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A strategy to prevent racism and intolerance in Europe

Report[1]
Committee on Equality and Non-Discrimination
Rapporteur: Mr Jonas GUNNARSSON, Sweden, Socialist Group

Summary

Over the last decade, manifestations of racism, hatred and intolerance have increased both in gravity and number. The effects of the economic crisis on the social fabric and governments' failure to devise and implement adequate policies on social cohesion, migration and Roma inclusion have triggered this upsurge, which has been amplified by the increasing use of Internet and social media.

It has become urgent to address racism, hatred and intolerance in Europe through a strategic rather than a piecemeal approach. The urgency becomes even more acute considering that these phenomena affect entire groups, leading to group victimisation; they create divides in society between different groups, affecting human rights and social cohesion; and they erode even further the trust in public authorities, the rule of law and ultimately democracy.

A strategic approach to racism, hatred and intolerance implies the strengthening of a comprehensive legal framework at national level, accompanied by greater efforts to ensure its effective implementation. The Council of Europe should take up a leadership role in this area, putting emphasis on prevention, awareness raising and human rights education, while relying on the Internet and social media as valuable tools to reach out to a wider public.

1. Reference to committee: Doc. 13131, Reference 3949 of 22 April 2013.

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A. Draft resolution[2]

1. Racism, hatred and intolerance are long-standing problems in Europe. Over the last decade, however, despite Council of Europe member States having strengthened their legal framework against hate crime and hate speech, physical and verbal expressions of intolerance against individuals belonging to some groups have increased both in gravity and in number.

2. The effects of the economic crisis on the social fabric and governments' failure to devise and implement adequate policies on social cohesion, migration and Roma inclusion have triggered this upsurge, which has been amplified by the increasing use of Internet and social media.

3. The Parliamentary Assembly believes that it has become urgent to address racism, hatred and intolerance in Europe through a strategic rather than a piecemeal approach. The urgency becomes even more acute considering that these phenomena have repercussions that go well beyond the single individuals that are directly targeted: they affect entire groups, leading to group victimisation; they create divides in society between different groups, affecting human rights and social cohesion; and they erode even further the trust in public authorities, the rule of law and ultimately democracy.

4. A strategic approach to racism, hatred and intolerance implies the introduction or strengthening of a comprehensive legal framework, accompanied by greater efforts to ensure its effective implementation. The strategy should place emphasis on prevention, awareness raising and human rights education, while relying on the Internet and social media as valuable tools to reach out to a wider public.

5. Government representatives and more generally politicians should lead the efforts to eliminate racism, hatred and intolerance with resolve and by their example, publicly challenging, rejecting and condemning expressions of hatred, from whatever quarters they come. In this regard, the Assembly expresses its support for the Declaration of Rome against racism and intolerance, which was signed by 17 ministers of European Union member States in September 2013.

6. In the light of these considerations, the Assembly calls on the Council of Europe member States to:

6.1. as regards the legal framework on hate speech and hate crime, and its implementation:

6.1.1. ensure that the legal framework on hate speech and hate crime includes the broadest possible range of bias motives, including sex, race, colour, ethnicity, language, religion, disability, migrant status, sexual orientation and gender identity;

6.1.2. require mandatory recording, investigation and public prosecution of suspected hate crimes;

6.1.3. introduce binding guidelines for law-enforcement officials to ensure that any alleged hate motive associated with a crime is promptly, impartially, effectively and thoroughly investigated and duly taken into account in the prosecution and sentencing of those crimes;

6.1.4. train criminal justice personnel, including prosecutors and judges, on how to deal with hate crimes and work with victims;

6.1.5. ensure that the hate motives behind a crime are explicitly mentioned in judicial decisions;

6.1.6. encourage victims and witnesses to report hate speech and hate crime to the authorities, by:

6.1.6.1. circulating, as widely as possible, information on how to report them;

6.1.6.2. ensuring that reporting can be done on the Internet and in other ways that are easily accessible;

6.1.6.3. waiving any fee for reporting or lodging a complaint;

6.1.6.4. ensuring that, when they are in an irregular situation, those who report cannot be expelled while co-operating with law-enforcement authorities;

6.1.7. sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);

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2. Draft resolution adopted unanimously by the committee on 5 December 2013.

6.2. as regards data classification and collection:

6.2.1. collect and publish on an annual basis disaggregated data on hate speech and crime, thereby enabling a better understanding and comparability of patterns of victimisation and offending;

6.3. as regards prevention:

6.3.1. support the Council of Europe Campaign “No Hate Speech Movement”;

6.3.2. organise large-scale awareness-raising campaigns on combating racism, hatred and intolerance, also using the Internet and social media;

6.3.3. promote the publication of educational material and the provision of training on combating racism, hatred and intolerance in schools;

6.3.4. ensure that law-enforcement officials are trained in diversity and equality issues;

7. The Assembly invites its members to join the national committees set up in the context of the “No Hate Speech Movement” and encourages the Committee on Equality and Non-Discrimination to empower its members to conduct campaigning activities against racism, hatred and intolerance, in co-operation with their national parliaments. The Assembly also calls on its members to co-operate more closely with the European Commission against Racism and Intolerance (ECRI).

8. The Assembly invites national parliaments to adopt codes of conduct for their members including safeguards against hate speech and hate crime, on whatever grounds.

B. Draft recommendation[3]

1. Recalling its Resolution …. (2014) on a strategy to prevent racism and intolerance in Europe and Resolution … (2014) on tackling racism in the police, the Parliamentary Assembly expresses deep concern at the upsurge of racism, hatred and intolerance in Europe and the dimension, gravity and frequency of their manifestations.

2. Considering that racism, hatred and intolerance run counter to the Council of Europe's most fundamental values, no effort should be spared to assist member States in preventing and combating this scourge. The Assembly acknowledges that, through a wide range of institutions, committees and structures, the Council of Europe is already making a major contribution in this area. However, it calls for a more strategic approach to be taken, with a view to increasing impact.

3. The Assembly therefore asks the Committee of Ministers to instruct the Secretary General of the Council of Europe to elaborate a Strategy against racism, hatred and intolerance in Europe as well as an Action Plan to implement it:

3.1. The Strategy and the Action Plan should be of a limited duration, pull together the existing Council of Europe activities and expertise in the area, involve the entire Organisation, and be implemented in co-operation with national authorities, intergovernmental and non-governmental organisations and other partners.

3.2. The Strategy and the Action Plan should put an emphasis on prevention while strengthening the legal framework and its effective implementation, and include at least the following activities:

3.2.1. campaigning and awareness raising of the general public, also by expanding and strengthening the "No Hate Speech Movement"*;*

3.2.2. stepping up human rights education and the elaboration of school curricula to prevent racism, hatred and intolerance and promote the respect of equality and diversity;

3.2.3. preparing online and distance-learning tools on preventing and combating racism, hatred and intolerance, for police and other law-enforcement officials;

3.2.4. strengthening the legal framework of Council of Europe member States, providing legal advice and expertise and promoting the ratification of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);

3.2.5. ensuring that the recommendations of existing monitoring mechanisms on racism, hatred and intolerance are followed up.

3. Draft recommendation adopted unanimously by the committee on 5 December 2013.

C. Explanatory memorandum by Mr Gunnarsson, rapporteur

1. Introduction

1. Racism, hatred and intolerance are long-standing problems in Europe. Over the last decade, however, a combination of circumstances have led to an upsurge in these phenomena and magnified their scope.

2. Physical and verbal expressions of racism, hatred and intolerance against individuals belonging to some groups are growing both in gravity and number. They are becoming increasingly widespread in all strata of society, including amongst law enforcement officials and public authorities.

3. I am convinced of the urgency to address this state of affairs through a strategic rather than a piecemeal approach. The urgency becomes even more acute considering that racism, hatred and intolerance have repercussions that go well beyond the single individuals that are directly targeted: they affect entire groups, leading to group victimisation; they create divides in society, affecting equality and social cohesion; and they erode even further people's trust in the authorities and the rule of law.

4. I do not intend to duplicate the thorough monitoring, reporting and data-collection work on racism, hatred and intolerance which is carried out by bodies such as the European Commission against Racism and Intolerance (ECRI),[4] the Committee on the Elimination of Racial Discrimination (CERD),[5] the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR)[6] and the Fundamental Rights Agency of the European Union (FRA).[7] I would rather rely on these reliable sources to highlight the main matters of concern from a political point of view.

5. This report is the opportunity to recall that politicians have a particular responsibility to reject racism, hatred and intolerance, and to promote, through their behaviour and discourse, the equal dignity of all human beings. Likewise, it is a call on the Council of Europe to take up a leading role in this area through a systematic and coherent action aimed at helping member States to come to grips with these phenomena.

6. This report has a broad scope. It covers all forms of intolerance, hatred and hostility, be it on the grounds of race, religion, migration status, disability, sexual orientation, gender identity or any other. I have left the title of the original motion because it is meaningful for most people. In reality this report is about preventing and combating hatred, on all grounds and however it manifests itself.

2. Basic terminology and legal aspects

2.1. Hate speech

7. In Europe, freedom of expression is not an absolute right. As the European Court of Human Rights ("the Court") has clearly stated that "tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance".[8]

8. There is no universally accepted definition of the expression "hate speech".

9. As far as the Council of Europe is concerned, in 1997 the Committee of Ministers adopted Recommendation No. R (97) 20 on this matter, clarifying that it covered "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin".[9]

10. In 2008, the Council of Europe launched a Manual on hate speech to clarify this concept on the basis of the case law of the European Court of Human Rights.[10] Even if the Court has not given a definition of hate speech, it has clarified that it is not protected under Articles 10 (freedom of expression) and 11 (freedom of

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4. www.coe.int/t/dghl/monitoring/ecri/default_en.asp.
5. http://www2.ohchr.org/english/bodies/cerd/.
6. www.osce.org/odihr/66388.
7. The FRA held its 2013 annual conference on "Combating hate crime in the EU – Giving victims a face and a voice" (conference website: http://fra.europa.eu/en/event/2013/fundamental-rights-conference-2013).
8. *Erbakan v. Turkey*, judgment of 6 July 2006, paragraph 56.
9. www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf.

association and assembly) of the European Convention on Human Rights (ETS No. 5). As a result, expressions of hate speech can be restricted by States in their national law, either because they negate the fundamental values of the Convention (on the basis of Article 17) or because restrictions are necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others (on the basis of paragraph 2 of Articles 10 and 11).[11]

11. Council of Europe bodies recommend that hate speech should be prohibited under national law. While the Committee of Ministers has limited itself to saying that it should be prohibited through civil, criminal or administrative law,[12] in its Recommendation 1805 (2007) on blasphemy, religious insults and "hate speech" against persons on grounds of their religion, the Parliamentary Assembly has recommended the criminalisation of "statements that incite hate, discrimination or violence against individuals or groups for religious or other reasons".

12. ECRI has also recommended criminalising "expressions which can be considered racist speech, notably when they intentionally and publicly incite to violence, hatred or discrimination on grounds of race, colour, language, religion, nationality or national or ethnic origin".[13]

13. Council of Europe member States follow a variety of approaches: in some jurisdictions speech that insults certain groups is criminalised; other common limitations to freedom of speech include the prohibition of Holocaust denial and the glorification of Nazi ideology. Incitement to committing violence, however, is always criminalised.

14. Among EU member States, this disparity is in line with the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. This text requires EU member States to criminalise hate speech while leaving it to them to decide in what form.[14]

15. I must say that, even though I do not disagree that hate speech should be criminalised, I do not think that criminalisation is the ultimate solution to the problem. I feel that even greater emphasis should be placed on prevention, awareness-raising, education, teaching of human rights and respect for equality and diversity. I am afraid that legitimate restrictions to freedom of expression implemented through criminal law may be perceived as "censorship" attempts and that, unchallenged on its foundations outside courts of law, hate speech may nest and flourish where it is more difficult to detect – in cyberspace, for instance, as is already the case.

16. Today, in Europe, hate speech is well established in the public space, including on the Internet and in the political arena. Tackling it on a case-by-case basis through judicial decisions is crucial to avoid impunity of the perpetrators and increase the trust in the authorities; however, even if it is necessary, this course of action is not sufficient because it does address the root causes. Moreover, considering the extent of under-reporting, it will only affect the tip of the iceberg.

2.2. Hate crime

17. Hate crime is not a legal definition. It is rather a concept describing a criminal offence which is motivated by hostility or prejudice against a certain group on the basis of certain grounds. Every hate crime therefore includes two elements:

– the act which is committed constitutes an offence under criminal law (the base crime), for instance an act of intimidation, threat, property damage, assault, murder;

– the offender has intentionally chosen a target because of his or her characteristic (the biased motive), which can be real or perceived.

18. A hate incident is an act committed with a biased motive which either does not reach the threshold of gravity to be a crime, or has not proved to be one.

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10. www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Hate_Speech_EN.pdf.
11. www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.
12. Recommendation No. R (97) 20.
13. ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, 2003: www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf
14. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008F0913:EN:HTML.

19. Hate speech must be distinguished from hate crime because, although resting on a biased motive, it does not have a base crime (speech *per se* is not a crime). Speech that incites to performing criminal acts can be a hate crime when it has a bias motive, because this kind of speech is *per se* a criminal offence.

20. In addition to differing from ordinary crimes on account of the biased motivation of the offender; hate crimes have also a different impact on the victims. As the OSCE/ODIHR Practical Guide on Hate Laws explains well, "the perpetrator selects the victim because of his or her membership of a group; this suggests that one member of such a group is interchangeable with any other. Unlike victims of many other criminal acts, hate crime victims are selected on the basis of what they represent rather than who they are. The message that is conveyed is intended to reach not just the immediate victim but also the larger community of which that victim is a member".[15]

21. In the last decade, Council of Europe member States have strengthened their legal framework against hate crime, even if they have tackled it in different ways. The most common solution is through penalty enhancements (often referred to as aggravating circumstances), which can be general (applying to any crime, like in Andorra and the United Kingdom) or specific (applying to specific crimes, like in Belgium and Bosnia and Herzegovina). On occasions, the degree of penalty enhancement is also established by law. Some countries also require the courts to state explicitly the reasons for applying or failing to apply the penalty enhancement. Others have set up special prosecutors on hate crimes (Greece and Spain).

2.3. Biased motives

22. In the introduction to this report, I mentioned that it is time to abandon a piecemeal approach to racism, hatred and intolerance. I think that this should apply also to the grounds motivating hate speech and hate crimes.

23. National and international legal instruments refer to a limited number of different biased motives. For instance, the EU Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia is limited to race, colour, religion, descent or national or ethnic origin. Many EU member States, however, have decided to include other biased motives, drawing on their national list of prohibited discrimination grounds. This list differs from one country to another.

24. At the moment, all Council of Europe member States include race as a biased motive; many include religion, sometimes with further specifications; fewer include gender, disability, sexual orientation and gender identity.

25. In my opinion, overcoming a piecemeal approach implies extending the list of biased motives as broadly as possible. Such motives should at least be those that are covered by Article 14 of the European Convention on Human Rights (on non-discrimination), as interpreted by the Court in its evolving jurisprudence.

26. I also see an advantage in explicitly mentioning as many biased motives as possible, including gender, disability, sexual orientation, gender identity and multiple grounds. The reason for explicitly listing the grounds is threefold:

– it makes the vulnerability of people from these groups visible and is a sign of awareness on the part of the authorities;

– it will shape the processes of data classification and collection, investigation and prosecution, making them more coherent and systematic;

– it makes it clear that all grounds are equally valid, thus preventing people belonging to some groups from being treated differently from others.

27. As regards this last point, I would like to recall that in its recent Resolution 1948 (2013) on tackling discrimination on the grounds of sexual orientation and gender identity, the Assembly asked member States to "introduce binding guidelines for law-enforcement officials to ensure that any alleged hate motive associated with a crime, including hate motives on grounds of sexual orientation and gender identity, is promptly, impartially, effectively and thoroughly investigated and duly taken into account in the prosecution and sentencing of those crimes".

15. www.osce.org/odihr/36426?download=true.

28. The European Court of Human Rights has repeatedly said that States have a positive obligation to investigate the motivation of crimes. In its decision *on Nachova and Others v. Bulgaria*,[16] the Court held that Bulgaria's failure to investigate possible racist motives behind acts of violence by State authorities constituted a violation of Article 14 of the Convention.

29. In its judgment *Šečić v. Croatia*, the Court has affirmed that the State's duty to investigate equally applies when racist crimes are committed by individuals: "… when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. ... treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."[17]

3. The reality on the ground

3.1. Data collection

30. It is not possible to present a comprehensive overview of racism, hatred and intolerance in Europe from a statistical point of view. This is primarily because States use different systems of data classification (biased motives, types of crimes and incidents) and collection (bodies involved, cross-checking of data, periodicity). In addition, they are not all equally systematic in publishing it.

31. The Fundamental Rights Agency divides EU member States into three categories:[18]

– Finland, the Netherlands, Sweden and the United Kingdom operate comprehensive mechanisms of data collection, covering a wide range of bias motives, types of crimes and incidents; the data is regularly published;[19]

– Austria, Belgium, the Czech Republic, Denmark, France, Germany, Lithuania, Poland, Slovakia and Spain operate good mechanisms, with a range of bias motives being recorded; data is generally published;

– Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Romania and Slovenia operate limited mechanisms of data collection, with few incidents and a narrow range of bias motives being recorded; data is not always published.

32. Other valuable information sources include:

– surveys published by the Fundamental Rights Agency, based on information collected through replies to questionnaires;

– annual reports published by the OSCE/ODIHR, which since 2006 has been given the task of serving as a collection point for information and statistics on hate crimes,[20] and which does so on the basis of the replies to a questionnaire sent to the participating States.

33. Reports describing and analysing the situation on a country-by-country basis are also particularly important, especially those by ECRI, the CERD and, among non-governmental organisations (NGOs), Human Rights Watch, the European Network against Racism (ENAR) and Human Rights First. Recently, the office of the United Nations High Commissioner for Refugees (UNHCR) in Greece started to monitor and collect information on racist and xenophobic crimes against people seeking asylum in this country. All these reports indicate an increase in the gravity of incidents and crimes motivated by hatred.

16. Judgment of 6 July 2005 (http://hudoc.echr.coe.int).
17. Judgment of 31 May 2007, paragraphs 66-67 (http://hudoc.echr.coe.int).
18. http://fra.europa.eu/en/publication/2013/fra-brief-crimes-motivated-hatred-and-prejudice-eu.
19. For instance, for the United Kingdom, see the annual report on hate crime and crimes against older people, published by the Crown Public Prosecution Service, www.report-it.org.uk/files/cps_hate_crime_report_2012.pdf
20. OSCE Ministerial Council, Decision No. 13/06, "Combating Intolerance and Discrimination and Promoting Mutual respect and Understanding".

3.2. Main features

3.2.1. Data

34. According to FRA:

– between 16 and 32% of the Roma surveyed had been victims of assault, threat or serious harassment with a perceived racist motive in the 12 months preceding the survey;[21]

– between 19 and 32% of the persons of African origin surveyed were victims of assault, threat or serious harassment with a perceived racist motive in the 12 months preceding the survey;[22]

– 25% of the LGBT people surveyed experienced violence in the five years preceding the survey;[23]

– up to one third of Jewish people have personally experienced verbal or physical anti-Semitic violence.[24]

35. In my country, Sweden, according to official statistics,[25] the police recorded 5 518 reports with an identified hate crime motive in 2012. The breakdown as regards the motive was:

– 72% (almost 3 980 reports) were motivated by xenophobia/racism (of which 940 were Afrophobic and almost 220 anti-Roma);

– 13% (over 710 reports) were motivated by homophobia, biphobia and heterophobia;

– 6% (almost 310 reports) were motivated by Islamophobia;

– 5% (almost 260 reports) were motivated by Christianophobia or were otherwise anti-religious;

– 4% (just over 220 reports) were motivated by anti-Semitism;

– 1% (just over 40 reports) was motivated by transphobia.

3.2.2. Under-reporting

36. The FRA surveys also shed light on the extent and the reasons for under-reporting:[26]

– between 57% and 74% of incidents of assault or threat suffered by members of minority or migrant groups in the European Union were not reported to the police by their victims;

– between 75% and 90% of incidents of serious harassment were not reported to the police;

– eight out of ten LGBT persons in the European Union who were victims of crimes motivated by bias or prejudice did not report them to the police;

– three quarters of those Jewish people who said they were victims of anti-Semitic harassment did not report this to the police or any other organisation.

37. “The main reason for non-reporting among Jews, Roma, persons of African origin or LGBT persons include that ‘nothing would change’ as a result of reporting incidents, that ‘such incidents happen all the time’ or that ‘they did not trust the police’”.[27]

38. The effectiveness of the criminal justice system depends on the victims being encouraged to report hate speech and hate crimes to the police and later co-operate with the prosecution. Unfortunately, as Mr David Davies describes well in his report on “Tackling racism in the police” (Doc. 13384), all too often the police condone hate crimes, failing to investigate them or to identify the biased motives, and sometimes are even directly responsible for hate speech and violence.

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21. EU-MIDIS survey, 2008: http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey
22. Ibid.
23. FRA’s EU LGBT survey, 2013: http://fra.europa.eu/en/survey/2012/eu-lgbt-survey.
24. Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, November 2013:. http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states_en.pdf
25. www.bra.se/bra/bra-in-english/home/crime-and-statistics/crime-statistics/reported-hate-crimes.html.
26. The following passage is a quote from the above mentioned FRA brief.
27. Ibid, p. 1.

39. A comprehensive strategy against racism, hatred and intolerance should therefore include, as key priorities: the provision of human rights and diversity training to the police; ensuring that police procedures are not inherently racist, biased or discriminatory on any grounds; setting up mechanisms to ascertain individual responsibilities of police officers for hate speech and/or hate crime; and ensuring that sanctions against them are effectively applied.

40. At the same time, it is important to introduce policies and practices that facilitate reporting of hate speech and violence, for instance by setting up easily accessible reporting mechanisms on the Internet, waiving any fees for reporting or lodging a complaint, and ensuring that migrants who co-operate with the authorities in the course of judicial proceedings cannot be expelled.

3.2.3. Everyday hatred

41. Hardly a day goes by without an act of racism, hatred and intolerance being reported in the media. Even worse, hardly a day goes by without such acts taking place. Not all these expressions of hatred reach the gravity of a hate crime; and yet, the psychological impact on the targeted group is enormous: people are afraid of going out – the majority of the attacks take place in public areas – and they are afraid of ordinary people, as the majority of the attacks come from them and not from organised extremist groups. It is urgent to reverse this dangerous trend of trivialising hatred.

3.3. ECRI country-specific recommendations

42. In the country reports that it published during its 4th monitoring cycle, ECRI made recommendations in the area of hate speech and hate crime to a number of countries, including Andorra, Croatia, Denmark, Ireland, Liechtenstein and Sweden. It is of great importance that, for its next monitoring cycle, which started in 2013 and will last five years, ECRI will focus on hate speech and hate crime, amongst other concerns, including those with sexual orientation and gender identity as biased motives.

43. I believe that, although the Assembly is represented ECRI as an observer, there is room for improving co-operation and exchange of information. Even if ECRI meetings are held *in camera* and confidentiality is an essential feature of the monitoring procedure, it would be advisable to enhance the interaction between the Committee on Equality and Non-Discrimination and ECRI, and ensure that ECRI's monitoring visits always include exchanges with the Parliamentary Assembly delegation of the country concerned. The members of the committee should also contribute to giving visibility to ECRI's reports and inform the committee on the follow-up which has been given.

4. Internet

44. Internet and social media have given racism, hatred and intolerance a new dimension. As underlined in the final report of the Conference "Tackling hate speech – Living together online", organised by the Council of Europe in 2012: according to Frank La Rue, United Nations special rapporteur on freedom of opinion and expression, Globalisation, "While in principle there is no distinction between hate speech on- and offline, the Internet makes hate speech go faster and further, facilitated by the Internet, makes possible 'action at a distance' and the fact that the victim of hate speech is not in the same physical space as the perpetrator, who may moreover be anonymised, facilitates the dehumanisation of the former by the latter".[28]

45. To these important considerations, it should be added that:

– it is almost impossible to have control over what is put on the Internet: hence, the uncontrolled proliferation of hate speech, intolerant comments and incitement to hatred and violence;

– Internet has an outreach capacity which is unprecedented compared to other forms of communication;

– Internet particularly appeals to young people, who are the main users of social media.

46. The Council of Europe has kept up with these developments. In 2000, ECRI adopted General Policy Recommendation No. 6 on "Combating the dissemination of racist, xenophobic and antisemitic material via the Internet".[29] In 2003, the Additional Protocol to the Convention on Cybercrime, concerning the

28. Budapest, 27-28 November 2012 (Rapporteur: Mr Robin Wilson): http://hub.coe.int/c/document_library/get_file?uuid=4336c477-d4c5-40fa-b49d-ae57d0e9e05f&groupId=10227.
29. www.coe.int/t/dghl/monitoring/ecri/activities/generalthemes_EN.asp.

criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189) was opened for signature.[30] It entered into force three years later. To date, it has been ratified by 20 Council of Europe member States.[31]

47. The Additional Protocol extends the scope of the Convention on Cybercrime so as to cover also offences of racist or xenophobic propaganda. It applies to the distribution via a computer system of "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".[32] It applies also to the diffusion of racist or xenophobic motivated insults and to the denial, gross minimisation, approval or justification of genocide or crimes against humanity.

48. The Assembly has repeatedly called on Council of Europe member States to sign and ratify this Protocol.[33] I give my support to this call, also considering that international co-operation is indispensable in order to have a meaningful impact on hate crimes committed in cyberspace.

49. The Internet is not only a vehicle for hate speech and incitement to violence. It can also be a very useful tool to promote human rights and the respect of diversity and equality. This is why I find the "No Hate Speech Movement" initiative extremely interesting and I think that its potential should be further explored.[34]

50. As explained by its secretariat,[35] the campaign is part of a larger project called "Young People Combating Hate Speech Online", aimed at combating racism and discrimination online. It was launched on 22 March 2013 and will run until April 2014. So far, 34 national campaigns have been established. The campaign has been designed to ensure that it is by and with young people. Young people aged between 13 and 30 will play a leading role by taking part in online and offline activities. The goals of the campaign are to raise awareness about hate speech and its risks for democracy, to mobilise, train and network online youth activists for human rights and to develop policy and tools for constructive responses to hate speech.

51. Further to an exchange of views with Ms Snežana Samardžić-Marković, Director General of Democracy of the Council of Europe, in October 2013 the Committee on Equality and Non-Discrimination adopted a declaration condemning racism and xenophobia and calling on national parliamentarians to join the national campaigns of the "No Hate Speech Movement".[36]

52. I would like to recommend that the "No Hate Speech Movement" not only continues after April 2014 but is also expanded so as to become a large-scale Council of Europe campaign, involving all the different parts of the Organisation. I also see a major role for Assembly members, and in particular for the members of the Committee on Equality and Non-Discrimination, who could be involved in campaigning and awareness-raising activities in their countries. Thanks to their dual mandate, Assembly members are in an ideal position to promote legislative changes in the area of hate speech and promote the ratification of the Additional Protocol to the Convention on Cybercrime.

53. I believe that racism, hatred and intolerance are such widespread and pressing problems today in Europe that the Council of Europe should devise a comprehensive strategy on this matter, an Action Plan focusing on:

– prevention (through awareness raising, education and training);

– legal advice on hate speech and hate crime legislation;

– promotion of Council of Europe instruments;

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30. http://conventions.coe.int/Treaty/en/Treaties/Html/189.htm.
31. They are Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Germany, Latvia, Lithuania, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia" and Ukraine. This is an open instrument, open to accession by non-Council of Europe member States. It has also been signed by Canada and South Africa.
32. Article 2.
33. The most recent is Assembly Resolution 1877 (2012) on the protection of freedom of expression and information on the Internet and online media.
34. http://act4hre.coe.int/no_hate/No-hate-speech-movement/The-Campaign.
35. Joint meeting of the Sub-Committee on Racism and Xenophobia of the Committee on Equality and Non-Discrimination and the Sub-Committee on Media of the Committee on Culture, Science, Education and Media, Strasbourg, April 2013 part-session.
36. AS/Ega/Inf (2013) 23.

– monitoring (through ECRI but also other bodies and institutions, including the Council of Europe Commissioner for Human Rights).

5. The economic crisis

54. The economic crisis is increasing poverty, frustration and social tensions.

55. At the same time, the crisis has a negative impact on the effectiveness of anti-discrimination and equality measures. Horizontal cuts on public spending have affected groups that are more dependent than others on social assistance and benefits. Some of them are the most affected by hate speech and hate crime. In addition, cuts have affected equality bodies, which in several Council of Europe member States have been merged with other structures (in Ireland, for instance),[37] while the introduction of new anti-discrimination measures has been postponed for budgetary reasons (this is the case in the Netherlands and Spain).

56. In a nutshell, the economic crisis has amplified racism, hatred and intolerance while reducing the capacity of its victims to seek assistance and redress.

6. The failure of migration and integration policies

57. In Europe, migration and integration remain unresolved challenges. For years, especially in some Council of Europe member States, they have been tackled as emergencies, in the worst cases as an invasion or a threat to security. I believe that issues which have been on the political agenda for decades cannot be an emergency to be addressed with a string of successive patchy measures lasting the duration of a legislature. They are crucial political issues which must be addressed seriously, long-term, and taking into account the broader picture. Without considering that only in this way can it be possible to cope with real, unexpected emergencies, such as the inflow resulting from the Arab Spring and the humanitarian tragedy of people fleeing the conflict in Syria.

58. The failure of many governments to find a satisfactory political response to migration and integration are amongst the main causes for the upsurge in intolerance that Europe is witnessing.

59. At the same time, there is a problem of communication on the part of politicians, on several levels:

– the demonisation of migration for political purposes, as underlined by the Assembly in its Resolution 1889 (2012) on the image of refugees and migrants during electoral campaigns;[38]

– the lack of distinction between people who are in need of international protection and those who migrate in search for economic betterment – or merely for a chance of survival;

– a failure to make it clear that the respect for human rights and dignity does not depend on the legal status of the people concerned, be they citizens, foreigners, refugees or migrants without a regular residence permit.

60. This kind of deliberate misrepresentation, or in any case inaccurate communication, creates a fertile ground for racism, hatred and intolerance, not only against migrants but also other groups.

7. The hate factor in political discourse

61. In the current political landscape in Europe, a number of political parties and groups put forward ideas which, if they cannot be labelled as racist, nevertheless create a climate of intolerance towards certain groups.

62. The case of Golden Dawn in Greece is particularly worrying because this is a neo-Nazi party, whose members are engaged in violent actions against people from minorities and which also has 18 representatives who have been elected to sit in the national parliament following a democratic vote.

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37. Sarah Spencer, Merger of Europe's human rights and equality bodies is on the agenda: good news or bad for migrants' rights?: http://compasoxfordblog.co.uk/2013/05/merger-of-europes-human-rights-and-equality-bodies-is-on-the-agenda-good-news-or-bad-for-migrants-rights/

38. http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18946&lang=EN.

63. In September 2013, the murder of the rapper Pavlos Fyssas was the last in a string of violent attacks carried out by members or sympathisers of Golden Dawn. This case made it into the international media but many others in the past did not. The murder led to the arrest of a number of members of Golden Dawn, including members of parliament, on account of their belonging to a "criminal organisation".[39]

64. While these developments were unfolding, in October 2013, the Committee on Equality and Non-Discrimination discussed the legal and political viability of prohibiting political parties promoting hatred and hostility against certain groups. Mr Thomas Markert, Director and Secretary to the European Commission for Democracy through Law (Venice Commission), clarified that not all Council of Europe member States allow for the option of banning.[40] Moreover, even in those countries that allow it, prohibition is a measure of last resort, and has been applied only in very exceptional circumstances. This does not exclude the criminal responsibility of party members who use hate speech or commit hate crimes.

65. I continued this discussion in a bilateral meeting with Mr Nils Muižnieks, the Commissioner on Human Rights. He told me that he considers the situation in Greece so serious that he felt it appropriate to recommend that the law be reviewed so as to allow for the prohibition of political parties, which is not the case at the moment.[41]

66. The situation in Greece has indeed reached an unprecedented level of gravity as regards the upsurge of racism, hatred and intolerance, and the election to parliament of a political party using symbols inspired by Nazism and whose members talk about the superiority and inferiority of people is extremely worrying.[42] However, in my view, it is important to keep in mind a basic question: why did the electorate vote for Golden Dawn? What is really important is addressing the root causes which fuel racism, and challenging ideologies of this kind openly and with resolve.

67. Politicians bear a special responsibility to remain vigilant in the face of these phenomena and firmly reject racism, hatred and violence. Unfortunately, all too often, politicians indulge in populist and intolerant discourse, even when they are from mainstream parties. This, of course, does not mean that they are not free to hold different positions as regards migration and integration policies, but they should avoid stigmatising people.

68. It has come as a shock to many of us that, since taking up her functions in April 2013, the Italian Minister for Integration, Ms Cécile Kyenge, has been the victim of insults and racist verbal attacks, including by other politicians. This led 17 ministers of European Union member States to react, by adopting a Declaration reiterating the special responsibility of politicians to fight against racism.[43] I believe that the Assembly should support this declaration. I also believe that the Committee on Equality and Non-Discrimination should strengthen its work by establishing a mandate of General Rapporteur against racism, hatred and intolerance. It is of the utmost importance to have the committee speak with a single voice when it comes to these matters, to have a focal point to act as an interlocutor with Council of Europe and external bodies and someone who follows the issue systematically.

69. As a body reflecting the composition of national parliaments, the Assembly is directly concerned by the issue of the political representation of parties which stigmatise certain groups. In January 2013, the credentials of two members of the Assembly – Ms Eleni Zaroulia and Mr Tamás Gaudi Nagy – were challenged on account of their membership respectively of Golden Dawn and Jobbik and of statements they had made in their respective countries. Ms Fiamma Nirenstein, who moved the challenge of the credentials, said: "I think that their political parties are racist and anti-Semitic, and this clashes with Article 3 of our Statute, according to which every member of the Council of Europe must accept the principle of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedom. Looking at the record, whether personal or political, of these two members of our Council of Europe, we see that what they say is not compatible with that."[44]

70. In addition, Ms Zaroulia and Mr Gaudi Nagy's membership in committees was also contested.

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39. www.reuters.com/article/2013/09/28/us-greece-goldendawn-idUSBRE98R02Q20130928.
40. Venice Commission, Guidelines on prohibition and dissolution of political parties and analogous measures (2000), www.venice.coe.int/webforms/documents/CDL-INF(2000)001-e.aspx
41. www.humanrightseurope.org/2013/09/nils-muiznieks-greece-in-its-right-to-ban-golden-dawn/.
42. "Greek MP: immigrants are sub-human", http://greece.greekreporter.com/2012/10/18/greek-mp-immigrants-are-subhuman/
43. www.theguardian.com/world/2013/sep/23/eu-ministers-racism-cecile-kyenge.
44. http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1301211130E.htm.

71. The Committee on Rules of Procedure, Immunities and Institutional Affairs was given the task of examining the challenge of the credentials. The committee clarified that according to the Assembly's Rules of Procedure, the credentials of individual members can be challenged only on procedural grounds. As all the procedures had been respected in the two cases, the credentials should be ratified. As regards membership of committees, Mr Gaudi Nagy's membership was confirmed by the Hungarian delegation and then approved by the Assembly, while Ms Zaroulia's membership was withdrawn by the Greek delegation.

72. I think that what happened on this occasion should invite the Assembly to think about whether the safeguards it has in place against racism and intolerance are sufficient. I have already said that I am not in favour of the prohibition of political parties. In the same way, I do not think that the Assembly should introduce a filter against some political parties: as long as they are represented in national parliaments, they should be also represented in the Assembly, consistent with Rule 6.2.*a* of the Rules of Procedure. However, it should be possible to sanction the non-respect of the commitment undertaken in the written declaration laid down in Rule 6.2.*b*, which every member must sign:

> *"I, the undersigned ... hereby affirm and state that I will subscribe to the aims and basic principles of the Council of Europe, mentioned in the Preamble, in Article 1.a and in Article 3 of the Statute of the Council of Europe."*

73. I would like to invite the Committee on Rules of Procedure, Immunities and Institutional Affairs to look into this issue and invite the Committee on Equality and Non-Discrimination to take part in an exchange of views.

8. Conclusions

74. Racism, hatred and intolerance run counter to Council of Europe values and deny the equality of human beings. They are a serious threat to democracy and human rights, irrespective of the groups they target. And yet, despite their heinous character, they are so widespread in today's Europe that they have become banal, an everyday occurrence.

75. Introducing a comprehensive legal framework to tackle racism, hatred and intolerance is essential, provided that a greater effort is made to ensure its effective implementation, including by addressing under-reporting, training law-enforcement officials and combating impunity.

76. Laws, however, are only part of the solution. A comprehensive strategy to tackle racism, hatred and intolerance should put emphasis on prevention, awareness-raising and human rights education. It should rely on the Internet and social media as precious allies to reach out to a wider public.

77. Politicians should lead the efforts to eliminate racism, hatred and intolerance with resolve and by their example, challenging, rejecting and condemning expressions of hatred, from whatever quarters they come. They should also make sure that the economic crisis does not deprive people from those groups that are more vulnerable to intolerance of their chance to seek assistance and obtain redress. Likewise, politicians should devise viable migration and integration policies and communicate responsibly on them.

78. I do not see a role for the Council of Europe in tackling racism, hatred and intolerance; I see a statutory mission. It is necessary for the Council of Europe to take up a leadership role in this area, and contribute to help its member States in "realising the ideals and principles which are their common heritage".[45]

45. Article 1 of the Statute of the Council of Europe (ETS No.1).