opened in advance of the working session. This is aiming at creating conditions for genuine debate. Instead, participants wishing to speak after you have opened the working session should:
 - Raise their hand to attract the Moderator's attention.
 - Wait for you to give them the floor.
 - On first speaking, introduce themselves - name and organisation/delegation only.
 - Wherever possible, they should comment directly on what has been said before.
 - They should keep comments brief and to the point - they do not have to say everything at once. There should be time to pick up on things later on.
 - They should feel free to ask questions relating to the discussion.
 - Criticism is welcome but should be constructive.
- You should feel free to organize the debate and ask speakers to wait (on the understanding that you will come back to them) if their comments are not relevant to what is under discussion at that time, and if you feel that their intervention will prematurely take the discussion in another direction when others might want to continue with the topic then in hand.
- You may need to remind participants that the working session is not a forum for raising personal disputes.

- Within reason, where someone is criticised, they will be given the opportunity to respond, but should do so briefly.

CONTENT OF DISCUSSION

- Each working session has a clear purpose: to draw concrete recommendations from general discussions and information on people's experience and knowledge. The annotated agenda is your basic guide to what should be covered in the working session. While, as Moderator, you must be flexible and responsive to the general flow of discussions, it is suggested that you guide discussions according to the following broad outline:

- **Identification of key issues and discussion of country situations and experiences**

It is important to provide space for participants to discuss the situation in their own countries, or in countries where they work or with which they are familiar, and their own experiences. From these examples, it should be possible to identify the key issues.

- **Focus on concrete recommendations**

Here, we are asking participants to make concrete recommendations especially to the OSCE participating States, but also to the OSCE political bodies, institutions and field activities. The annotated agenda gives a guide to the kind of recommendations we are looking for in respect of each working session topic. You will find recommendations adopted previously under

- **Discussion of good and bad practices**

Participants will know about a wide range of ways of addressing key issues. Discussion about good practice, that may be transferable, and bad practice, in terms of what can be learned from it, are equally important.

- You should feel free to summarize the general discussion from time to time, perhaps concluding what has gone before and setting the session off in another direction.

IV. KEY QUESTIONS TO BE DISCUSSED

- What are the key concerns that need to be considered in the areas mentioned in the working groups?
- Are the OSCE participating States implementing the commitments related to those specific areas? Are any new commitments needed?
- How can OSCE assistance in ensuring that areas of common concerns and emerging trends are adequately tackled? What steps can be taken?
- Can co-operation between governments and civil society be strengthened? What are the best practices?
- What initiatives from civil society can be highlighted? What activities from civil society need support from States, from the OSCE and other IGOs?

V. BACKGROUND INFORMATION ON INTRODUCER/RAPPORTEUR

Now, I have the pleasure to introduce to you the introductory speaker

- **Mr. Paul LeGendre**, Interim Director of the “Fighting Discrimination Program” of Human Rights First, U.S.

Introductory speaker: Mr. Paul LEGENDRE

CV:

As Interim Director in the Discrimination Initiative, Paul is responsible for researching and monitoring hate crimes, for compiling data on discrimination and

for promoting and evaluating efforts by governments to combat discrimination through the adoption of appropriate legislation and its effective implementation. Paul focuses on Europe and Central Asia.

Prior to joining Human Rights First, Paul worked for the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) as Program Officer (2000-2005) providing staff support to the Assembly's work in Eastern Europe and Central Asia and to its General Committee on Human Rights and Humanitarian Questions. Paul also worked for the International League for Human Rights as Europe Program Coordinator (1998-2000), for the Committee to Protect Journalists as the Acting Program Coordinator for Europe (1998-1999), and for CAF-Russia, a Russian non-profit resource centre, as Director of Publications (1995-1997). Paul has a B.A. in History from Boston College (1993) as well as a Master of International Affairs from Columbia University (2000).

I also welcome our Rapporteur

- **Ms. Nasrin KHAN**, Legal Adviser, Office for Democratic Institutions and Human Rights, Warsaw

15 minutes before the end of the session, I will give the floor to Nasrin Khan in order for her to present the recommendations. Participants will have the opportunity to shortly comment on them.

The recommendations will be compiled, edited and will be at the disposal of all participants after the plenary session on cooperation between civil society and the OSCE.

The final document will be at your disposal on the tolerance and non-discrimination system (tandis) and will also be available in hard copy at the latest before the opening ceremony of the Conference.

Our recommendations will be presented at the High Level Conference by Paul LeGendre during plenary session 6.

START OF THE PRESENTATION

Introductory speaker: Mr. Paul LEGRAND

Now I would like to ask our introductory speaker to introduce our main issue.

I am sorry to remind you that your intervention should not last more than 12 Minutes. Thanks a lot.

DISCUSSION

Introduction remarks:

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Now the discussion is opened.

May I ask those of you who wish to comment or ask questions to raise their hands?

xxx, you have the floor, please.

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Thanks a lot for all your valuable contributions.

VI. CONCLUSION