Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 240 (2002)[1]

Draft additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

Parliamentary Assembly

1. The Parliamentary Assembly refers to its Opinion No. 226 (2001) on the draft convention on cybercrime and to its Recommendation 1543 (2001) on racism and xenophobia in cyberspace. It believes that the arguments expounded in those two texts concerning the dissemination of racist propaganda and the unlawful hosting of hateful messages remain relevant.

2. It welcomes the large number of signatures of the Convention on Cybercrime (thirty-three signatures and one ratification), to which it gave its political support, and trusts that it will soon enter into force.

3. It salutes the speedy action taken by the Committee of Experts on the Criminalisation of Acts of a Racist or Xenophobic Nature committed through Computer Networks (PC-RX). The committee has worked efficiently and in line with the Assembly's general recommendations. The Assembly accordingly believes that the final protocol could be opened for signature in the year following the opening for signature of its parent convention.

4. It realises that the text adopted by the European Committee on Crime Problems is a compromise between differing legal and cultural traditions, which strikes a broadly satisfactory balance between combating racism and freedom of expression.

5. However, the Assembly cannot go along with the Committee's refusal to include unlawful hosting, a concept which it defended in its above-mentioned opinion and repeated in its recommendation. The opposition of a single non-member state of the Council of Europe should not override the defence of the European continent's common values when the states that share them join together in drafting an instrument of such importance, even if that state threatens not to accede to the instrument in question.

6. It welcomes the fact that the protocol, if the current version is confirmed, will be the first international instrument to penalise negationism.

7. Accordingly, the Assembly recommends that the Committee of Ministers make the following amendments to the draft protocol:

add the notion of unlawful hosting and make any reservation in respect of the criminal and civil offences it provides for, subject to the recognition of this notion in domestic law;

add the word “language” between “colour” and “descent” in Articles 2(1), 4, 5(1) and 6(2);

delete paragraph 3 from Article 3 of the draft protocol, because it would represent an abusive reservation;

replace, in Article 4, the words "threatening, through a computer system, with the commission of a serious criminal offence" by the words "disseminating or otherwise making available to the public through a computer system, threats to commit a serious criminal offence (…)";

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1. Assembly debate on 27 September 2002 (32nd Sitting) (see Doc. 9538, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Guardans. Text adopted by the Assembly on 27 September 2002 (32ndSitting).

replace, in paragraph 1 of Article 5, the words "insulting publicly, through a computer system" by the words "disseminating or otherwise making available to the public through a computer system, insults to (…)";

replace, in paragraph 1 of Article 6, the words "as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 April 1945, or any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party" by the following text:

8. "as defined by international law and/or any other international court established by relevant international instruments".