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UN & CoE

January

19 February – Council of Europe European Commission against Racism and Intolerance (ECRI) publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Austria, Estonia and the United Kingdom, which were released in 2010

19 February – ECRI issues its fourth report on Ireland

February

March

4 April – United Nations Committee on the Elimination of Racial Discrimination (CERD) concludes that the absence of an effective investigation by Germany into statements made by Thilo Sarrazin about migrants of Turkish and Arab background amounted to a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

16 April – Council of Europe Commissioner for Human Rights issues his report following his visit to Greece, with a particular focus on intolerance and hate crimes

17 April – CERD issues its Concluding observations on Slovakia

April

26 May – UN Office for the High Commissioner for Human Rights, Special Rapporteur on freedom of religion or belief, issues a report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 67/154 on glorification of Nazism

May

6 June – Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance issues his report on his visit to Spain

June

9 July – ECRI issues its fourth reports on Finland and Portugal, and publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Poland and France, which were released in 2010

9 July – The European Court of Human Rights (ECtHR) rules in the case *Vona v. Hungary* that disbanding the Hungarian Guard Association (*Magyar Gárda*), which had been involved in anti-Roma rallies and paramilitary parading, does not violate the European Convention of Human Rights (ECHR)

July

23 August – CERD adopts General Recommendation on combating racist hate speech

August

23 September – CERD issues its Concluding observations on Cyprus and Sweden

September

15 October – ECRI issues its fourth reports on Malta and the Netherlands

October

November

December

EU

17–18 January – Informal meeting of Justice and Home Affairs Ministers on EU action in countering hate crime, racism, antisemitism and xenophobia

January

February

14 March – European Parliament adopts a resolution on strengthening the fight against racism, xenophobia and hate crime

March

April

May

6–7 June – Council of the European Union adopts conclusions calling for an update of the EU Strategy for combating radicalisation and recruitment to terrorism

June

July

August

23 September – Ministers of 17 EU Member States meet in Italy to sign the Rome Declaration on diversity and the fight against racism

September

October

12–13 November – Fundamental Rights Conference on hate crime is organised by the European Union Agency for Fundamental Rights (FRA) and hosted in cooperation with the Lithuanian Presidency of the Council of the European Union

November

6 December – Council of the European Union issues conclusions on combating hate crime in the European Union

December

6

Racism, xenophobia and related intolerance



The impact of the economic crisis, high unemployment rates, fears relating to the arrival of migrants and a gradual loss of trust in democratic processes fuel racism, xenophobia and related intolerance in the European Union (EU). Some political rhetoric at local, national and European levels exacerbates an aggressive tone, not least because the media pick up on these messages, which then echo across social media. The EU institutions and Member States must therefore remain vigilant and reinvigorate their efforts to counter the expression of racism, xenophobia and related intolerance in all their forms.

6.1 Racism, xenophobia and related intolerance again top political agenda

Black ministers of state compared to apes; a centrist mayor saying in public that maybe Hitler did not kill enough *gens du voyage*; Members of Parliament claiming that Zionists financed and organised the Holocaust; the scapegoating of Roma, asylum seekers, refugees, migrants and members of ethnic and religious minorities for the ills of society; murders motivated by racist and extremist considerations: all these elements contributed to putting racism, xenophobia and related intolerance back on the political agenda of the EU and its Member States in 2013. These issues are increasingly discussed within a broader context of 'hate crime' (see also Chapters 5, 7 and 9).

The fight against racism, xenophobia and related intolerance gained political attention at the highest level in January. The Irish Presidency of the Council of the European Union then hosted an informal meeting of Justice and Home Affairs Ministers on EU action to counter hate crime, racism, antisemitism and xenophobia, drawing on FRA evidence presented by FRA's director. This meeting set the stage for the year to

Key developments in the area of racism, xenophobia and related intolerance

- Racism, xenophobia and related intolerance return to the top of the political agendas of the EU, its institutions and its Member States.
- Murders motivated by racism and extremism are committed in a number of Member States.
- Elements of racist and extremist ideology are openly expressed in the public sphere in some Member States.
- Member States take steps to ban extremist parties or groups.
- All 28 Member States sign the Rome Declaration on diversity and the fight against racism.
- Discriminatory ethnic profiling continues in some Member States, including in the context of immigration checks.
- Few changes take place in the status of official mechanisms of data collection on racist and related crime.
- The Council of the European Union urges Member States and the European Commission to take more effective action to counter hate crime, including that motivated by racism.

come, focusing the attention of political leaders on their duty to counter these phenomena.

The European Parliament further called on "Member States to take all appropriate measures to encourage

the reporting of hate crimes and of every racist and xenophobic crime and to ensure adequate protection for people who report crimes and for the victims of racist and xenophobic crime” in March¹ (see [Chapter 9](#) for more information on the rights of victims of hate crime).

The Council of the European Union focused attention on the need for more concrete actions to be developed to “counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia”² in its June conclusions on fundamental rights and the rule of law.

FRA ACTIVITY

Assessing the impact of the Framework Decision on Racism and Xenophobia, with special attention to victims’ rights

Hate crime can vary from everyday acts committed by individuals on the street or over the internet to crimes carried out systematically by extremist groups. In this opinion, FRA assesses the impact of the Framework Decision on Racism and Xenophobia on the rights of victims of crimes motivated by hatred and prejudice, including racism and xenophobia.

Building on evidence collected and analysed by FRA, including its large-scale surveys and its thematic and Annual reports, the opinion forms part of FRA’s work on supporting efforts by EU institutions and Member States to combat hate crime in the EU. It was developed in response to a request from the Council of the European Union’s Working Party on Fundamental Rights, Citizens’ Rights and Free Movement of Persons.

The opinion encourages the EU and its Member States to address hate crime with targeted action in a number of areas, including awareness raising, building trust in law enforcement, enhanced penalties and judicial review, as well as data collection.

FRA (2013), Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime, available at: http://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia_en.pdf

In July, the European Court of Human Rights (ECtHR) issued a factsheet citing a number of cases where it ruled speech of a racist, xenophobic, antisemitic or aggressively nationalist nature and speech discriminating against minorities and immigrants to be “offensive and contrary” to the European Convention on Human Rights (ECHR).³ The court is careful to distinguish

in its findings between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely even if they offend, shock or disturb others.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) called upon states to give due attention to all manifestations of racist hate speech and take effective measures to combat them, in its general recommendation on combating racist hate speech issued in September.⁴

In a similar development, ministers of 17 EU Member States met in Rome in September to condemn the stream of racist abuse directed at Cécile Kyenge, Italy’s first minister of African origin. Highlighting the special responsibilities of political leaders, they called for pan-European action to fight racism by promoting diversity. All 28 Member States had signed the so-called Rome Declaration on the matter by November,⁵ by which time France’s Minister for Justice, Christiane Taubira, also of African descent, had been the subject of similar racist abuse.

The EU Commissioner for Home Affairs highlighted the dangers of extremism, speaking at the Fundamental Rights Conference on hate crime jointly organised by FRA and the Lithuanian Presidency in November.⁶ She stressed that:

“We have seen the development of Islamophobic, anti-Semitic and white supremacist ideology in far-right groups. These groups are also anti-democratic, intolerant, and violent. They are divisive, using one another to create suspicion and hatred between communities. These groups are behind a mounting wave of harassment and violence targeting asylum seekers, immigrants, ethnic minorities and sexual minorities in many European countries.”⁷

Finally, the Council of the European Union, in its conclusions on combating hate crime issued in December, called on

“the Fundamental Rights Agency to continue assessing in an objective, reliable and comparable manner the extent of racism, xenophobia, anti-Semitism and other forms of hate crime through EU-wide surveys and to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes.”⁸

(See the FRA activity box on FRA’s antisemitism survey on the next page.)

FRA ACTIVITY

Responding to antisemitism in the European Union

Antisemitism is still a reality in the European Union. Little is known, however, of how it affects Jewish communities. That is why FRA conducted a survey asking self-identified Jews their opinions about trends in antisemitism; how antisemitism affects their everyday life; their personal experiences as victims or witnesses of antisemitic incidents; their worries about becoming a victim of an antisemitic attack; and their actual experiences of discrimination because they are Jewish.

- Two thirds of respondents (66 %) consider antisemitism to be a problem across the EU Member States surveyed. Three quarters of respondents (76 %) indicate that antisemitism has worsened over the past five years in the country where they live.
- Three quarters (75 %) of respondents consider online antisemitism to be a problem. Almost three quarters of respondents (73 %) said that antisemitism online has increased over the last five years.
- In the 12 months preceding the survey, 26 % of all respondents experienced an incident or incidents involving verbal insult or harassment because they are Jewish; 4 % experienced physical violence or threats of violence.
- Almost half (46 %) of the respondents worry about becoming the victim of an antisemitic verbal insult or harassment in the next 12 months, and one third (33 %) fear a physical attack in the same period.
- Almost two thirds (64 %) of those who experienced physical violence or threats of violence did not report the most serious incident to the police or to any other organisation. Three quarters (76 %) of the respondents who experienced antisemitic harassment in the five years preceding the survey did not report the most serious incident. More than four in five (82 %) of those who said that they felt discriminated against in the 12 months preceding the survey because they are Jewish did not report the most serious incident to any organisation.
- Close to one quarter (23 %) of the respondents said that they at least occasionally avoid visiting Jewish events or sites because they would not feel safe there, or on the way there, as a Jew. Over one quarter of all respondents (27 %) avoid certain places in their local area or neighbourhood at least occasionally because they would not feel safe there as a Jew.
- One in 10 respondents experienced discrimination when looking for work or at work in the 12 months preceding the survey.
- Over half of all survey respondents (57 %) heard or saw someone claiming that the Holocaust was a myth, or that it had been exaggerated, in the 12 months preceding the survey.
- Large proportions of respondents said they considered emigrating from the Member State they live in because they do not feel safe there as Jews.

FRA's survey on antisemitism collected data from 5,847 self-identified Jewish respondents (aged 16 or over) in eight EU Member States: **Belgium, France, Germany, Hungary, Italy, Latvia, Sweden** and the **United Kingdom**. These countries cover over 90 % of the estimated Jewish population in the EU. It is the first EU survey to collect comparable data on Jewish people's experiences and perceptions of hate motivated crime, discrimination and antisemitism.

FRA (2013), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, available at: http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hatecrimeagainst-jews-eu-member-states_en.pdf; data available through data explorer tool at: <http://fra.europa.eu/DVS/DVT/as2013.php>

6.2 Racism, xenophobia and related intolerance fuel incidents and brutal crimes

Racism, xenophobia and related intolerance manifested themselves in the most brutal form in several EU Member States in 2013: murder motivated by racism and extremism.

FRA fieldwork in **Greece** found that Greece has witnessed a steep increase in phenomena of racist violence, discrimination and intolerance, as well as extremism, despite the notable decrease in the overall violent crime rate in the country.⁹ Shehzad Luqman, 26, a Pakistani migrant worker, was stabbed to death in Athens, **Greece**, in January, allegedly by two young Golden Dawn supporters, whose trial started in December. Mohammed Saleem, 82, was killed on his way back home from mosque in Birmingham, **United Kingdom**, by a man who proclaimed that he wanted to

initiate a 'race war'. Lee Rigby, 25, was murdered in broad daylight in the streets of London in May by two radicalised Muslim youths. Clément Méric, 18, an anti-fascist activist, died from the consequences of a fight with skinheads in Paris, **France**, in June. Pavlos Fyssas, 32, a Greek hip-hop artist, was stabbed to death by a Golden Dawn party member in September in Athens. This was followed by a retaliatory attack, in which two Golden Dawn sympathisers (Manos Kapelonis, 22, and Georgios Fountoulis, 27) were murdered in front of the party's headquarters in November.

These murders are at the sharp end of a societal climate where intolerant views come to be more openly and violently expressed in the EU. Political actors share responsibility for enabling such a climate. This is shown in the cases of the politicians Cécile Kyenge in **Italy** and Christiane Taubira in **France**, who were the targets of racist abuse by other politicians, with the media often serving as an echo chamber and the internet providing a further outlet for the expression of such abuse.

6.2.1 Racism, xenophobia and related intolerance in politics

Racism and discrimination against foreigners and migrants is often fuelled by the discourse of politicians, as the Commissioner for Human Rights of the Council of Europe points out.¹⁰ In addition, CERD highlights that "the use of racist discourse by some politicians and in the media [...] vilifies and promotes prejudices against persons of foreign origin".¹¹ FRA evidence also shows that Jews often heard antisemitic statements being made in the context of political events or speeches.¹²

"Europe has been experiencing a worrying intensification of activities of racist extremist organisations, including political parties. [...] It worries me deeply that the European community and national political leaders appear not to be fully aware of the serious threat that these organisations pose to the rule of law and human rights. [...] National authorities need to be vigilant and combat racism and extremism at all levels of society."

Council of Europe Commissioner for Human Rights (2013), Europe must combat racist extremism and uphold human rights, Human Rights Comment, 13 May 2013, available at: <http://humanrightscomment.org/2013/05/13/racist-extremism/>

The year 2013 was marked by steady support for political parties with largely xenophobic anti-foreigner, anti-migrant and anti-Muslim agendas in a number of EU Member States including **Austria**, **Bulgaria**, the **Czech Republic**, **France**, **Greece**, **Hungary** and the **Netherlands**.

Groups campaigning on ultra-nationalist and xenophobic platforms initiated steps to be recognised as political parties in their own right, sometimes with success. The rhetoric of these groups and parties often accuses European integration of further eroding national sovereignty; highlights what they consider as the negative

impact of social integration on national identity, particularly as regards accommodating the needs of religious minorities, such as Muslims; and makes a case for national preference, including when it comes to access to the social welfare system.

FRA ACTIVITY

Assessing the effectiveness of responses to racism, discrimination, intolerance and extremism

Crimes motivated by racism, xenophobia and related intolerances persist throughout the European Union, as do the mainstreaming of elements of extremist ideology in political and public discourse, and ethnic discrimination. Growing alarm was expressed at the national, EU and international levels concerning violent manifestations of racism and intolerance. An additional important concern is the substantial parliamentary representation of parties that use paramilitary tactics or are closely associated with paramilitary groups and use that extremist rhetoric to target irregular migrants in Greece, and the Roma and Jews in Hungary.

In this context, FRA took the initiative to collect data and compile a thematic situation report that examines the effectiveness of responses by public authorities, statutory human rights bodies, civil society organisations and others to counter racism, discrimination, intolerance and extremism. The report takes Greece and Hungary as case studies to develop concrete and practical proposals for action.

The identification of barriers to counter such phenomena is, however, relevant to the EU as a whole. The proposals contained in the report on issues such as tackling racist and related crime, increasing trust in the police and countering extremism are, therefore, useful in all EU Member States.

FRA (2013), Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary, available at: http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf

One example is the application, in November, by the newly formed Nationalist Party of **Bulgaria** to be officially recognised as a party, which would allow it to benefit from public funding. Stated aims of this party are to "smash the Gypsy terror with an iron hand" and to "demolish social policies that stimulate the birth rate of minorities and parasitism".¹³

In a development reminiscent of the events in Gyöngöspata in **Hungary** in 2011 (see FRA Annual report 2011, p. 156), the Nationalist Party in **Bulgaria** formed civil groups with the cooperation of the

Bulgarian National Union to patrol areas with large migrant populations and where refugee camps are located.¹⁴ In response, the National Centre for Roma Development announced that it would establish its own groups to protect Roma from such patrols.¹⁵

The reach of ultra-nationalistic and xenophobic ideology in the EU is also illustrated by the efforts of the newly formed **Hungarian Dawn** (*Magyar Hajnal*) group to be recognised as a political party. 'Dawn', here, is a direct reference to **Greece's** Golden Dawn party. Golden Dawn claimed 7 % of the vote in the 2012 elections, is the fourth-largest party in the Hellenic Parliament and has an extreme nationalist agenda, from which *Magyar Hajnal* takes inspiration. *Magyar Hajnal's* mission is to "revive the White and ethnic Hungarian identity"¹⁶ and its members are screened to establish the ethnic roots and religious background of their families, effectively checking their 'racial purity'. The court rejected the application on the grounds that it was incomplete, but *Magyar Hajnal* continued its efforts to be recognised as a political party, including through seeking to rename an existing party.

6.2.2 Responding to political intolerance

Political actors have a particular role to play in countering hate speech. The responsibility of political actors in that regard was the subject of a conference organised by the Council of Europe and the **Polish** Ministry of Digitisation (*Ministerstwo Administracji i Cyfryzacji*) in September, at which FRA's director gave a speech. Next to setting out the roles and responsibilities of political actors and the media in fighting hate speech, the conference highlighted the potential of education and training on the values of diversity and living together in this fight.¹⁷

EU Member States have other means at their disposal to address racist, xenophobic and extremist actions of parties, groups and their membership. They could, for example, consider adopting or strengthening existing legal provisions to suppress public funding for political parties whose members are responsible for racist or discriminatory acts, as recommended by ECRI.¹⁸ Another means would be to forbid and prevent the activities of extremist organisations that promote and incite racial hatred by disbanding them and declaring them illegal, as recommended by CERD.¹⁹

The European Court of Human Rights (ECtHR), in its decision of 9 July 2013, confirmed the disbanding of the Hungarian Guard Association (*Magyar Gárda*) because of the activities of its Hungarian Guard Movement. These activities included paramilitary rallies in villages with Roma populations across **Hungary** and advocacy for racially motivated policies. The court found that the Hungarian authorities were entitled to take

preventative measures to protect democracy and ban the *Magyar Gárda*.²⁰ It ruled that, if the activities of an association amount to widespread racist intimidation of a group, then banning it does not contravene the European Convention of Human Rights.

Members of Parliament can also be called to account by lifting their parliamentary immunity to answer to charges levelled against them in court. This was the case for Marine Le Pen, leader of the National Front (*Front National*). Her immunity was lifted by the European Parliament in July at the request of the Ministry of Justice in **France** so that she could answer charges of "incitement to hatred, discrimination or violence against a group of persons on grounds of their religious affiliation".²¹

The **Greek** Parliament lifted the immunity of six leading Members of Parliament representing Golden Dawn in October to enable a deeper investigation into their alleged involvement in serious criminal offences. Charges ranged from establishment and participation in a criminal organisation, murder and grievous bodily harm to money laundering and bribery.²² In addition, the parliament voted to suspend state funding for Golden Dawn. Furthermore, in December a Joint Ministerial Decision was issued, suspending any kind of state funding for Golden Dawn.²³

The initiative taken in December by 16 state governments in **Germany** to attempt to ban the far-right National Democratic Party must also be noted. The proposed ban rested on the notion that this party actively seeks to undermine or overthrow the free democratic order.²⁴

6.2.3 Racism and xenophobia persist in the European Union

Roma, persons of African descent, migrants and asylum seekers continue to face racism and xenophobia in the European Union, as evidence from **Austria**,²⁵ **Bulgaria**,²⁶ **Finland**,²⁷ **Germany**,²⁸ **Greece**,²⁹ **Hungary**,³⁰ **Ireland**,³¹ the **Netherlands**,³² **Slovakia**³³ and **Sweden**³⁴ shows (see also ► [Chapter 7](#) for more information on Roma).

The arrival of asylum seekers and refugees in **Bulgaria** and **Hungary** in larger numbers than usual fuelled the expression of xenophobic sentiments and attitudes in these countries. This raises the question of what effect the arrival of asylum seekers from Syria and other conflict zones in large numbers could have in EU Member States not usually considered traditional destination countries.³⁵

In **Bulgaria**, opinion polls showed that feelings of hostility, resentment and fear towards asylum seekers and refugees are widespread.³⁶ The Council for Electronic Media (*Съвет за Електронни Медии*) criticised media for the way they reported immigration and refugee

issues,³⁷ and the United Nations High Commissioner for Refugees urged Bulgarian authorities to take steps to stem the expression of xenophobia against asylum seekers and refugees in the country.³⁸

Promising practice

Acknowledging racist crime: mapping Afrophobia in Sweden

The authorities in Sweden refer to racism and discrimination against black persons as Afrophobia. Little is known yet about the phenomenon, but the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) shows that the number of recorded Afrophobic crimes in the country is increasing steadily, with about one in five of such crimes recorded in 2012 being of a violent nature.

Acknowledging the issue, the Swedish government commissioned an NGO (*Mångkulturellt Centrum*) to map racism and discrimination against persons of African descent in Sweden. This mapping will review official hate crime data and highlight examples of good practice to counter Afrophobia, with a particular focus on awareness-raising activities for children and youth. The results are expected to be published in January 2014.

For more information, see Arbetsmarknadsdepartementet (2013), Mångkulturellt centrum ska kartlägga afrofobi, available at: www.regeringen.se/sb/d/17988/a/229303

In **Hungary**, xenophobic sentiments were expressed in towns hosting reception and detention centres, such as Balassagyarmat, Bicske, Debrecen and Vámoszabadi. Incidents involving asylum seekers, related to the overcrowding of a refugee reception centre, contributed to an increase of xenophobic sentiments among the public.³⁹ The 2013 results of a yearly survey of a representative sample of the Hungarian population show that 36 % of respondents would reject all asylum applications.⁴⁰

CERD concluded in April that the absence of an effective investigation by **Germany** into statements made by Thilo Sarrazin in 2009 about migrants of Turkish and Arab background amounted to a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁴¹ Mr Sarrazin was a member of the executive board of the German national bank at the time.

While CERD acknowledged the importance of freedom of speech, it concluded that:

“Mr. Sarrazin’s statements amounted to dissemination of ideas based upon racial superiority or hatred and contained elements of incitement to racial discrimination. By concentrating on the fact that Mr. Sarrazin’s statements did not amount to incitement of racial hatred and

were not capable of disturbing public peace, the State party failed its duty to carry out an effective investigation whether or not Mr. Sarrazin’s statements amounted to dissemination of ideas based upon racial superiority or hatred”.

The German government was given 90 days to react to the complaint and to decide on measures that needed to be undertaken. It informed CERD of its willingness to review whether or not existing legislation is sufficient.⁴²

The UN also urged **Germany** to develop a comprehensive strategy to combat racial discrimination.⁴³ The Human Rights Council found deficits in the protection of human rights of migrants in the framework of the Universal Periodic Review (UPR). The UPR criticised, among other matters, the German state’s handling of the 10 murders allegedly perpetrated by members of the right-wing extremist group National Socialist Underground (NSU). In response, Germany promised to enhance how it tackles discrimination against migrants.⁴⁴

The internet and social networking sites increasingly offer platforms for the expression of racist, xenophobic and intolerant sentiments. This is confirmed by FRA surveys, such as the EU LGBT survey, the survey on antisemitism and the EU-wide survey on violence against women.⁴⁵ Europol has also highlighted that social networking sites are increasingly used by extremists to disseminate their ideologies and to radicalise, recruit and mobilise their followers.⁴⁶

“Racist hate speech can take many forms and is not confined to explicitly racial remarks. As is the case with discrimination [...] speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and objectives [...] States parties should give due attention to all manifestations of racist hate speech and take effective measures to combat them [...] whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events.”

Committee on the Elimination of Racial Discrimination (2013), General Recommendation No. 35: combating racist hate speech, Geneva, United Nations

The privacy afforded to internet users does not mean that they can post racist and xenophobic abuse with impunity (see also Chapter 3). For instance, the Supreme Court in **Italy** found in August that managing a blog inciting racial hatred is the same as participating in a criminal association.⁴⁷

Still in **Italy**, a representative of the *Lega Nord* political party was served with a 13-month sentence, a €10,000 fine and a three-year ban on holding public office by the Court of First Instance of Padua in July.⁴⁸

The representative was found guilty of incitement to commit acts of sexual violence motivated by racism, having posted the following comment on Facebook, targeting Cécile Kyenge, Italy's first black minister: "But is there no one there who could rape her, just to let her understand how a victim of such a ferocious crime could feel? Shame!"

In January, the Court of First Instance in Paris, **France**, held that Twitter should provide information to the plaintiffs enabling them to identify the authors of tweets posted under antisemitic hashtags (*#unbonjuif* – a good Jew; *#unjuifmort* – a dead Jew). The court's judgment also required Twitter to make available a system on its French platform which enables users to report content that falls under the category of crimes against humanity and incitement to racial hatred.⁴⁹

Still in relation to antisemitic content posted online, an offender in **Latvia** received a six-month suspended sentence in January on the grounds of incitement to hatred.⁵⁰

Prosecutors in **Belgium**⁵¹ and the **United Kingdom**⁵² can also call upon specific guidelines relating to how to prosecute online content of a racist nature. *The Guidelines on prosecuting cases involving communications sent via social media* drafted by the Crown Prosecution Office for England and Wales describe action it is necessary to take before initiating a prosecution. The first stage requires sufficient evidence and the second involves considering the public interest. The guidelines also provide principles for initially assessing the communication's content. Before bringing charges, the prosecutors are further encouraged to take into account the context in which the interactive social media dialogue takes place and to carefully consider if the prosecution would not constitute a breach of the right to free speech as protected by the ECHR.

In **Belgium**, the *Circular regarding the investigation and prosecution policy on discrimination and hate crimes (including discrimination on the basis of gender)*⁵³ aims to standardise research policies and prosecution for offences, laws and decrees on 'anti-discrimination', 'gender' and 'racism', including the phenomenon of Holocaust denial. Its specific objectives are identification and more efficient recording of the facts of discrimination and hate crimes; raising awareness among prosecutors, labour auditors and police; providing guidance in the investigation and prosecution of the offences concerned for judges and police officers on the ground; improving collaboration and mutual exchange between police and judicial actors and other stakeholders. The circular also notes that special attention needs to be paid to investigating offences committed over the internet.

Evidence from **Cyprus**,⁵⁴ **Finland**⁵⁵ and the **United Kingdom**⁵⁶ shows that schools can be the theatre of racist abuse. Education should, however, offer effective means to counter racism. The OSCE Parliamentary Assembly acknowledged this in June, when it called upon participating States to

*"increase efforts to counter racism, xenophobia, intolerance and discrimination, also through education, inter alia, by reviewing, as appropriate, educational curricula and textbooks in order to ensure that they are free from prejudice and negative stereotypes and by introducing or further elaborating sections on tolerance and non-discrimination."*⁵⁷

Promising practice

Keeping racism out of the classroom and off the playground

The Immigrant Council of Ireland, an NGO advocating for and providing legal advice to migrants, published an anti-racism policy guide to assist schools in ensuring that their anti-bullying policies respond adequately to racist incidents. The guide sets out procedures for identifying, reporting and dealing with racist incidents. It also provides tools and management support for school staff to directly intervene in racist incidents and means of sanctioning offenders.

The guide further stresses the importance of preventative measures, such as running awareness-raising activities during European anti-racism week, organising intercultural days or inviting guest speakers from diverse ethnic backgrounds to serve as positive role models.

For more information, see: www.immigrantcouncil.ie/images/stories/pdfs/Anti-Racism_policy_2.pdf

6.3 Discriminatory ethnic profiling persists

Discriminatory ethnic profiling is unlawful, yet it persists, thereby contributing to the deterioration of social cohesion and to loss of trust in law enforcement. Evidence of such profiling was found in **Austria**,⁵⁸ **Finland**, **Germany**, **Greece**, **Ireland**, the **Netherlands**, **Sweden**, **Spain** and the **United Kingdom** (see below). The practice involves treating an individual less favourably than others who are in a similar situation, for example by exercising police powers such as stop and search solely on the basis of a person's skin colour, ethnicity or religion.⁵⁹

Persons with an ethnic minority background were found to be much more likely to be stopped and searched than

members of the majority population in the **Netherlands**,⁶⁰ **Spain**⁶¹ and the **United Kingdom**.⁶²

The German Institute for Human Rights called for the elimination of racial profiling by the **German** federal police and recommended that identity checks should not be carried out on the basis of criteria such as a person's skin colour.⁶³

The police in **Greece** continued its large-scale operation (*Xenios Zeus*) to remove what it referred to as 'illegal immigrants' in regions bordering Turkey and in Athens.⁶⁴ The operation ran from August 2012 to June 2013. It involved about 4,500 police officers and led to the apprehension of nearly 124,000 third-country nationals, of whom fewer than 7,000 were found to be in the country irregularly. The Greek Ombudsman highlighted the abusive character of transferring people who were not suspected in any way to police stations during the operation for the purpose of identity checks,⁶⁵ as evidenced by the low percentage of those who were actually found to be in the country irregularly (5.6 %).⁶⁶

International monitoring bodies stress the importance of protecting the foundations of democratic system and the rule of law, and tackling misconduct by law enforcement officials.⁶⁷ The Council of Europe Commissioner for Human Rights, following his visit to **Greece**, raised concerns about ill-treatment, including torture, committed by law enforcement officials, notably against migrants and Roma.⁶⁸

The Greek police launched internal investigations on law enforcement officials, resulting in arrests of police officers, including senior officers, and others on various charges, including illegal weapons possession, reportedly related to Golden Dawn.⁶⁹ The special report of the Greek Ombudsman includes 47 racist incidents in which members of the security forces are alleged to have participated.⁷⁰

ECRI recommended that the authorities in **Ireland**, **Finland** and the **Netherlands** should take steps to prevent ethnic profiling, whether through adopting legislation on the issue (Ireland), ensuring that visible minorities are not profiled (Finland) or training police officers about it (Netherlands).⁷¹

Similar recommendations were made to **Spain** by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁷² CERD recommended that **Sweden** "take measures to evaluate the effects of the application of the Terrorism Act, including on minority communities, and ensure the application of relevant guarantees to prevent possible police profiling and any discrimination in the administration of justice."⁷³

Noting that "figures show that people from a black or ethnic minority background are up to seven times more likely to be stopped and searched by the police than those from white backgrounds,"⁷⁴ the **UK** government launched a consultation on the police's stop and search powers in July, to establish if they are used fairly and appropriately.⁷⁵ The consultation shows that a quarter of people surveyed believe that stop and search powers are used in a way that discriminates against certain groups, with more than half of respondents from black and minority ethnic groups believing this to be the case.

The report recommends that the police use stop and search powers in compliance with the relevant code of practice and equality legislation, as well as establishing ways of monitoring the extent to which this is the case. In 2010, the Equality and Human Rights Commission found that Asian people were stopped and searched about twice as white people and black people about six times as often.⁷⁶ Five separate police forces took action to remedy the situation, which was the subject of a publication by the commission in May 2013.

The Equality and Human Rights Commission "concluded that where firm action had been taken to reduce race disproportionality, and/or overall usage of the [stop and search] power, it had succeeded, without prejudice to the drop of crime levels."⁷⁷ In November, the commission published a further report, which reveals that, while the use of stop and search by police forces in **England** and **Wales** has decreased, black and Asian people are still disproportionately targeted.⁷⁸

6.4 Responses to manifestations of racism, xenophobia and related intolerance

EU Member States can address manifestations of racism, xenophobia and related intolerance through policy responses, by appointing specialised authorities or by making changes to anti-racism strategies and action plans.

ECRI recommended to the **Netherlands** and **Portugal** that they should introduce provisions in their criminal codes that would make racist motivation an aggravating circumstance.⁷⁹ Similarly, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that **Spain** "ensure that racial motivations are harmonized throughout the Penal Code in conformity with Article 1 of the ICERD, and ensure a better implementation of the provisions relating to racial motivation as an aggravating circumstance".⁸⁰



In November, the **Greek** government submitted to parliament another bill seeking to transpose the Framework Decision on Racism and Xenophobia into national law. This was the third bill of this type set before Greek lawmakers in 2013, each being the subject of intense political controversy.⁸¹ The last draft provides for increased sanctions and penalties for those who publicly encourage or cause hate or violence against individuals or a group of individuals on the basis of their race, skin colour, religion, genetic origin, ethnic or national origin and disability, posing a danger for public order or a threat to life, freedom or physical integrity of these persons.⁸² Law 4139/2013 on addictive substances and other provisions amended the Greek Criminal Code, which now provides that committing an act motivated by a racist motive constitutes an aggravating circumstance, and the sentence for such a crime cannot be suspended.⁸³

In **Germany**, the State Parliament of Brandenburg (*Landtag Brandenburg*) voted unanimously in November for the integration of an anti-racism clause into the State Constitution. The text prohibits discrimination based on ethnicity but also obliges the *Land* to protect peaceful coexistence and to fight the dissemination of racist and xenophobic ideas.⁸⁴

Promising practice

Addressing institutional racism

In its report on **Finland**, ECRI recommends that law enforcement officers, prosecutors and judges undergo systematic training and awareness raising on antidiscrimination legislation, racism and tolerance. It also suggests to the authorities that they monitor and record racist acts and hate speech committed by the police.

The Court of Appeal of Helsinki (*Helsingin hovioikeus*) conducted an internal study on discrimination and racism. It found instances of intolerant and racist behaviour among judges and the court staff, including racist jokes and degrading language used about minorities in work-related situations and prominent use of derogatory expressions. The study concludes that such conduct can be considered as harassment as stipulated in the antidiscrimination legislation.

See: Council of Europe, *European Commission against Racism and Intolerance (ECRI) (2013), ECRI report on Finland (fourth monitoring cycle)*, Strasbourg, Council of Europe, available at: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf; Tuohino, T. and Ojala, T. (2013), *Yhdenvertaisuus- ja tasa arvoselvitys, yhteenveto, Helsinki, Helsinki Court of Appeal*

A number of EU Member States undertook initiatives to improve and enhance their institutional responses to combat racism and related intolerance. In **Spain**, a prosecutor's office was set up in each of the

50 provinces to investigate offences with discriminatory or racist motivations. The activities of these offices are coordinated by a national delegate appointed by the state's general attorney.

The **Cyprus** police, in cooperation with the Office of the Commissioner for Administration, issued a circular outlining the police's official policy in tackling racist violence, xenophobia and discrimination.⁸⁵

FRA ACTIVITY

Fighting hate crime in the European Union

A conference on combating hate crime in the EU, hosted by FRA in cooperation with the Presidency of the Council of the European Union and held in Vilnius on 12–13 November 2013, brought together more than 400 policy makers and practitioners from national governments, international organisations, civil society, EU institutions and bodies. The conference objectives, apart from an exchange of ideas and best practices on how to combat hate crime, were in particular to develop concrete proposals for a follow-up to FRA's opinions pertaining to hate crime and to explore effective practical solutions for combating hate crime at the EU and Member State levels.

The conclusions of the conference fed directly into the Council Conclusions on combating hate crime in the European Union issued in December.

For more information, see FRA (2013), *Fundamental rights conference: Combating hate crime in the EU – giving victims a face and a voice*, available at: <http://fra.europa.eu/en/event/2013/fundamental-rights-conference-2013>

Council of the European Union (2013), *Council conclusions on combating hate crime in the European Union*, available at: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf

The **Greek** police set up a direct telephone help line (11414) for victims of racist violence in January, together with an online form for reporting racist crime.⁸⁶ By September, 214 complaints were registered through the hotline, according to information FRA obtained from the Ombudsperson.⁸⁷

The Inter-Ministerial Committee on the Fight against Racism and Antisemitism in **France** adopted a new programme in February. The programme aims to prevent racist violence in schools; fight racism and antisemitism through education at schools, in public offices and in sport; and enhance victim support services, including through conducting annual victimisation surveys and strengthening the reporting and investigation of hate crime.⁸⁸

A coalition of parliamentary groups in **Germany** submitted a request to the government in June calling on the government to step up its fight against antisemitism and support the life of Jews in the country. One aspect would be to establish a permanent expert group tasked with analysing and evaluating the situation of antisemitism in Germany and detailing measures taken to counter the phenomenon. Remembrance also figures as a task; the group would need to implement educational measures for teachers as well as young people, in cooperation with foundations, institutions and memorial places.⁸⁹

The Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was established in **Poland** in February.⁹⁰ It is responsible for monitoring and analysing the occurrence of racist and xenophobic incidents and promoting activities to counter racial discrimination, xenophobia and related intolerance.

Still in Poland, the Police strategy for the development of the system of human rights protection for the years 2013–2015 was adopted. One of its main aims is to enhance actions towards the prevention of hate crimes on the grounds of national, racial or ethnic origin and on other grounds.⁹¹

6.5 EU Member States need better official data collection to address racist crime effectively

Reports published by law enforcement agencies and criminal justice systems in EU Member States show great fluctuation in officially recorded crime with racist, xenophobic, anti-Roma, antisemitic or Islamophobic/anti-Muslim motives in the EU between 2011 and 2012.⁹²

These reports show decreases in recorded racist crime in **Belgium, Cyprus, Finland, Ireland, Luxembourg** and **Scotland (UK)**. They show increases in recorded racist crime in **Austria, Denmark, France, Germany, Greece, Lithuania, Latvia, the Netherlands, Poland, Slovakia, Spain** and **Sweden**, as well as in **England, Northern Ireland** and **Wales** (all UK).

Data on racist incidents are available for **Austria, Belgium, Finland, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Poland, Spain, Sweden** and the **United Kingdom** in the Annual report on hate crime published by the Office for Democratic Institutions and Human Rights (ODIHR).⁹³

The **Netherlands** and **Sweden** report a rise in recorded anti-Roma crime, whereas the **Czech Republic** reports a decrease in such crime. The Prosecutor General's

Office in **Poland** began collecting data on anti-Roma crime in 2012. ODIHR reports recorded anti-Roma data from the **Czech Republic** and **Sweden**.⁹⁴

"The Council of the European Union invites Member States to collect and publish comprehensive and comparable data on hate crimes, as far as possible including the number of such incidents reported by the public and recorded by law enforcement authorities; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders.

[...]

"The Fundamental Rights Agency [should] work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes."

Council of the European Union (2013), Council Conclusions on combating hate crime in the European Union, available at: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf

In recorded antisemitic crime, the authorities in **Austria, Belgium, Finland, France, Germany, the Netherlands** and **Sweden** report increases, with a decrease reported in the **Czech Republic**. The Prosecutor General's Office (*Prokuratura Generalnej*) in **Poland** began collecting data on antisemitic crime in 2012. ODIHR reports recorded antisemitic data from **Germany, Ireland, Sweden** and the **United Kingdom**.⁹⁵

Whereas the authorities in **Finland** report a decrease in recorded Islamophobic/anti-Muslim crime, those in **France, the Netherlands** and **Sweden** report increases. The **Austrian** authorities reported no change in the recorded number of crimes. The Prosecutor General's Office in **Poland** began collecting data on anti-Muslim crime in 2012. ODIHR provides recorded Islamophobic/anti-Muslim data for **Austria** and **Sweden**.⁹⁶

On the basis of the data obtained by FRA, official data collection mechanisms on crimes with racist, anti-Roma, antisemitic and Islamophobic/anti-Muslim motivations in EU Member States can be classified into three broad categories (*Table 6.1*), which relate to the scope and transparency of the data that are recorded:

- limited data available – data collection is limited to a few incidents, and data are, in general, not published;
- good data available – different bias motivations are recorded, and data are, in general, published;
- comprehensive data available – different bias motivations are recorded, as are characteristics of victims and perpetrators, where criminal victimisation has occurred, and the types of crimes that were committed, such as murder, assault or threats, and data are always published.



Table 6.1: Status of official data collection on racist, anti-Roma, antisemitic and Islamophobic/anti-Muslim crime in EU Member States, December 2013

Limited data	Good data	Comprehensive data
<i>Few incidents and a narrow range of bias motivations are recorded Data are usually not published</i>	<i>A range of bias motivations are recorded Data are generally published</i>	<i>A range of bias motivations, types of crimes and characteristics of incidents are recorded Data are always published</i>
Bulgaria Cyprus Estonia Greece Hungary Italy Latvia Luxembourg Malta Portugal Romania Slovenia	Austria Belgium Croatia Czech Republic Denmark France Germany Ireland Lithuania Poland Slovakia	Finland Netherlands <u>Spain</u> Sweden United Kingdom

Note: Spain is underlined as its official data collection on racist and related crime became comprehensive, see first paragraph below.

Source: FRA, 2013

Data collection on racist and related crime in Spain became comprehensive as a result of changes introduced in relation to what data are collected and training offered to frontline police officers on how to record racist and related crime. Data are now collected on crimes motivated by racism, xenophobia and intolerance of another person's religion or beliefs as well as antisemitism. In addition, about 20,000 law enforcement officials received training in how to identify and record such crimes in 2013.⁹⁷

Outlook

The Stockholm Programme, which aims to deliver on an area of freedom, security and justice for Europe's citizens, draws to a close in 2014. EU institutions and Member States are expected to follow up the Stockholm programme, in particular concerning the fight against all forms of racism, xenophobia and related intolerance within the EU.

The publication of the European Commission's report on the implementation of the Framework Decision on Racism and Xenophobia in 2014 will provide important information about how EU Member States have

transposed provisions on incitement to racist and xenophobic violence and hatred, the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction across the EU. The full and correct transposition of the existing Framework Decision will constitute a first step towards effectively fighting racism and xenophobia by means of criminal law in a coherent manner across the EU. Bilateral dialogue between the European Commission and Member States will play a key role in this process.

The collection of reliable, comparable and comprehensive data on racist and related crime would contribute to the Framework Decision's effective implementation. Public authorities in Member States will be increasingly called on to collect and publish data on such crime, including details of prosecutions and the sentences handed down. Public authorities in Member States will also look to find ways to provide more effective remedies to combat racist abuse perpetrated online or through social media platforms.

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