

P A R T I

Racism in  
Central and Eastern Europe  
and Beyond:  
Origins, Responses, Strategies

*Rapporteur's Notes*

Budapest, Hungary  
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# Racism in Central and Eastern Europe and Beyond: Origins, Responses, Strategies

## *Rapporteur's Notes*<sup>1</sup>

### 1. INTRODUCTION: RACISM AND LAW IN EUROPE TODAY

The Open Society Institute convened a meeting in Budapest on 19 July 2000 to discuss racism in Europe. The event took place against a background of apparent contradiction. On the one hand, reports of discrimination and racist violence seem to be on the increase in much of Europe. On the other, European leaders and civil society are saying and doing more to combat racism.

“After a generation in relative abeyance,” one observer has noted, “the ‘political discourse of racism’ has once again forced itself onto Europe’s agenda.... A resurgence in right-wing parties of a racist nature has been evident across most continental European nations in the 1990s.”<sup>2</sup> In his former capacity as Minister of State at the German Foreign Office, Gunter Verheugen, the European Enlargement Commissioner, acknowledged “an alarming increase in racist and xenophobic tendencies in all European countries, including Germany.”<sup>3</sup> A government report published this March noted a rise in “racist and anti-Semitic violence” in France in 1999.<sup>4</sup> Xenophobic attacks in Germany have grown by 5% since 1998.<sup>5</sup> And, in its “Human Rights Agenda for the European Union for the Year 2000,” the EU’s Comité des Sages expressed concern that, “within the Union, large-scale discrimination persists in various forms. Racism and xenophobia are thriving.”<sup>6</sup>

EU residents born outside the union “have been subjected to greatly increased levels of racially motivated attacks” over the past decade.<sup>7</sup> Heightened violence against foreign-born immigrants and racial minorities has been documented in the United Kingdom<sup>8</sup> and other countries. News outlets from across the political spectrum carry reports to the effect that “Europe’s difficulties in integrating millions of immigrants are feeding xenophobic movements....”<sup>9</sup>

And in Central and Eastern Europe, where ten countries are lining up to join the EU in the next several years, the situation appears no better. A survey this spring sponsored by the United Nations High Commissioner for Refugees revealed a rise in “overt xenophobic phenomena” in Hungary, where 38% of those polled said Hungary should not receive

any refugees.<sup>10</sup> In February, a racist Czech computer game appeared on the internet. Entitled "Shoot your Gypsy down," the game purportedly allows players to fire at Roma who are trying to hide behind a brick wall.<sup>11</sup> A few months earlier, researchers from the STEM agency reported the results of a study indicating that 90% of ethnic Czechs denied that Roma in the Czech Republic suffer discriminatory treatment.<sup>12</sup> A similar poll conducted at the same time by the TNS Polling Institute in Bratislava concluded that more than three out of five Slovaks say they favour segregating the Roma minority from the majority population, including in separate schools.<sup>13</sup> Of course, throughout much of Central and Eastern Europe, the Roma remain "the one people ... whom it is largely acceptable to persecute."<sup>14</sup>

At the same time, a determined drive to combat racism also appears to be underway. At the official level, no development is more significant than the adoption in June 2000 of European Union Directive 2000/43/EC, "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin."<sup>15</sup> This "Race Directive" represents a significant step forward in its prohibition of discrimination on the grounds of race or ethnicity in employment, access to public accommodations and other fields. It must be implemented in the national legislation of all EU member states and, as it becomes part of the so-called *acquis communautaire*, in the aspirant EU candidate countries.

In 1998, the European Monitoring Centre on Racism and Xenophobia opened in Vienna, with a mandate to study the extent and development of racism, xenophobia and anti-Semitism in the EU, to gather and analyse information at European level, to establish a racism and xenophobia information network, and to make recommendations on policy to European institutions and EU Member States.<sup>16</sup>

The Council of Europe has also been active in the field of anti-racism. The European Commission against Racism and Intolerance is currently issuing a second round of reports identifying problems and highlighting issues in member countries. A European Conference Against Racism in October 2000 brought member states and NGOs together to examine current trends and re-affirm European commitments. In June 2000 the Council of Ministers adopted Protocol No. 12 to the European Convention on Human Rights. This provision, enforceable by the European Court of Human Rights, will establish that "the enjoyment of any right set forth by law shall be secured without discrimination on any ground,"<sup>17</sup> including race. This would mark a major advance over Article 14 of the Convention, which presently prohibits discrimination only in the enjoyment of other rights of the Convention.

Meanwhile, the United Nations, which owes its inception largely to the post-World War II reaction against fascism and genocide, is also stepping up its anti-racist activities. The UN is currently preparing its Third World Conference Against Racism in South Africa,

September 2001, where the agenda will focus on contemporary forms of racism; education and other measures of prevention; and remedies, recourses and redress. The conference will be informed by the UN's instruments in monitoring, identification of issues, and policy review and formulation. These include the Sub-commission on the Promotion and Protection of Human Rights and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, both established under the aegis of the UN Commission on Human Rights. Meanwhile, the UN Committee on the Elimination of Racial Discrimination (CERD) continues to conduct bi-annual reviews of governments' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. Although not sufficiently publicised, the concluding observations often contain important findings about the shortcomings of government policies and recommendations for concrete changes in law and/or practice.<sup>18</sup>

Despite the increased activity by both the UN and the EU, however, there are few signs of coordination between the two organisations. Theo Van Boven notes that "in not one of the texts issued in preparation for the European Year Against Racism [1997] was any reference made to the numerous relevant texts and instruments of the United Nations. In the same vein, all European Parliament and Council resolutions on racism, xenophobia, and anti-Semitism conspicuously ignored the existence of United Nations standards and pronouncements on the same subject."<sup>19</sup> Other European organisations, such as the OSCE and the Council of Europe, appear to be embarking on a more cooperative path with the UN, in preparations for the recent European conference, for example.

The increase in intergovernmental pronouncements is matched – or at least complemented – by a flurry of activity at grassroots and NGO level. The appearance and proliferation of, for example, Roma rights and legal defence organisations in Central Europe was not imaginable even ten years ago. Their work places a new emphasis on minority rights in the region, and combines anti-racist activities with traditional human rights concerns.

And the result of this activity, at international level, and in civil society, has not been insignificant. To take one example, in 1990 no government in the Central and East European region even acknowledged, let alone addressed, racially motivated violence and discrimination against the Roma minority. Today, as a result of pressures from above and below, governments cannot afford to overlook the issue. Many have publicly pledged reform, and a few have begun the long process of changing laws and attitudes to break the centuries-old cycle of oppression. So there is progress. It takes time, it is inadequate, and it is not clearly sustainable without persistent pressure from Roma rights advocates. But it is unmistakable.

It may be that the simultaneous surge in racist hostility and anti-racist activity is linked. More than one observer has suggested a connection between the Austrian Freedom Party's

electoral success and the EU's quick adoption of the Race Directive. Others have posited that the 'EU XIV' sanctions – first imposed then lifted without adequate explanation – revealed the need for “a mechanism within the EU to monitor and evaluate the commitment and performance of individual Member States with respect to the common European values.”<sup>20</sup>

The looming prospect of enlargement plays a dual role, heightening Western concern about increased immigration even as it focuses attention on the European human rights standards which EU candidates are asked to satisfy. Not only has the EU placed minority rights at the forefront of the accession agenda, but it has the financial resources to back it up in a way that many other inter-governmental bodies cannot. As one participant noted, the EU is “a real carrot...”. “Countries of the region often ignore the OSCE and the Council of Europe, but when the EU speaks, the candidate countries listen”. As the accession process plays out, it becomes increasingly challenging to manage the tension between the competing dangers of, on the one hand, granting accession ‘too early’ (and thereby removing candidate governments’ policies from scrutiny) and, on the other, delaying accession ‘too long’ (and, through resulting popular frustration, diminishing the EU’s power as a lever for positive change in candidate countries). But what happens if accession is delayed or postponed indefinitely? And would the accession process be enhanced if monitoring of candidate countries were extended to EU member states?

## **2. THEORY: ORIGINS AND CONTOURS**

### **2.1 A Twin Legacy: Holocaust and Cold War**

Does racism manifest itself differently in different places? Or is it not rather ahistorical, always present and always basically the same – a “collective demon of humankind”? Racism is understood differently on different sides of the former Iron Curtain because, in their experience of the twentieth century East and West Europe had, in the words of one participant, “a different nightmare, a different understanding of what constitutes the greatest evil.”

In Western Europe the Holocaust arguably defined modern history. The ultimate standard of evil, it remains a symbol of unapologetic xenophobia and of the failed response of civilisation’s defenders. In the East, however, the Holocaust was often overshadowed by, on the one hand, the rivalling atrocities of Stalinist totalitarianism, and, on the other, Communist orthodoxy’s emphasis on victory against (rather than genocide by) the Nazis. “For us,” one participant remarked, “the greatest nightmare was not a crazy dictator killing off neighbouring nations of a different ethnicity, for us the nightmare was a crazy dictator killing off 20 million of his own kin on political grounds.”

The contrasting view in formerly Communist countries reflected a fundamental political distinction: “The real problem was that the state was weak in these countries, and to strengthen legitimacy and raise popular support it was tempting to play the anti-Semitic card.” This pattern can be traced in Czechoslovakia, Poland, Hungary and the Soviet Union itself. Indeed, as one scholar observed, “in many CEE countries official anti-Semitism coincided with the official founding of the state – to deny anti-Semitism is to deny the regime’s creation myth.” Much of the region that constituted the battleground for a struggle between dictators regards the Second World War as a time of national tragedy, rather than ethnic extermination. For example, only 35% of Poles surveyed in 1998 accepted that 75% of Polish Holocaust victims were Jewish.<sup>21</sup> “For most Poles today,” one participant remarked, “the Jewish as an ethnic and religious community are more an idea – a historical rather than a social reality: a virtual reality.” In Hungary, successive governments have “projected responsibility for the Holocaust onto Germany and other countries”, with the result that “very few identify the Holocaust as a Hungarian event.”

Far from confronting the horrific consequences of anti-Semitism and its related manifestations, post-Holocaust Eastern Europe often simply muzzled them. Ethnic and racial identifications were actively discouraged under Communist rule; and where there are no ‘races,’ there can be no racism: “When we heard of racism at all it was as something which is not applicable to Europe, Eastern Europe or Socialist Society. It was a black/white issue, applicable in the US or South Africa, not here.” This attitude persists in much of Central and Eastern Europe, where accusations of racism are met with disbelief on the part of many in the majority.

One element of Holocaust interpretation was common to both regions of Europe. Thus, in neither East nor West was attention paid to the Roma Holocaust, and this remains a subject of widespread ignorance to this day. According to studies, only 50–60% of adults in the Czech Republic and Slovakia are aware that Roma were targeted by the Nazis.<sup>22</sup> And perhaps not coincidentally, Roma remain among the most widely persecuted of ethnic minority groups throughout Europe.

## 2.2 Minority Rights and Non-discrimination

Why has work against racism only recently come out of the ghetto? One participant responded: “because minority rights have just emerged from the ghetto. [Previously] EU member states denied the existence of minorities, human rights thinkers found minority rights a distasteful form of particularism and many subscribed to the illusion that minorities would disappear through assimilation. It took a long time for these illusions to disappear and for people to realise that a false universalism – human rights for all – could degenerate into human rights only for the majority.”

Minority rights are controversial because they seem to stand at odds with the basic principles of non-discrimination and individual rights cherished by many human rights activists. “We all agree,” noted one participant, “that [‘minority’] is a useful concept in the European context... [but] we should think in the long run of a situation where the terms ‘minority/majority’ regarding ethnic difference – so-called race differences – are obsolete. The concept of minority rights is a short-term concept to improve the situation of certain groups of society. It is not a long term concept because human rights means that in the long run individual rights and not group rights should be protected.”

Yet ‘group rights’ have a venerable tradition. For some Eastern countries, the legal recognition of minorities as state policy goes back to the ethnically fractured Habsburg Empire. Where many states in the West were founded on the principle of subordination of ethnic to civic allegiance, nationality further East remained rooted in ethnicity.<sup>23</sup> In much of the region today, minority status extends to nominal political representation in national parliaments and/or minority self-governments. The conception of “minority rights”, as one participant said, “is part of the lexicon for both minorities and majorities. What is new are legal instruments at the regional level which enshrine this conception – the OSCE High Commissioner on National Minorities, the Framework Convention for the Protection of National Minorities. In Central and Eastern Europe the discourse about ‘minorities’ is likely to be relevant for a long time to come.”

Indeed, far from being absorbed in the general discourse of human rights, minority rights are also gaining ground in Western Europe. In the United Kingdom, for example, the evolution of societal approaches to racism has led to a renewed emphasis on ethnic difference, cultural sensitivity, and consequently the right to be recognised as non-majority. In universities all over the continent research into ethnicity, spurred by migration studies, is flourishing. The EU itself refers explicitly to the rights of minorities in the Copenhagen accession criteria. This orientation is welcomed by some East European human rights activists, for whom national minorities are often the most visible victims of racism. Perhaps this is because, as one participant put it, “minority rights are indissociable from the rights of the individual.”

### 2.3 Racism and Political Power

In the region of Central and Eastern Europe, answers to the question of whether racist extremism is on the rise depend on which country is looked at and what indicators are used. The rise of political racism in part of the West, meanwhile, is verifiable according to at least one core indicator: rising support for extremist parties.<sup>24</sup> In Austria, according to one scholar, supporters of Haider’s party, often young and less educated, express through their vote sentiments of “anti-globalisation” and “anti-correctness” – i.e. opposition to a global liberal agenda said to be ‘imposed from America’ and elsewhere.

What is the connection between racism and political power? Do extremist parties create racist sentiment or do they merely respond to an existing animus and exploit it for political ends? One participant described the relationship as “a combination, because there is a feedback mechanism whereby political elites grasp and legitimise an existing racism.” Legitimation takes the form of using and promoting ideas and terms previously considered outside the boundaries of public discourse, producing a “break in the elite consensus.... I am not optimistic regarding the possibility that an elitist consensus not to use existing racist stereotypes will hold in the long run.” By legitimising racist discourse, a political party can harness a range of contemporary frustrations and use them as stepping stones to power.

Xenophobia, the suspicion of foreigners, can thus function as a cultural code, as anti-Semitism did in the early twentieth century. Then, according to an historian, “expressing an opinion on ‘the Jewish question’ advertised a whole range of opinions on contemporary issues which, although important, were not intrinsically interconnected”. Racism does not yet perform this role in Europe, but the inherent dangers it presents – of becoming the choke point where clusters of frustrations can coalesce – are comparable to those posed by anti-Semitism in Europe in the late nineteenth century. Then the reaction was against modernisation, today it is against globalisation. One danger is that a new politics dominated by sound-bites will reduce the complexities of globalisation – with the dissolution of borders it appears to augur – to simple questions of racial domination. However, where fascisms of the past shared a nostalgia for a mythological, natural world, radical racists today have no aversion to technological progress. For many the internet is one aspect of the borderless world seen not as a threat, but rather as a useful weapon of propaganda.

## 2.4 Citizens and Migrants

“In Europe, citizenship and voting rights for immigrants and minorities are so important because this is the only way to create electoral alliances and interests on the political market against racism and xenophobia.” The political arena is open to the opponents of racism as well as its apologists. Political alliances can be built with “authorities who are independent of the political markets – religious or academic for example” or, once a certain critical mass of representation has been reached, directly through the electoral system. The latter approach, however, is only available to certain members of the polity, and this takes us into the heart of a key European political question: citizenship.

In the European tradition, suffrage and citizenship have stood as the guarantors of equality before the law. Those outside the net of citizenship – refugees, asylum seekers, immigrants – are least empowered to impact the political status quo. Stateless persons “can be considered third class citizens in many countries, where national citizens are first class and legal migrants second class.” Furthermore, these “new minorities” are often the most vulnerable

to racial abuse, but they have the least recourse to the law should they become victims. The absence of legal status amplifies the absence of legal protection: a justifiable fear of deportation prevents stateless people from bringing charges against the perpetrators.

One participant observed:

The issue of citizenship often has racist connotations in the distinction between citizens and non-citizens. Europe now has the concept of European citizenship – where citizens enjoy many rights and non-citizens have only some ‘benefits’ This carries a notion of exclusion and racist tendencies in many countries. Legally, the international texts and instruments are dubious on this issue. For example, the UN Convention [on the Elimination of All Forms of Racial Discrimination] says “this Convention shall not apply to distinctions, exclusions, restrictions and preferences, made by a state party to this Convention between citizens and non-citizens” (1965). The [European Union] Race Directive, Article 3, paragraph 2: “this directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.” We have in Europe by now two classes of persons – those who enjoy citizenship and the others, and this also has major racist tendencies and implications.

Governments and the media often treat racism and migration as unrelated issues – the first a human rights question, the second economic. Yet, given the frequency with which migrants are the victims of explicit racist abuse and even violence, the two are clearly bound. Maligning “economic migrants”, associating desirability with national origin, and stirring hostility against purportedly “bogus” asylum seekers implicitly supports the rhetoric of racism.<sup>25</sup>

This would seem to pose a dilemma for activists. Having fought for years on behalf of the rights of Hungarian and Roma minorities, human rights advocates in Romania are receiving increasing numbers of applications for assistance from people of Kurdish ethnicity and Turkish citizenship. There are 8,000 Kurds in Romania, hoping for access to national minority status, education in Kurdish for their children, or parliamentary representation – the same rights as the ‘old minorities.’ “Should Kurds receive this right or not?” asks one participant. His response, not shared by all, is discouraging: “I do not believe that to open this debate would improve the situation for minorities in Romania.”

A different perspective is offered by another participant, advancing a ‘possibility of a theory’: “People working in racism in the context of ethnic minorities and those working

on migrant rights, immigration and asylum seekers are working together because they feel they share a common agenda, which comes down to something we mysteriously call racism, whatever the definition. Despite the lingering Cold War divide, we are now witnessing the beginnings of a common set of strategies.” And this brings us back to political alliances and coalitions. Non-citizens are not only likely targets of racism; they are also potential allies in the fight against it.

### 3. PRACTICE: RESPONSES

The last decade has seen a blooming of anti-racist activity in Europe, and many people consider 1997, the European Year Against Racism, a significant milestone. Other parts of the world have also contended with racism. The experience of these countries may offer useful lessons, models, and warnings, when account is taken of quite different circumstances. Of course, racism has not been eliminated anywhere, but perhaps, to follow one participant, “the paradigm should be one of ongoing struggle, or as we used to say in the liberation struggle in South Africa: the struggle continues.”

#### 3.1 Responses to Racism I: Litigation in the United States

“America was a nation born in racism.” Following the Civil War – in which race played a significant role – it also became a nation re-born (in the eyes of some) in opposition to racism. However, progress in the long and often bitter struggle against discrimination in the US has not always been even. The period of “Reconstruction” that followed the Civil War gave way to a regressive era of “Redemption” in the late 19<sup>th</sup> century, which saw the rise of the Ku Klux Klan and a proliferation of racially segregationist laws. In 1896, the US Supreme Court’s ruling in the case of *Plessy v. Ferguson* formally “sanctioned apartheid in America” by validating ‘separate but equal’ laws.

The four-decade legal campaign to overturn *Plessy*, which culminated in the 1954 landmark Supreme Court decision in *Brown vs. Board of Education*, has been rightly lauded as a model of strategic litigation to combat racial discrimination in the courts. And yet, “the possibilities of social change through litigation are real but limited. In the US, progressive people go into law thinking they can obtain social change through litigation. But if we look to the courts as the primary vehicle for social change we will be deeply disappointed – we need activism to create a context in which courts are more likely to be responsive.” Litigation is highly dependent on the broader social and political climate. Thus, in the US, following the reforms brought about by *Brown* and its progeny, the Reagan era yielded a marked change in the federal judiciary, and a fundamental shift in courts’ receptivity to anti-discrimination litigation. And outside the courtroom, “the whole notion of political correctness demonises anti-discrimination and progressive

paradigms in a way that puts them on the defensive and puts reconstructed racist, homophobic, sexist and anti-progressive ideology back on the offensive.”

Meanwhile, struggles over issues of race continue to pervade many areas of American life. In the arena of criminal justice, according to one participant, roughly fifty percent of those incarcerated in American prisons today are African Americans, who make up twelve percent of the population. This may compare with Central and Eastern Europe, where many allege that Roma are imprisoned in comparable disproportion. Such ratios can be cited either as evidence of “Gypsy criminality” or as proof of institutional racism.

Notwithstanding the sea change that race relations in the US have undergone in the past century, more is yet to come. Current demographic trends suggest that, by the mid twenty-first century, there will no longer be a racially-defined numerical majority. So “the old racial paradigm – the black-white divide, which defined race in the States and still does – is no longer useful. We have to deal with race in a very pluralistic, diverse society.”

### 3.2 Responses to Racism II: Reconciliation in South Africa

South Africa’s democratic transition took place in parallel with the countries of Central and Eastern Europe, but, given the fundamental importance of race to the new state, much of the last decade has been devoted to bridging the racial gulf that existed after decades of apartheid. The achievements of the Truth and Reconciliation Commission (TRC) are well known. Less understood is the extent to which this admirable instrument at times elided the issue of racism. As one participant stated, “the contradiction of the goal of reconciliation was that to speak about race and racism would have been to fly in the face of this very goal of reconciliation.”

Recent modifications in South African law reflect, in the view of some, a shift in official policy – most particularly, a concern with the overall legacy of racism rather than with its daily manifestations. “For this reason,” asserted one observer, “responses based on law may have a better efficacy in South Africa than social action in other countries where the preparedness of the government to deal with the problem does not necessarily exist.”

Europe, it was noted, has no parallel to the TRC – forgiveness and reconciliation appear to be low on the agenda. And yet, expressions of remorse are, by themselves, not sufficient. As one participant argued, “toleration is a thin value unless it is accompanied by procedure.” Public acknowledgement of the truth, of the existence of current and historical racist attitudes, is perhaps a pre-requisite for the establishment of a truly tolerant and diverse society. But truth on its own does not guarantee that outcome – “there has to be deliberate social action and political will.”

### 3.3 Responses to Racism III: Civil Society

The support and energy of civil society were pivotal factors in the struggles against discrimination in both the US and South Africa. Through a wide variety of instruments, ranging from protests, rallies and demonstrations to targeted litigation, publication, and monitoring, civil society action was a primary motor for social change.

In Europe too, civil society initiatives against racism have proliferated recently. In Central and Eastern Europe, anti-racism emerged – if somewhat reluctantly at first – out of the central core of human rights NGOs such that today, several independent Helsinki Committees carry out a broad range of anti-discrimination initiatives despite limited resources. There are also a growing number of legal defence organisations, particularly focusing on the abuse of Roma in the region, and a plethora of research institutes and policy think tanks examining the problems of ethnic and national minorities. In Western Europe, anti-racism NGOs have arisen somewhat distinctly from – if necessarily a part of – the broader human rights movement. They have targeted much of their work at hostility toward immigrants.

Given the large number and small size of many such NGOs, competition – for funding and publicity – is not unknown. One solution is to build broad alliances with a range of actors – including “lawyers, judges, anti-fascists, Jewish and Roma organisations and other minority groups such as gays and lesbians.” One NGO, UNITED, encompasses 500 such organisations, maintaining a pan-European focus, “because policies transcend borders.” Such an inclusive approach challenges activists to move beyond the limitations of divisive group specifications, to return to the spirit of the UN Universal Declaration on Human Rights, and to concentrate on action rather than debate. “Shortly,” said one participant, “we will need all the alliances we can get.”

## 4. INSTRUMENTS: STRATEGIES

### 4.1 Legal Instruments

The law, one participant offered, has a limited role, but an essential one. “You can’t use the law alone to deal with discrimination and the law cannot deal with every aspect of discrimination.” However, civil law can be used to provide victims of discrimination with remedies, by way of compensation or court orders restraining acts of discrimination. And criminal law can be used to prohibit racial incitement or racial conduct leading to violence, or to impose enhanced penalties on those who commit other crimes with racial motivation. Where should advocates focus their efforts?

- 1) *Domestic anti-discrimination legislation*  
The adoption of the EU Race Directive and of Protocol No. 12 to the European Convention of Human Rights has created a whole new set of possibilities. First and foremost, the new norms must be translated into comprehensive domestic implementing legislation in each of the affected states. This requires political will, technical expertise, and a readiness to learn from the mistakes of others.
- 2) *The grounds of discrimination*  
Protocol No. 12 prohibits discrimination on a broad range of grounds, including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status. In a number of countries, different laws govern each separate ground, complicating the task of transposing new international norms into domestic legislation. Mechanisms which address all forms of discrimination and not simply racial discrimination may be more practical and efficient in the long run.
- 3) *The scope of anti-discrimination legislation*  
The scope should be broad enough to cover every possible discriminator, including all public authorities and private institutions. In the United Kingdom, for example, the 1965 Race Relations Act does not address actions by the police.
- 4) *Enforcement bodies*  
To ensure that the new legislation is adequately implemented, it may be necessary to establish an independent board or commission for this purpose. The commission will need wide ranging powers of investigation and sufficient funding to guarantee independence. Even then its proper functioning is not guaranteed. Some have suggested that the effectiveness of the UK's Commission for Racial Equality has been compromised by a judiciary largely unsympathetic to its aims. Ultimately judges who are able and willing to implement the law creatively are crucial to the success of anti-discrimination legislation. Furthermore, tribunals must have the statutory powers to make the necessary orders and awards.
- 5) *Extending the practical range*  
Once in place, anti-discrimination law can be used to impose requirements on certain institutions to monitor their performance and the proportions of ethnic minorities in their workforces. One participant pointed to legislation in force in certain places obliging corporations to maintain and file documents containing information about the ethnic composition of the workplace. Sanctions can then be imposed on the basis of the information collected by the alleged perpetrator. The law can also be used to impose requirements to maintain equal opportunities programmes, managed in conjunction with officials from the body set up to supervise implementation.

6) *Ensuring access to legal redress*

Access of individuals to information, to advice and to representation in a court is an essential foundation for effective anti-discrimination law. Many countries suffer from inadequate legal aid systems which fail to secure effective access to the legal machinery for victims of discrimination.

Virtually all of this is difficult to achieve without what Charles Epp calls a support structure.<sup>26</sup> This involves competent lawyers willing to take on discrimination cases, and the availability of funding to follow through on arduous court processes. But it also implies a public climate of receptivity and support for anti-discrimination laws, which is in turn dependent on education and the media.

## 4.2 Education

As a social phenomenon, racism is, to a great extent, about identity: the construction and clarification of individual identity in an environment of potentially heterogeneous groups. Of the many factors impinging on the question of identity, education is one of the most important, given its role not only in value-construction but also in the earliest experiences of group identification.<sup>27</sup>

An obvious area of importance is the curriculum. Many post-Communist countries inherited curricula which neglected the issue of racism, and more particularly the history and significance of the Holocaust. The Roma Holocaust – a defining event for the Romani people – appears in few textbooks. As one participant noted, “If students do not receive information about different communities in their society, about for instance Roma history and culture, they will have distorted views about these groups.” Activists can lobby for more inclusive curricula, and also publish and promote textbooks focusing on multicultural and human rights issues.

At least as important are the teaching methods used in schools. Relevant issues include: the classroom environment, be it democratic, authoritarian, or other; the attitudes transmitted by teachers about minority groups and cultures; and conflict resolution methods in use, if any, in the case of racist harassment or violence. The training teachers receive is of primary importance. In many teacher training institutes, courses in intercultural and multi-cultural education exist, and may be encouraged, but they are often not mandatory. As a result, not all teachers attend who would benefit.

Steps can be taken to ensure that the classroom experience underscores equality between minority and majority students. Often students from racial or ethnic minority groups find themselves alienated or marginalised in the classroom. By creating a “safe space” where they are comfortable, such students can make their voices heard. Building friendships between children of different ethnicity; creating opportunities for interaction and empathy;

integrating methods and content in the teaching of, for example, human rights or civic education – all of these methods have been successfully attempted in different contexts.

Of course, the education process is itself a function of the broader society. What attitudes do students acquire from their parents? How sensitive are teachers to the specificity of racial violence in the classroom? Should education be devoted to academic fundamentals alone, or should it include a focus on broader questions of citizenship? A strong case could be made that, as Europe integrates, multiculturalism needs to be a centrepiece of education.

### 4.3 The Media

The media plays a crucial role in the creation or alteration of social attitudes about race and ethnicity. In Central and Eastern Europe, this centrality is part of a recent historical trend which has seen the media serve as a forum for the discussion of democratic values. “The first appearance of political pluralism was reflected in pluralism of media”, with the result that “human rights debates were taken up by the media in many countries as central transition debates” after the collapse of the state controlled press and the emergence of a private media. It is striking that the weight given these issues was greatest both in countries that previously had enjoyed the most freedom – such as the former Yugoslavia – and those that had the least, such as Belarus.

At the same time, the emergence of hate speech targeting ethnic and racial minorities has forced many to consider at what, if any, point the demands of free expression must give way. “One of the undisputed achievements in the Central and Eastern European countries since the fall of Communism,” writes one observer, “has been the consolidation of freedom of expression. Thus, it is not surprising that political elites in the region have been loathe to set limits on this freedom by punishing those who incite national, racial or religious hatred or advocate racial discrimination or violence.”<sup>28</sup> Another expresses the dilemma as follows: “Unrestrained speech may endanger social stability. Restricted speech, on the other hand, may immobilise nascent civil society, limit fundamental freedoms, and stifle the lively criticism of government so essential to democracy.”<sup>29</sup>

The question is not academic, though it is one of the most profound puzzles of liberal thought. “Is hate speech to be the price we must pay for safeguarding free expression above all other rights? Sometimes it seems as though it only takes words to provoke genocide. The question [...] is whether we’re prepared to accept the price, and who pays it, and whether there are circumstances in which speech should be censored or even criminalised to protect those who really do get hurt.”

Notwithstanding the fundamental questions raised by attempts to address hate speech, debate on the media’s proper function have been surprisingly rare in the region. One

participant pointed to “the lack of a culture of debate in the region; the lack of knowledge on how to initiate a debate on the part of human rights groups; and the focus on particular segments of society when opening a debate. Intellectual debate does reach society through the media, but is often very simplified for digestion. Also there is the rise of an irresponsible, yellow type of journalism, which is now blooming. The debate has to be owned by many participants, it has to be inclusive and it has to be targeted when it begins.” Participants discussed the need for monitoring of racist hate speech in the media.

## 5. FUTURE STEPS

What else should be done? On the one hand, a number of specific things. The requirements of the newly adopted EU Race Directive must be disseminated widely and transposed into domestic legislation, both in the European Union and in the accession region. Protocol No. 12 to the European Convention on Human Rights, which sets forth an independent guarantee of non-discrimination, requires the ratification of ten governments for it to come into force. More governments must also make the requisite declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, in order to give the UN committee which oversees the Convention authority to entertain individual communications alleging violations.

These are all relatively clear. But a number of other things remain less so. Why, for example, are racist attitudes apparently in resurgence and how should they be addressed? Numerous explanations have been offered: failed states; the weakness of political institutions in newly democratic states to resist racist elements; the susceptibility of downwardly mobile segments of the population – those who have disproportionately suffered the economic costs of transition – to racist and/or aggressively nationalist appeals; and national or ethnic humiliation resulting from divided states or recent political change. Others have pointed to a vacuum of intellectual resistance which has allowed purveyors of hate to take the initiative.

More generally, when institutions have finite resources, is it enough to attempt to reduce the number of overt discriminatory acts and/or make the expression of racist beliefs socially unacceptable? Or is our goal to change attitudes? Should we not address the fundamental problem of intolerance towards others, and its political exploitation through the prism of what we have come to call race?

In addition to the foregoing, participants discussed a range of other possible measures to address racism and racial discrimination. These included the following:

1. *Training of immigration officials and border guards* – Programmes in, for example, anti-racism or sensitivity to the situation and needs of asylum applicants and refugees.

2. *Preparing potential host populations for refugees* – As EU candidate countries gain in levels of quality of life, political stability, and political/economic proximity to the EU, they can be expected to attract increasing numbers of refugees. Hence the need will arise to forestall the potentially negative consequences of such an influx, by undertaking education and race/ethnic-sensitivity programs for people residing in towns likely to be major recipient points.
3. *Training in investigation and prosecution of racist crime* – The July 19 meeting confirmed what numerous studies by inter-governmental bodies and NGOs have long indicated – that racist crime against minorities, though prevalent in much of CEE, is often investigated inadequately or not at all. The 1998 decision of the European Court of Human Rights in the case of *Assenov v. Bulgaria* (Application No. 24760/94, of October 28, 1998), provides a legal tool for litigators to use in seeking judicial review of prosecutorial non-indictment decisions, where credible evidence exists of police abuse. In addition, however, training is needed to help local law enforcement bodies to become more serious about, and effective in, the investigation and prosecution of racist crime. More specifically focused than overall human rights training, such a program might make use of expertise developed in a number of EU countries in the prosecution of racially-motivated violence.
4. *Mapping, analysing and educating government, media and the public about new forms of racism* – Despite the plethora of seminars and other fora devoted to racism and its attendant phenomena, there are few quality efforts to date to understand and map existing racist movements and theories as a basis for advocacy and/or public education. One set of studies could include: a) organisational profiles of racist institutions in each country; b) documenting racist acts, articles or broadcasts; c) surveying applicable law which addresses racism, including criminal law, media law, NGO law; d) surveying the range of government institutions which are, or should be, engaged in combating racism; e) analysing public opinion polling data on racism. Once published, these studies and/or summaries thereof might be used as advocacy tools with government officials, the media, and other actors.
5. *Addressing racism on the internet* – It seems only a matter of time before the wave of internet racism which has afflicted a number of Western European countries moves eastward with the increasing technological capabilities of post-Communist states. NGOs and governments might build on, and apply in Central and Eastern Europe, existing programs which have raised awareness among internet providers about the racist content of some of their sites, and encouraged them to adopt and follow an anti-racist policy.

6. *Enhancing advocacy before the UN Committee on the Elimination of Racial Discrimination (CERD)* – Participants at the July 19 meeting noted that, although the International Convention for the Elimination of Racial Discrimination provides the strongest legal protection in existence against racial discrimination, and although this Convention has been widely ratified, its supervisory and enforcement powers have been under-utilised. Notwithstanding persistent underfunding, the CERD has evidenced an ability to issue accurate findings of racist government practices when provided with adequate documentation by NGOs. Furthermore, when publicised effectively, CERD “concluding observations” offer powerful ammunition for anti-racism advocates to use in domestic litigation, public education and lobbying. Concerned partners might establish a program to train advocates for racial and ethnic minorities to prepare quality submissions, to undertake effective face-to-face advocacy with CERD members, and to publicise the findings of resulting CERD reports in local media and among government officials.
  
7. *Race statistics* – The tension between the right to information and the right to privacy has been widely recognised, if not definitively resolved. Nowhere is the difficulty of reconciling these tensions more pronounced than in the field of race relations. Fundamental to the task of promoting civil rights and non-discrimination throughout Europe is accurate documentation of the subordinated position of racial and ethnic minorities in many areas of public life. Statistical information is a prerequisite for the formulation of government policy. It is particularly crucial in addressing, and providing evidence to support, claims of racial discrimination. And yet, if statistics are needed to document the condition of minorities and prove legal violations, many understandably fear the abusive purposes to which statistics have been – and can be – put. Some actively oppose renewed efforts to gather information on the number of ethnic minorities in schools, courthouses and prisons. Others, mistrustful of the willingness and/or capacity of government and other officials to maintain the confidentiality of collected information, counsel non-cooperation with surveys and census counts. Some data protection laws are interpreted in such a way as to hinder the collection of race- or ethnic-coded statistics. The unfortunate consequence is that non-discrimination advocates are handicapped by scarce reliable information, and allegations of racial discrimination often lack the persuasive power which statistical evidence would provide. Some discussants agreed on the need for legal and empirical research to make clear the legal status of race- and ethnically-coded data, and its availability for use by governments and advocates in combating racial and ethnic discrimination.

# Notes

- <sup>1</sup> Stephen Humphreys, Program Coordinator, Open Society Institute, acted as Rapporteur and drafted this synthesis, which was edited by James A. Goldston, Deputy Director, Open Society Institute. Unless otherwise noted, quotation marks in the text denote comments made by participants in the July 19 meeting. Despite universal rejection of the idea of human “races”, the term “racism” is commonly used to denote a wide range of forms of discrimination against people on the basis of colour, ethnicity or religion. The present document follows this convention without seeking to define racism precisely.
- <sup>2</sup> C. Gearty, “Racism, Religious Intolerance, Xenophobia,” in P. Alston, ed., *The EU and Human Rights* (1999), p. 328.
- <sup>3</sup> G. Verheugen, “The Answer Is – Europe,” in European Monitoring Centre on Racism and Xenophobia, *European Media Conference – Cultural Diversity against Racism: Documentation* (1999), p. 22.
- <sup>4</sup> “France Finds Rise in Racist Violence,” *International Herald Tribune*, March 16, 2000.
- <sup>5</sup> *International Herald Tribune*, July 18, 2000.
- <sup>6</sup> The Comité des Sages consisted of Judge Antonio Cassese, Catherine Lalumiere, Peter Leuprecht, and Mary Robinson. See Comité des Sages, “Leading by Example: A Human Rights Agenda for the European Union for the Year 2000” (1998), para. 11. See also P. Alston and J.H.H. Weiler, “The European Union and Human Rights: Final Project Report on an Agenda for the Year 2000” (1998), para. 32 (noting “a resurgence in racist and xenophobic behaviour, a failure to fully live up to equality norms or to eliminate various types of discrimination”).
- <sup>7</sup> C. Gearty, *supra*, p. 329.
- <sup>8</sup> See “The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny” (1999); Human Rights Watch/Helsinki, *Racist Violence in the United Kingdom* (1997).
- <sup>9</sup> Y. Trofimov, “Berlusconi urges anti-immigration bill,” *The Wall Street Journal Europe*, March 31–April 1, 2000, p. 1.
- <sup>10</sup> Nepszabadsag, March 10, 2000, p. 5.
- <sup>11</sup> Transitions Online, *Week in Review*, February 21–27, 2000. The “wall” was apparently an allusion to a wall constructed in the town of Usti nad Labem in 1999 at the behest of ethnic Czech residents who sought to restrict the movement of Roma in the town. The wall was pulled down after criticism from the European Union and Roma rights activists.
- <sup>12</sup> Radio Prague, December 29, 1999.
- <sup>13</sup> Radio Free Europe/Radio Liberty, December 30, 1999, citing a December 28, 1999 article in the Czech daily, “Hospodarske noviny.”
- <sup>14</sup> S. Erlanger, “Life is getting much worse for Gypsies, Europe’s scorned minority,” *International Herald Tribune*, April 3, 2000, p. 6. Of course, anti-Roma sentiment is by no means confined to Europe. In March, a Canadian judge acquitted six men of promoting hatred against the Roma people. Accused of demonstrating outside a motel housing Czech Roma asylum applicants, the men were reported to have worn swastikas, made stiff-armed salutes, and held up placards urging motorists to “Honk if you hate Gypsies.” The Ontario Court judge found no evidence that “Roma” and “Gypsy” meant the same thing. J. Saunders, *The Globe and Mail*, March 25, 2000, p. A-10.

- <sup>15</sup> See Part III, p. 93.
- <sup>16</sup> COM (96) 615 (final) of November 27, 1996.
- <sup>17</sup> Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1, para. 1. See Part III, p. 105.
- <sup>18</sup> However, the individual complaints mechanism of the Convention has been underused. To date, only 30 governments have, pursuant to Article 14 of the Convention, agreed to the Committee's jurisdiction to entertain individual or group complaints, and the Committee has issued fewer than two dozen decisions.
- <sup>19</sup> UN Economic and Social Council, Document E/CN.4/1999/WG.1/BP.7, "United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives", background paper prepared by Theo van Boven, member of the Committee on the Elimination of Racial Discrimination, February 26, 1999.
- <sup>20</sup> See M. Ahtisaari, J. Frowein, M. Oreja, Report on the Commitment of the Austrian Government to Common European Values (September 8, 2000), para. 117.
- <sup>21</sup> Cited by participant during discussion, July 19, 2000, Budapest.
- <sup>22</sup> Cited by participant during discussion, July 19, 2000, Budapest.
- <sup>23</sup> This question is discussed at some length in "Minority Rights and EU Enlargement to the East. Report of the First Meeting of the Reflection Group on the Long-Term Implications of EU Enlargement: the Nature of the New Border", G. Amato and J. Batt, Robert Schumann Policy paper No. 98/5, 1998 (available on the internet at: <http://www.iue.it/RSC/Amato98-PP.htm>).
- <sup>24</sup> In addition to Austria, in recent years extreme right-wing parties have scored electoral successes to varying degrees in Denmark, France, Germany, and Switzerland. In much of Eastern Europe, by contrast, support for extremist parties has remained static or fallen in the last decade. See Nils Muiznieks, "The Struggle Against Racism and Xenophobia in Central and Eastern Europe: Trends, Obstacles and Prospects" (July 2000); G. Amato and J. Batt, *supra*; Richard Rose, "Another Great Transformation", *Journal of Democracy*, Vol. 10, No. 1 (1999).
- <sup>25</sup> See, e.g., "Concluding observations of the [United Nations] Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland," 18/08/2000, CERD/C/57/CRP.3/Add.9 (recommending that the state "take leadership in sending out positive messages about asylum seekers").
- <sup>26</sup> See Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (1998).
- <sup>27</sup> This is reflected in Article 26 of the Universal Declaration of Human Rights, which provides: "Everyone has the right to education. Education shall be directed to the full development of the human personality, and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace."
- <sup>28</sup> Nils Muiznieks, *supra*.
- <sup>29</sup> Andras Sajó, "Hate Speech for Hostile Hungarians," *East European Constitutional Review* Vol. 3, No. 2 (Spring 1994), p. 82.



P A R T I I

Presentations  
and  
Selected Discussions

*From the Transcripts of the Meeting*

Budapest, Hungary  
19 July 2000



*Presentations and Selected Discussions*

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# 1. Introduction

*James A. Goldston*

OSI has been involved in the struggle against racism and its associated phenomena since its inception in South Africa 20 years ago. And that activity has continued over the past decade as OSI developed in the post-Communist countries of Central and Eastern Europe and the Former Soviet Union. You have a brief written summary in the background materials about our activities in this field, and Emily Martinez will speak about them shortly. To be sure, they are extensive. Nonetheless, the OSI Sub-Board on Law and Human Rights, of which Professor Andras Sajo is a member, convened this meeting in order to consider, in view of all that OSI and numerous other institutions are presently doing, to what extent existing approaches are adequate to the problem, and/or whether there are not other efforts that should be undertaken, and/or other ways of addressing the problem, that have not been pursued to date.

I would like to highlight three separate ambiguities or paradoxes which surround these discussions – about how to assess the present situation, about what we should do, and about what is the problem we are talking about.

## 1.1 Ambiguity about the present situation

On the one hand, there has been a recent increase in activities addressing racism on the part of both intergovernmental organisations, notably the EU and the UN, and civil society in the region which is bristling with activity today. Examples of the former are:

- The Race Directive recently adopted by the EU, which represents a significant step forward in its prohibition of discrimination in employment, access to public accommodations and other fields on the grounds of race.
- The adoption last month by the Committee of Ministers of the Council of Europe of Protocol 12 to the European Convention on Human Rights – an enormous advance over the subsidiary protection of Article 14 of the Convention. For the first time under this Protocol the Convention would have an independent non-discrimination guarantee, analogous to, if not quite as protective as, Article 26 of the UN International Covenant on Civil and Political Rights.
- Preparations for the European Conference Against Racism this autumn as a prelude to the World Conference Against Racism to be held in South Africa under UN auspices.

- Recent establishment of the European Monitoring Centre on Racism and Xenophobia by the European Union.

As for civil society, the NGO movement against racism, either generally or on behalf of the rights of individual minority groups, has grown ever more vigorous since 1989. To take a field I know somewhat, there are hundreds of Roma rights organisations populating the landscape today who simply did not exist ten years ago. Many of them are issuing press releases, documenting violations, and launching lawsuits challenging police abuse, discrimination in education and in access to goods and services.

And the results of this activity, at international level, and in civil society, have not been insignificant. There have been successes and advances. To take one example, ten years ago, no government in the Central/East European region even acknowledged, let alone did anything about, racially motivated violence and discrimination against the Roma minority. Today, as a result of pressures from above and below, including an increasingly significant Roma rights movement, governments cannot afford to overlook the issue, many have publicly pledged reform, and a few have begun the long process of changing laws and attitudes to break the centuries-old cycle of oppression. So there is progress. It takes time, it is inadequate, and it is not clearly sustainable absent persistent pressure from Roma advocates. But it is unmistakable.

On the other hand, racism is on the rise in Central and Eastern Europe and elsewhere, according to many sources including the Eurobarometer, statements of EU officials and the ECRI reports. There is a reported rise in racist and anti-Semitic speeches by politicians in the region. It is hard to open a newspaper without seeing evidence of racism. Yesterday's [July 18, 2000] International Herald Tribune, for example, reports a 5% increase in skinhead violence in Germany since 1998. A student is quoted as saying "We want to stop this, we would like to challenge the neo-Nazis who are giving our cities a bad image, but it is dangerous. We have to be reasonable and heed our fears in the presence of a right that is so dominant and aggressive."

There may be a causal relationship between the rise in racism and the rise in anti-racist activity. The coming to power of Jorg Haider's party in Austria was a significant impetus for the recent passage of the Race Directive.

## 1.2 Ambiguity about what to do

There is some ambiguity about what should be done. On the one hand there are very clearly many specific things to do:

- With regard to the Race Directive there is a need to implement this in national legislation not only in the Member States but in the various countries of Central

and Eastern Europe which hope to join the European Union, since it now becomes part of the *acquis communautaire*. Those who are interested in fighting racism will have lots to do, educating activists and governments both in the EU and in the accession region about the requirements of the directive and how it should be adequately implemented and enforced.

- Similarly with regard to Protocol No. 12 of the European Convention on Human Rights, ten governments must ratify it in order for it to become valid and enforced. This requires substantial work on the part of advocates.
- There is a great need to get governments to make the requisite declaration under Article 14 of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD), in order to give the UN Committee which oversees the ICERD the authority to entertain individual communications alleging violations thereof. The ICERD is a wonderful document – it is also perhaps one of the most under-utilised mechanisms in the world with respect to racial discrimination and governments need to make better use of it as do activists.
- Finally – the issue of race statistics. Governments throughout Central and Eastern Europe have pledged to take measures against discrimination, but through law or practice have actually denied themselves the very tools – that is statistics based on race or ethnicity – needed to measure the effects of the very measures they pledge. There is a clear need to reform law and practice so as to make race statistics available to governments and anti-discrimination activists in a way that is consistent with data-protection and privacy concerns.

These are all relatively clear. But a number of other things remain far less clear. Why, for example, are racist attitudes in resurgence and how should they be addressed? Numerous explanations have been offered as to why racism is on the rise in this region over the past decade. People have referred to:

- Failed states – the political weakness of institutions in new, nascent or not-yet democratic states;
- Downward mobility – the economic costs of transition (and the resulting frustrations) endured by significant segments of the population made newly vulnerable to globalisation in its various manifestations;
- National or group humiliation – borne of recent political change, state division, political manipulation of perceived ethnic differences;
- Vacuum of anti-racist resistance – the lack of an intellectual framework within which to respond to renewed racism, which has allowed advocates of racism to take the initiative.

A larger question is: should we be concerned only about punishing and preventing acts of discrimination, or are we interested in changing the way people think, which may be more complicated? Yes, they are related. But in the real world where institutions have finite resources, and must decide how most efficiently to marshal them, might it not be acceptable simply to try and reduce the number of overt discriminatory acts and/or make socially or even legally unacceptable the expression of racist beliefs? On the other hand, is there nothing that can be done to address the fundamental problem of tolerance towards others, and how that intolerance is socially constructed and politically exploited through the prism of what we have come to call race?

In thinking about how to act we have to be aware of the all-encompassing nature of racism, the intimate links between racist attitudes and core human notions of identity. And thus the fact that efforts to tackle racism will necessarily address every sphere of public life, from police to the schools to legal systems to the very advertisements which we see on television and street billboards. While we seek right answers we need to be humble and realistic as to our capacities.

### 1.3 Ambiguity about what we are talking about

Finally, there is some uncertainty about the language that we use. Racism is a large topic, and throughout Europe people are addressing it using different terms. Examples include: racism; ethnic hatred; intolerance; anti-Semitism; Islamophobia; xenophobia; Fascism; the radical right; anti-immigration.

There seems to be a difference between Central/Eastern and Western Europe, in that in the former – the post-Soviet region – many anti-racist movements seem to arise from within a purely human rights discourse and to explicitly make reference to that discourse in their language and their viewpoints. Whereas in Western Europe there has been somewhat of a divide between anti-racism and the promotion of human rights, and the discourses are not always as closely aligned.

### 1.4 Our discussion today

So those are some of the issues which I hope will inform our discussion today. As we try to address root causes, we intend that this discussion helps OSI and its partners in the region consider what concrete steps – intellectual, organisational, financial, or in the realms of law and advocacy – can be taken to address these problems.

This discussion is the first stage of a longer exploration OSI seeks to have about these issues. Today we do not hope for definitive answers, but rather for ideas we can mull over in weeks and months to come as we consider how to tackle these problems. I apologise

for the entirely too-crowded nature of this discussion and the fact that everything is far too compressed and there will surely not be sufficient time to consider everything. But I hope the knowledge that this is only one moment in a continuing dialogue may temper somewhat any frustration you may feel about the lack of depth which necessarily results from abbreviated time.

We will commence briefly with presentations about what a few organisations are now doing in the field of racism. We will move on to a longer discussion about the roots and characteristics of racism in the region, then to the question of societal response: is there one? What is it? How does it compare to responses in the United States and South Africa? Finally, we will close with a session on building strategies to combat racism in different fields.

## 2. Current Work of Selected Organisations Fighting Against Racism

### 2.1 THE EUROPEAN UNION

*Dr. Beate Winkler*

Racism is a complex problem. It is linked to the problems of all societies, not only Europe – to facts but also to feelings, to hate, to anxiety, to fear of the future. Racism is not a new problem in Europe – what is new is the gathered strength with which the EU is tackling this issue. The European Parliament published its first report on racism in 1986 – the problems we are tackling now are rather old. Many proposals have been elaborated, but there has been a tremendous lack of implementation

The year 1997 was a turning point. Not only was it the European Year Against Racism, but it was the first time that Europe really networked against racism. This was because people became aware that racism, xenophobia and anti-Semitism were a threat for Europe – a threat to the principles of the EU, principles of human rights, equality, diversity. 1997 was also a year of new legal initiatives: Article 13 of the European Treaty; the Treaty of Amsterdam; and also the European Monitoring Centre. The Centre was a new initiative of the EU, a European agency. It is an independent body of the EU, due to the deeply political nature of the issue. The task of the EUMC is to collect data and information, to analyse and to work out strategies. Also in 1997 a new network of NGOs was formed tackling racism, campaigning and initiating new systems of information.

Race Directive: we have to use the opportunity to tackle anti-discrimination legislation in all member states so that we will have the best legal measures to combat racism. The Monitoring Centre is a network organisation, a bridge builder between the different areas of life. The issue is extremely complex. It is linked to all areas of life – politics, education, culture, media, economic and social affairs. We have to tackle complex problems with complex answers, but at the same time we must reduce it to a manageable problem. We adopted a broad but practical approach – concentrating on our priorities. RAXEN is our new information network with 15 national focal points. They will be chosen after a long but transparent tendering procedure. The aim of the network is to identify needs and knowledge, experience and new approaches in the member states. The result was

unanimous agreement on a concept – to establish 15 focal points between research centres, NGOs and specialised bodies, starting with a so-called mapping exercise. To establish our work on the existing structure and existing knowledge, to establish what is known where and by whom. There is a lot of competition in the field, but the Centre is not competitive – we are a service organisation, networking and trying to bring forces together.

There was a decision not to rely on governments – other EU agencies have asked governments to nominate their focal points, but the EUMC itself took responsibility because governments are sometimes a part of the problem. A new system of data collection is to start by the end of this year. We are calling round tables between experts in member states to identify what are the key issues, the key questions. How can you find the right answers if you don't have the right questions? Some initiatives in this field are also counter productive – people don't know how to tackle hate and anxiety and you have to integrate this new dimension from the beginning. To sum up, the following are the activities of the European Monitoring Centre on Racism and Xenophobia:

- a) set up and co-ordinate a European Racism and Xenophobia information network (Raxen),
- b) build up co-operation between the suppliers of information and develop a policy for concerted use of their databases;
- c) carry out scientific research and surveys, preparatory studies and feasibility studies,
- d) set up documentation resources open to the public,
- e) develop methods to improve the comparability, objectivity and reliability of data at Community level,
- f) initiate Round Tables on a national level,
- g) formulate conclusions and opinions for the Community and its member states,
- h) publish an annual report on the situation regarding racism and xenophobia.

## 2.2 THE UNITED NATIONS

*Prof. Theo van Boven*

The UN has been involved in issues of racism and discrimination ever since its inception as a reaction against Nazism. On that basis, the Universal Declaration of Human Rights was drawn up and also the Genocide Convention which has now received renewed attention through the ad hoc tribunals and in the statute of the permanent International

Criminal Court. Another factor was the condemnation of white supremacy as a striking feature of colonial rule, and of apartheid as the most institutionalised form of racism.

Both these factors led people to believe that racism was somewhere else: in South Africa or in the past, but now we have come to believe that racism is everywhere – it is not only a matter of foreign affairs, of foreign policy, but also a domestic concern. The UN Convention for the Elimination of All Forms of Racial Discrimination (ICERD) of 1965, which is the most comprehensive UN document against racism, relates not only to race, but also colour, descent, national or ethnic origin. We still don't know what a race is – there is only one race, the human race.

Under the ICERD we deal with old and new minorities, with deeply rooted and entrenched discrimination, anti-Semitism or discrimination against the Roma/Sinti, and with contemporary forms of slavery in particular. Trafficking of women is a huge problem – as is the whole sex industry, which has both sexist and racist aspects.

Current activities are of three types: monitoring, study and identification of issues, and policy review and policy formulation.

### 2.2.1 Monitoring

- a) The Committee on the Elimination of Racial Discrimination is a treaty body based on the Convention of 1965 which started functioning in 1969 and carries out periodic reviews based on country reports. All States Parties (there are now around 160) have to report periodically every two years. Concluding observations are drawn up on the basis of dialogue with the state and with NGOs, and include suggestions and recommendations. This has developed in a more specific and meaningful manner since the end of the cold war in 1990/1. However, the examination of complaints based on article 14 of the ICERD is an under-utilised procedure. The Committee has also been taking up 'urgent situations' on the basis of early warning systems and procedures, not only in Yugoslavia and the Great Lakes region but also in, for example, Australia and the Czech Republic. Finally, a thematic consideration of the Roma – as opposed to a country by country analysis – will take place in August.
- b) A charter-based instrument not limited to states parties is the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, established by the United Nations Commission on Human Rights. Recent missions to Romania, the Czech Republic and Hungary have focused on forms and manifestations of discrimination against Roma. The Special Rapporteur deals with allegations, which he transmits to governments, and

includes government replies in his reports. He pays particular attention to contemporary manifestations of racism – against blacks, negrophobia, anti-Semitism, discrimination against Roma and Islamophobia.

### 2.2.2 Study and identification of issues

The Sub-commission on the Promotion and Protection of Human Rights is a sub-commission of the UN Commission on Human Rights. Their work includes studies on globalisation – increased instances of racism and xenophobia, the rights of non-citizens and the impact of affirmative action; working groups on contemporary forms of slavery – trafficking persons and exploitation of the prostitution of others; domestic and migrant workers; bonded labour; indigenous populations – land rights and the establishment of a new and permanent forum for indigenous people in the UN, to allow decision-making in their own interests.

### 2.2.3 Policy review and formulation

Preparations are underway for a World Conference Against Racism and Racial Discrimination, Xenophobia and Related Intolerance – in South Africa, September 2001. UN preparations are taking place also on the regional level. A European Conference Against Racism and Racial Discrimination will take place in October in Strasbourg. The role of civil society is essential. There are five main themes on the agenda:

1. Sources, causes, and forms of contemporary racism and racial discrimination, xenophobia and related intolerance.
2. Victims of racism.
3. Measures of prevention, education and protection aimed at the eradication of racism at national, regional and international levels.
4. Provision of effective remedies, recourses and redress, compensatory mechanisms at all appropriate levels, national, regional, and international. This is currently in brackets because Western countries have opposed the issue of compensation – particularly claims for historical wrongs done by the slave trade and to indigenous people. The issue is becoming very controversial.
5. Strategies to achieve full and effective equality including international cooperation etc.

The conference is the major preoccupation for coming years. Previous such conferences were not much of a success.

## 2.3 OPEN SOCIETY INSTITUTE AND THE SOROS FOUNDATIONS NETWORK

*Emily Martinez*

The Open Society Institute-Budapest was established in 1993 to develop and implement programs in the areas of educational, social and legal reform. OSI-Budapest is part of the Soros foundations network, a group of autonomous organisations created and funded by George Soros and operating in over 30 countries around the world, principally in Central and Eastern Europe and the former Soviet Union but also in Guatemala, Haiti, Mongolia, Southern Africa and the United States. One of the priorities of the Soros foundations network is to promote ethnic and social tolerance and protection of the rights of minorities. Hence, a wide range of programs within OSI-Budapest support projects and initiatives that, on the one hand, challenge prejudice and stereotypes among ethnic and racial majority populations and, on the other, capacitate and address the needs of minorities. Furthermore, within each of the national Soros foundations, programs are developed to deal with the specific educational, legal and cultural needs of minorities living in those countries. Please find following a brief overview of the kind of activities OSI supports.

### 2.3.1 Information programs

OSI supports a myriad of initiatives at the local and regional level with the aim of promoting exchange and distribution of information in support of racial and ethnic understanding. The East-East program engages people in discussions of problematic subjects and encourages dialogue to overcome stereotypes, prejudices, phobias, national exclusivity and isolation by provoking interactive exchange through, for example, seminars, workshops, roundtables and exchange visits. The program supports hands-on participation and new methodologies of cross-cultural and interdisciplinary communication. The Center for Publishing Development supports local-language access to international titles on Roma-related issues by providing grants for translations in this field. In 1999, CPD supported the translation of 22 titles into 9 languages, and a new competition has been announced in 2000. The Network Library Program also provides collection development grants for libraries planning to increase the number of titles by or about Roma.

The Network Media Program works at several different levels to combat racism and promote ethnic tolerance.

#### 1. *Regulatory framework*

The NMP provides support both for legal regulation and self-regulation. With regard to governmental/legal regulation, the program works with the Council of Europe

and other international organisations in providing expertise and support to local groups advocating for legislative change, though the program does not typically become directly involved in legislative drafting. NMP is also active in supporting industry-wide and/or professional organisations working to draft codes of ethics. In Slovenia, for example, the public media recently adopted a framework for self-regulation.

2. *Coverage of minorities*

NMP has funded initiatives to train journalists to report on a more diverse range of groups and subjects, and to reflect more upon the implications (for, among other things, racial/ethnic harmony) of their work. However, the program also tries to promote the training of civil society actors to involve the media in their work more effectively.

3. *Minority media and minority representation in mainstream media*

The NMP has been very active in funding minority media and trying to ensure that minority media in a country will be sustainable. The program has also sought to promote minority representation within mainstream media, but the NMP's priority remains media in minority languages and minority media. NMP has also supported initiatives that make information about minorities available, for example news agency reporting.

4. *Monitoring*

The program supports media monitoring efforts throughout East Central Europe and the former Soviet Union. The program attempts to support only those monitoring efforts that include an effective strategy for using the information collected. NMP also organises training courses on how to monitor the media effectively, which are both tailored for each country and focused on a particular issue.

### 2.3.2 Legal, governance and human rights programs

The OSI Sub-Board for Human Rights, Law and Criminal Justice encourages all network programs and national foundations to integrate minority issues throughout their work. The Constitutional and Legal Policy Institute supports projects that are aimed at the protection of national minorities through legislative assistance, legal training of key professional groups (such as civil servants of competent ministries, staff and members of government-minority dialogue bodies, the judiciary, and the police), exchange programs, and summer schools. The OSI Sub-Board for Human Rights, Law and Criminal Justice also provides funding to organisations supporting and protecting the rights of minority communities throughout Eastern and Central Europe. Currently, the program is providing funding to approximately 25 organisations working to protect the rights of minorities.

The Roma Participation Program (RPP) works to help Roma help themselves in the struggle for greater integration into the societies of the countries in which they live. It aims to empower them to take part in the democratic process and to fight for an open society in which they are equal partners. The RPP supports local Roma activists and offers a variety of programs to help them establish and administer their own projects and institutions. It provides special training in civil rights and community development, as well as in professional fields such as education, media and health. Special attention is given to the training of Romani women. RPP supports more than 30 Romani organisations in 9 countries across Eastern and Central Europe.

The Local Government Initiative has launched a program aimed at providing local government and public administration officials with technical support to design and implement multicultural policies that meet the needs of diverse communities. The initiative includes leadership training programs for minority leaders, a web-based best practices database, an internet-based information exchange program and other region-specific programs designed to strengthen the capacity of local governments.

### 2.3.3 Education programs

Many of the national foundations' educational programs focus efforts on ensuring equal access to quality education. For example, using the Step-by-Step model, many of the national foundations support pre-schools within minority communities with the aim of preparing children from those communities for primary school education. Many of the foundation programs also include mentoring and scholarship programs for young minority students. At the higher education level, *Romaversitas* is an educational program for Hungarian undergraduate students of Roma origin. The college aims to broaden students' knowledge and strengthen their Roma identity and their ties with the Roma community, in an effort to assist them in the continuation of their university studies. In addition, the Higher Education Support Program and the Central European University provide support to a variety of summer schools, seminars and workshops aimed at promoting the development of curricula in ethnic minority studies. Finally, the Fellowship program aims to identify and support the next generation of open society leaders in Central and Eastern Europe and support their policy research. Many of the fellows selected are conducting research on minority policy issues in the educational, legal and media fields.

### 2.3.4 Arts and culture programs

Many of the programs within the national Soros foundations include a substantial component exclusively for the promotion of minority cultures. In addition, the Roma Cultural Initiative is an OSI-Budapest-based grant-giving program, which aims to support

Roma in their efforts toward self-reliance, and to provide the general population in Central and Eastern Europe with informed material on Romani culture. The program has received over 300 project applications in response to requests for proposals in support of Roma high culture: history, art, language, oral and written literature, cultural anthropology and musicology. The Cultural Link provides funding that enables professionals in the region to cooperate, exchange and develop art and culture projects which combat social exclusion and ethnic intolerance.

### 3. Sources, Origins, Characteristics of Racism in Central and Eastern Europe

#### 3.1 THE RISE OF EXTREMISM IN CENTRAL AND EASTERN EUROPE

*Nils Muiznieks*

Why has work against racism only recently come out of the ghetto? My paper [*The Struggle against Racism and Xenophobia in Central and Eastern Europe: Trends, Obstacles and Prospects*] reviews the survey data in the region, and highlights:

- a) the understandable reluctance in the region to prosecute hate speech;
- b) the apparent rise in racist crime and challenge of dealing with (trans-national) extremist groups;
- c) the legal, educational and civil society efforts in the last few years to combat racism – traditional remedies of law and education take a lot of time. These countries don't have time because new problems are compounding old ones, problems such as changing from countries of emigration into countries of immigration. Also new technological developments – racism on the internet and so on.

Is extremism on the rise? It depends on which country you look at and which indicators you use. We don't have a lot of systematic analyses and comparisons. The core indicators are: support for extremist parties; racist crime and violent attacks; survey data on ethnic distance; attitudes towards minorities, immigrants, asylum seekers.

The European Monitoring Centre will hopefully develop some consistent methodologies allowing for comparison. The Eurobarometer is a start, but we also need race statistics and data on racial crime.

There has not been a marked rise in anti-minority sentiment in the region in the 1990s. However there probably has been an increase in racially motivated crime and violence, particularly in the Czech Republic, Slovakia and Bulgaria. But it is difficult to know if this is new or if it was merely hidden before. While many of the victims are the traditional targets – Roma and Jews – some are refugees and asylum seekers, newcomers to the region.

Also new is racism on the internet – this is undoubtedly on the rise everywhere and is just emerging in certain countries in the region. The Simon Wiesenthal Centre are doing work on combating internet hate, which may provide a possible interface with OSI.

Some of the forms of racism are new, and some of the targets are new, but the phenomenon has been around for a long time in Europe both East and West. The Council of Europe have issued a publication reviewing efforts combating intolerance and xenophobia since 1969 and the European Parliament has commissioned studies and passed a great number of resolutions since 1985. It is not surprising that racism would become visible after the collapse of Soviet Union, Yugoslavia and Czechoslovakia after 1989.

Before the mid-1990s anti-racist work was in an intellectual ghetto. There were studies and resolutions but little action, few resources, and little political will. As Professor van Boven points out we are past the third UN decade against racism, but unfortunately UN work has been largely ignored in Europe.

One reason anti-racism discourse was in the ghetto is because minority rights were in the ghetto. Minority rights discourse and anti-racist discourse are distinct, but they overlap considerably – especially in the realm of non-discrimination. For a long time most regional human rights organisations were afraid to even use the word ‘minority’. Important EU member states denied the existence of minorities, human rights thinkers thought that minority rights were a distasteful form of particularism, and many subscribed to the illusion that minorities would disappear through assimilation or through re-emigration if they were guest workers. It took a long time for these illusions to disappear and for people to realise that a false universalism – human rights for all – could degenerate into human rights only for the majority.

The 1990s were a very busy decade for minority rights. It is striking that it was only in the 90s that all these documents of the OSCE, the Council of Europe and the UN were adopted. It is new that we have minority rights standards at the regional level, and good ones. For the EU a turning point seems to be 1997 under the Dutch Presidency. In that year a conference on governance and European integration featured a workshop on cultural diversity, organised by the High Commissioner on National Minorities. Getting minority rights on the agenda was considered a great success at the time.

Now that the EU is talking seriously about racism and minority rights, the Central and Eastern European countries have begun to pay attention as well. Countries of the region often ignore the OSCE and the Council of Europe, but when the EU speaks the candidate countries listen. European organisations have begun to cooperate with the UN on the issue. ECRI and the OSCE were actively present and participating at the UN conference in Warsaw, and the European Conference Against Racism and Xenophobia in October

is slated as a European contribution to the UN event. Mary Robinson will be a speaker. There has not been this kind of cooperation before.

So the issue seems to have come out of the ghetto. Reasons: the Yugoslav wars; the rise in immigration and asylum seekers; a critical mass of Social Democrats in key positions in Western Europe; the realistic prospect of EU enlargement and the fears of Western Europeans of an influx of Easterners, particularly the Roma; and, lastly, time. The issue took a long time to wind its way through the EU bureaucracy and now that it has done so there's money available for fighting racism and money is sexy. This interest is now institutionalised and is here to stay and that bodes well for those in Europe and those in this challenging but thankless line of work.

## DISCUSSION

[Nils Muiznieks]

How confidently can you say whether racism against Roma is increasing in the region?

[Dimitrina Petrova]

It depends on which country and exactly whether you're talking about police, skinheads, or let's say pogroms of the mob law type. I'm not comfortable with a generalisation of the type 'racist violence against Roma has risen in the region over the last ten years'. Because I'm not sure whether it holds true for all countries, all types of violence and whether it is due to a real rise in violence or better reporting. But certainly there can be cases where you can say in a limited way that such and such a violence in a certain country has gone up. Certainly skinhead violence has gone up in the Czech Republic, while it has gone down in Hungary where it peaked in the early nineties. Certainly mob law in Romania has virtually disappeared, but police raids have not. It's a very complicated picture.

[Columbus Igboanusi]

Violence against Roma in Slovakia is on the increase and there is no state organised mechanism to actually combat the rise of racially motivated crime.

[Boris Tsilevich]

The role of the EU is really crucial in Central and Eastern Europe, because this is a real carrot – a real way in which governments in the candidate states can be influenced. You say the role of the EU in the fields of anti-discrimination, racism and minority rights is growing. Do you really think so? It is true that minority rights are mentioned in the

Copenhagen criteria. But we know that the new Race Directive doesn't mention a single word about minority rights. And several key states in the EU refuse to acknowledge the existence of minorities within their borders or to sign the main European documents on minority rights. There was recently a joint programme between the EU and the Council of Europe (implemented by the CoE, financed by the EU). It was hoped for some years that this programme would lead to a clarification on the part of the EU on the issue of minority rights. However at the moment, although there are demands on candidate countries in terms of human rights and minority rights, there is absolutely no clarity about what the EU means by 'minority rights' at the level of formal criteria – there are no binding documents. There is a dangerous precedent being set that everything can be settled at the level of political bargaining – if governments of the candidate countries say everything is ok, and the EU governments say yes everything is ok – there are no formal commitments, no mechanisms, no procedures – the very question is dealt with only at the level of political bargaining. This is my concern.

[Nils Muiznieks]

I don't share your concern. There are three core principles of minority rights: equality before the law, non discrimination, and discretionary measures. The EU is dealing with non-discrimination with regard to minorities – it's not enough, but its an important step forward. Yes there will be political bargaining, but at least they're talking about the issue now. Back in 1997 it was a lot to expect that the issue would be discussed at a conference – we've come a long way. People often don't realise the way the EU and the Council of Europe work because it is often behind closed doors. It is clear that the EU rely heavily on the opinions of the OSCE. During, for example, the Latvian referendum on the citizenship laws, they worked together very closely behind the scenes. Yes, there is a danger that when the EU says in their progress reports 'minority rights are in general observed' politicians can say this issue has been resolved. But in the aftermath of the EU sanctions against Austria, politicians in the region perceive that the political criteria will be revisited over and over again in the negotiations, and are by no means a closed book. Politicians are not complacent about this issue being behind them. The situation is very dynamic. And there's money behind it too. The UN has done good work but it had no money and no political clout – if you have money and political clout you can make things happen.

[Andras Sajó]

What happens if EU accession is delayed? Would this give an impetus to extreme right groups? NGOs need a strategy for this possibility.

[Anton Pelinka]

Regarding the concept of minority – we are all agreed that it is a useful concept in the European context, and we should take an interest that in all countries minority rights must be established and strengthened. But in different contexts it is different – what

does it mean in South Africa? And in the US in maybe 30 years there will be no majority at all. So we should keep this in mind; in speaking about minorities we should not accept the idea that there is a natural majority. We should think in the long run of a situation where the terms 'minority/majority' regarding ethnic difference – so-called race differences – are obsolete. The concept of minority rights is a short term concept to improve the situation of certain groups of society. It is not a long term concept because human rights means that in the long run individual rights and not group rights should be protected, but in the short run we have to protect the rights of certain groups. We should keep in mind that minority rights can be a very helpful understanding in the present European situation, but in the future it could be different, as it is different in many non-European situations already.

[Saskia Daru]

The use of the term minorities is not self-evident. In the meeting of the technical working group preparing for the European preparatory conference for the UN racism conference in South Africa, the term 'vulnerable groups' was used and specifically not 'minorities', since several countries objected, particularly France and Spain. The good side of the term 'vulnerable groups' is that it covers migrants and asylum seekers. Its also linked to the idea of multiple discrimination. National minorities are mentioned in only one paragraph of the draft conclusions.

[Beate Winkler]

This issue will grow in importance in the EU – due to the Race Directive and the Charter of Fundamental Rights. (1) The Monitoring Centre has asked the European Parliament to initiate a broad debate in the member states about the issue of European identity. What does it mean, how can we develop – we have to make sure that we don't have a Europe without Europeans. (2) The whole issue of minority rights is very helpful but also dangerous. We have to mainstream the whole issue, and recognise that our societies are more and more fragmented. We need the common values of being equal and at the same time different. But in becoming different, people are losing their common values.

[Nils Muiznieks]

The term 'minority rights' will still be very useful and relevant for a long time in the region. (1) in Central and Eastern Europe this is part of the lexicon for both minorities and majorities; (2) we only recently have the instruments at the regional level which enshrine these terms – OSCE Commissioner for *National Minorities*, Framework Convention for the Protection of *National Minorities*. 'Vulnerable groups' in Latvia would mean pensioners, children and the mentally ill.

[Theo van Boven]

Why is this so in Central and Eastern Europe? We have a similar experience in the UN – racist crimes remain unattended.

[Nils Muiznieks]

Regarding reluctance to prosecute hate speech – freedom of expression is one of the core achievements in the last few years and people are very reluctant to put any limits on it. Regarding prosecuting crime – this has to do with law enforcement agencies, and is not restricted to this region. Physical violence should be the number one priority and that means dealing with law-enforcement officials – not only educating them in dealing with tackling this, but also in regional cooperation as extremist groups are often transnational.

[Andras Sajo]

There is a systematic increase in the admission of the existence of racist attitudes particularly among officials – the best data is among police officials.

### **3.2 THE LEGACY OF THE HOLOCAUST AND ITS RELEVANCE TO THE CONTEMPORARY STRUGGLE AGAINST RACISM**

*Waclaw Dlugoborski*

My paper will be a case study about Poland – concerning the important role still played by racism and xenophobia against Jews and Roma. These groups are still the target of racist propaganda by right wing Polish parties and their sympathisers. These parties have only 1–2% support and no political influence, but they have mobilised unemployed youths to attacks against Jewish cemeteries and Roma houses in small Polish towns. However the social and political situation of the two minorities and their images amongst Poles are different. For most Poles, the Jewish as an ethnic and religious community are more an idea – a historical rather than a social reality – a virtual reality. There are no more than 50-100,000 Jews among the population of 40m in Poland today. The lack of personal contacts and lack of economic competition means that the issue of anti-Semitism remains a political and confessional one. This is visible in recent controversies over the placing of crosses – or some years ago a Carmelite convent – near the concentration camps.

Who does Auschwitz belong to? About 75% of the victims were Jews, but two years ago only 35% of Poles were willing to accept this fact, and to consider the Holocaust as more than a camp for Polish intelligentsia and Polish youth, but also as the place where 900,000 European Jews perished. Poles could visit Auschwitz, but not Birkenau, with its gas chambers and crematoria. It was compulsory in Polish schools to learn about the persecution of Poles but not about the mass extermination of Jews. In the curricula and textbooks the Holocaust was ignored as a second rate question.

Change began in the nineties, not only in the schools but also in the mass media. Some universities organised postgraduate studies for teachers and new history textbooks about the Holocaust were introduced. But this was not enough to realise a change in the curriculum. The Catholic church has remained an important obstacle to change. But in May of this year there was an official apology for the anti-Semitism of Polish priests and their indifference to the fate of Jews.

To what extent will Polish youth ever know about the events of WW2? The gap in educational standards between cities and town is still great, and for many the Holocaust was, is, and will remain a completely unknown event. But for younger generations – even in rural areas – the school reforms of 1998 are introducing new curricula, new textbooks and a new generation of teachers. Issues include the importance of Jewish–Polish relationships in history and also the attitude of Poles towards the Jews under the German and Soviet occupations. According to recent estimates, Poles saved as many as 40,000 Jews from the camps. Some historians and sociologists accuse the majority of Poles of indifference concerning the fate of their Jewish brethren. Whether or not there is a basis for estimating the extent of Polish collaboration in the Holocaust, what matters is that the attitude of Polish society during that period are an object of discussion in the media.

Although the number of Roma is not much higher than that of Jews in Poland, the attitude of Polish society to Roma is comparable to that towards Jews. Most Roma live in rural areas with little contact with society at large. More than 90% are lacking formal public education beyond primary schooling. Prejudice against Roma persists throughout society and discrimination in everyday life. This ranges from attacks by skinheads and racist graffiti on walls to a certain bank which instructed its branches not to give credit to Roma customers, and to discrimination of local authorities in the provision of services.

On the other hand, some Roma have established successful businesses and attracted the envy of their poorer Polish neighbours. Prejudice against the Roma is based on the Russian stereotype of them as a group forced to adopt a settled style of life in 1964, who have lost their traditional habits and manners – all that remains is their typical Gypsy characteristics of laziness, excessive sexual drive and thieving. Roma, in the opinion of most Poles, are a nation without history, who in the last century only learned to passively cancel out their persecutions. Poles are unaware of the Roma Holocaust, and this is true in most of the world. Knowledge of Jewish suffering has increased since Wiesenthal first levelled his bitter accusation. But this is not the case with the Roma.

The history of the Roma Holocaust and its consequences – not only the biological extermination of peoples, but the destruction of their history and culture – this all must be introduced to the curricula and textbooks. This has been done in Germany, but not in Poland.

## DISCUSSION

[Barry van Driel]

There is an international task force on Holocaust education that came into existence two years ago. A hot topic in that task force is whether the Holocaust should be used to talk about racism and discrimination today. Especially Yad Veshem in Israel, under the leadership of Yehuda Bauer, feel that the Holocaust should be approached as a history lesson and nothing more. But it is viewed differently in other countries, such as Poland, the Netherlands and the US. Organisations such as the Anne Frank House and the Boston-based Facing History and Ourselves feel that there are many lessons to be learned from the Holocaust and it should be the starting point of discussions about racism today. In studies in Slovakia and the Czech Republic, about 50–60% of adults are aware that the Roma were targeted by the Nazis. This is often missing in history books and would be a good starting point in introducing the history of the Roma and the suffering of the Roma in the past.

[Ferenc Eros]

In Hungary, very few students identified the Holocaust as a Hungarian event, but many referred to it as a European event. The Hungarian government and authorities projected responsibility onto Germany and other countries. Studies on the relationship between racism against Roma and anti-Semitism found that it is more difficult to express or admit anti-Semitism publicly, but to admit anti-Roma sentiment has no cultural or social taboo. Even people who consider themselves liberal would have no inhibitions about admitting anti-Roma prejudice.

[Beate Winkler]

Nobody feels that the Holocaust has anything to do with them, it is always a problem of others, and this is one reason that politicians tend to avoid it. People regard it as a personal affront. The Monitoring Centre faces the same problem with its name. The solution is to tackle the positive and negative at the same time. However, people are often unable to approach this kind of ambiguity.

[Zoran Pusic]

The kind of racist discourse that leads as a logical consequence to the Holocaust is not reserved to the past, but was thriving in the former Yugoslavia in the 1990s. The important question for us – taking Croatia as an analogy for other Central and Eastern European countries – is that policies of spreading hate and intolerance and preaching violence are policies which are accepted by public opinion over time as a legitimate political standpoint. This fact in Croatia is somehow related to the Holocaust and the events of WW2.

[Anton Pelinka]

Regarding the Yehuda Bauer point. He wishes to warn us against using the Holocaust in an inflationary way. Lithuanians, Czechs, Poles, even Germans are claiming the Holocaust, whereas it should not be used for any hate crime, or ethnic crime. On the other hand, the right wing is using the Holocaust – there is a clear linkage between the Holocaust and contemporary right wing extremism. The hard core usually denies the Holocaust. This is one quality of contemporary right wing extremism. Another tactic is to play down the Holocaust. There is too much evidence that racism today in Europe cannot be dissociated from the Holocaust. The Holocaust from a European perspective has a lot to do with contemporary racism.

[Eva Orsos]

We have learned much more about the Roma Holocaust recently thanks to the work of the OSI and ERRC. The next step is to disseminate this information – at the moment there is more knowledge about the Roma Holocaust in some countries than others. This can be addressed.

[Nils Muiznieks]

Strategies for Holocaust education. In Latvia, for example, mentioning the Holocaust and anti-Semitism bring up the response, what about the Holocaust for Latvians? People become defensive – so although it is necessary to confront the subject head on, there is also a need for a strategy. In Latvia the focus has moved to those who saved Jews – celebrating them with films, books and government awards. The subtext is that there are so few of them. Why are there so few and why haven't we heard about them before?

[Columbus Igboanusi]

The Holocaust is not an issue of the past – it is very contemporary. Jewish students in Bratislava have complained about being attacked for being Jewish. Prejudice among Slovaks against Roma, Blacks and Jews tends to go together. The protection that is currently extended to Roma could also be extended to Jews. Without constant alertness there is a real risk that it may happen again.

[Barry van Driel]

Work in Holocaust education could relate to anti-racist work. Four roles are identified in Holocaust education: victims, perpetrators, bystanders, rescuers:

*Perpetrators* – A problem is blaming Adolf Hitler. It is difficult to convince people anywhere in Europe that people in their own country were responsible.

*Victims* – To point out that six million Jews died is not enough. There is a tendency to believe they must have done something to deserve this. Children vastly overestimate the number of Jews in Germany. Roma, too, tend to be blamed for their own problems.

*Bystanders* – Very difficult in Central and Eastern Europe. The Holocaust is often presented as a history of people doing nothing while their neighbours were taken to the camps. It is reminiscent of the Soviet occupation days. The Holocaust is to a great extent a history of bystanders, but it is usually not presented that way in textbooks and in classrooms.

*Rescuers* – This is a useful approach: it shows that young people could make a difference then and to focus on it shows that young people can make a difference now.

[Andras Sajo]

In many Central/East European countries, official anti-Semitism coincided with the official founding of the state and so to deny anti-Semitism is to deny the creation myth of the regime.

[Waclaw Dlugoborski]

We must distinguish between the terms Holocaust and genocide. Holocaust can only be applied to the Jews and the Roma. There are important similarities – both were persecuted on the basis of racial ideologies. The second is that a great part of Roma victims (c.20,000) perished in the gas chambers. Croatia is another symbolic place for the genocide of Roma – Jasenovac, where about 25,000 Roma perished. We hope that the new government will make a monument or museum at Jasenovac to the memory of the Roma. Education: Young people ask why did my parents and grandparents not help? The question of bystanders is very important to tackle and study. Can the OSI help in educating – preparing a textbook for example about the Roma Holocaust.

### **3.3 XENOPHOBIA, ANTI-SEMITISM AND THE EXTREME RIGHT IN EUROPE**

*Andras Kovacs*

There are three problems I will deal with:

- 1) Arguments about the similarities and differences between the extreme right today and traditional Fascism.
- 2) Even if there are differences, there are similarities and they can be found in publications and analyses of the new right.
- 3) The history of anti-Semitism in Europe.

At Haider's election the argument was made in Austria that 'only the faces change', as the protest slogan went. Of course the differences between these parties and those of Fascism in the past are obvious, but for those who see in this a revival of the right wing, these differences are minor. Umberto Eco identified a 'family resemblance' between the various types of Fascism – a minimal definition of Fascism can be established: 'one can eliminate from a Fascist regime one or more features and it will still be recognisable as Fascist.' Eco lists 14 criteria – ten psychological and four ideological and socio-political criteria, these being the cult of tradition, the rejection of modernity, social elitism and 'qualitative populism', i.e. legitimacy bestowed through the will of a monolithic mass.

Today's extreme right is very different – for example in its relationship to the tradition of modernism: it no longer celebrates the virtues of romantic utopias projected onto pre-capitalist societies, nor do they wish to establish an organic unity between the individual and the community in a revolutionary way. They do not inveigh against technical civilisation and the market economy, nor do they propagate corporatist ideas – naturally they do not want to destroy the information superhighway and computerised bureaucracy, which is a very effective tool of their propagation. Today's extreme right is not totalitarian and does not invoke the leadership principle and it is no longer elitist: it is rather anti-elitist.

These substantive differences are not accidental. The conditions leading to the growth of the modern right have little in common with those following WW1. If we want to understand the phenomenon of the extreme right we should avoid 'reduction to Hitler'. We must ask ourselves whether xenophobia is the political outcome of a Fascist world view, changed in form and content, but not essence. Is xenophobia not more likely to be a distorted outcome of the real problems of post-industrial affluent society, which although conflicting with a whole series of humanitarian values is not the product of an ideological rejection of these ideals. The extreme right today appears to share cognitive, rather than ideological, 'family features' with traditional Fascism.

What is the role and function of xenophobia in the extreme right wing movements of today? Are we not simply depoliticising a dangerous political phenomenon by using psychological terms such as 'xenophobia' to describe it? When and how do racism, xenophobia and anti-Semitism represent more than personal feelings and what transforms them into political phenomena – what turns them into 'isms'? My hypothesis is that xenophobia does not fulfil the same role today as anti-Semitism did in the 1930s, but the inherent dangers are the same and the key to understanding these dangers is to know how exactly anti-Jewish sentiments were turned into political ideologies.

In the late 19th Century anti-Semitism became a common thread binding a wide range of highly differing ideas and sentiments. It became a cultural code with a symbolic value

– expressing an opinion on ‘the Jewish question’ advertised a whole range of opinions on contemporary issues which, although perceived as important, were not intrinsically interconnected. Anti-Semitism may only function as a consensual cultural code once the cognitive process binding other conflicts and problems to the ‘Jewish question’ has run its course.

Extreme right wing parties today exhibit the same patterns of behaviour – such as sloganeering – as anti-Semitic parties of the late 19<sup>th</sup> Century. They have no solution or vision of a future society, but they realise that these problems cause insecurity and anxiety to many people and attempt to offer insecure sections of society a simple tangible solution. But they are in need of a code and they use xenophobia. They are dangerous primarily not because they *create* xenophobia but because they attempt to *organise* it into a conceptual system and link it to existing serious socio-economic problems.

If we identify xenophobia as the factor establishing the family resemblance between traditional Fascism and today’s far right, we are not depoliticising, individualising and psychologising a political phenomenon. On the contrary we are pointing to the factor that introduces frustrated, anomic and disorientated people to the culture of the extreme right.

### **3.4 RACISM AND POLITICAL POWER: TO WHAT EXTENT ARE THEY LINKED?**

*Anton Pelinka*

The phenomenon of racism cannot be explained by the objects of racism but by the needs and social and psychological situation of those who transport and express racism – racism is primarily a phenomenon of racists and not of the objects of racism. An important point to keep in mind is that there is no race but there is racism.

I outline three approaches to underline the relationship between power and racism – two will explain the political instrumentalisation of racism and the third will describe the possible instrumentalisation of power to fight racism. The first follows the traditional elite mass pattern, as established by the elitist theorists at the turn of the 20<sup>th</sup> Century. Racism as a stereotype can be seen as a political agenda, either top down or bottom up. Top down implies that political elites not only use but at least strengthen, if not actually creating, racist phenomenon. Racism would then be mainly a phenomenon we can observe on the political top. Bottom up is the idea that political elites, parties, politicians, political

media are reacting and responding to an existing racism, instrumentalising it for political purposes, but racism is rather a social than a political phenomenon in the narrow sense. I see the reality as a combination of these approaches, because there is a feedback mechanism whereby political elites grasp and legitimise an existing racism.

Power can be understood rather as a political than a social phenomenon. I am indebted to the analysis of the so-called 'authoritarian personality' carried out more than half a century ago by the Frankfurt school in the US – racism reflecting power positions in society, under the assumption that our societies are seen as a hierarchical pyramid and power as an expression of an economic and social position.

Fifty years ago in the US the typical racist was a blue collar worker who had nothing to lose but his collar-based privileges, and so he was more available to racism against the outsider group – the African-Americans – perceived as in a position to take this away. In Europe today we have a different picture – the citizen or member of a majority group who has nothing to lose but his citizenship-based or majority-based privileges, and for that reason he is tempted to stress his differences vis á vis the groups who seem to endanger his social power position: foreigners, which explains xenophobia; and minorities – which explains racism.

As we are living within political systems, societies in which power is one reality, fighting racism means dealing with power structures and making the best of them. There are two aspects of this: one is to build alliances with authorities who are independent of the political markets – religious or academic authorities for example – building what is called 'political correctness', that certain aspects of racism are simply not accepted. For example, in Europe despite the prevalence of stereotypes surrounding Roma it is not acceptable, within certain circles in Europe, to make derogatory remarks about Roma.

The second alliance would be with political authorities dependent on the political market, which have certain interests coterminous with an anti-racist agenda – political parties which need to have certain groups integrated with their electoral alliance and for that reason fighting for affirmative action, specific educational curricula, and so on. This is why in Europe citizenship and voting rights for immigrants and minorities are so important, because this is the only way to create electoral alliances and interests on the political market against racism and xenophobia.

Finally, a brief point on Haider and the Austrian situation. This is both an Austrian and a European phenomenon. In Austria, the Freedom Party is the only successful post-Nazi party (the party was founded by an ex-SS general) and by far the most successful party outside the European mainstream – it does not belong to any European umbrella organisation or a party group within the European Parliament – its members in the European Parliament are mavericks. But it is also a European phenomenon – it is a

postmodernist party: style rather than substance is what counts. It is not that the Freedom Party has no coherent agenda, it is that the agenda does not matter in the least: this is politics by entertainment. Stereotypes and simplifications are helpful to politics by soundbite, where people have only five minutes a day for politics. This trend in politics is trans-European – and perhaps not only European. Behind it is a new aggressive exclusion of the other, behind the message there is always a clear us and them.

There are two basic sentiments fuelling the rise of the Freedom Party. One is anti-globalisation, the other is anti-correctness. Anti-globalisation underlines ethnic difference and ethnocentricity. This message attracts the interest of ‘modernisation losers’ – those who for perhaps understandable reasons feel themselves to be victims of the globalisation process. These are the socially weaker groups of insiders, who are ‘in’ by virtue of being citizens and belonging to the majority, but are underdogs within that group. Their aggressiveness is directed against those who are out and want to come in.

Anti-correctness is a rich vein for revisionism. There is a feeling that a certain understanding of WW2 and the Holocaust is dictated by the Americans or a ‘liberal Jewish conspiracy’. This gives Haider and others like him elsewhere in Europe a Robin Hood image, fighting against the powerful who are dominating the agenda.

The EU sanctions – although they can be accused of bias and hypocrisy – are extremely useful because they put this topic at the top of the EU agenda.

## DISCUSSION

[Columbus Igboanusi]

Does ‘anti-correctness’ refer specifically to political correctness? Of the two facets of racism – socio-cultural and political – is racism the result of these two factors or their synergy?

[Anton Pelinka]

Political correctness in Austria has become almost a negative term – it has been occupied by the Freedom Party and others and portrayed as a kind of intellectual dictatorship. The ‘East Coast of the US’ is a key code for ‘Jewish conspiracy’. Haider in an interview gave his two negative figures from the 20<sup>th</sup> Century as Stalin and ... not Hitler but Churchill. Thus underlining the rightness of his father’s generation and his and their opposition to the dominant liberal agenda. Racism arises from the need to distinguish

– to build an identity. To underline ethnic difference is to choose an option with a certain understanding and meaning behind it, and this can be understood as a kind of synergy.

[Waclaw Dlugoborski]

What is Kovács's opinion about the anti-Semitism of the Communists – there were two phases of militant anti-Semitism in Socialist countries, the first was the 'anti-Zionist' purge under Stalin, the second, from 1967–68, was anti-Zionist and anti-Israelist.

[Andras Kovacs]

There were huge differences between the various socialist countries. In Czechoslovakia in the 50s anti-Semitism became official policy, which was not the case in Hungary. Romania was a special case. In most countries all specific identifications were opposed – there was nothing special about the Jewish case. The real problem was that the state in these countries was weak and to strengthen legitimacy and raise popular support it was tempting to play the anti-Semitic card. This was the case with the Hungarians after the war and also in Poland and the Soviet Union. Communist politicians cynically used anti-Semitism whenever crises appeared to threaten their regime as a way of shoring up popular support. This is naturally a part of our shared Communist history.

[Theo van Boven]

The issue of citizenship sometimes has racist connotations in the distinction between citizens and non-citizens. Europe now has the concept of European citizenship – where citizens enjoy many rights and non-citizens have only some 'benefits' This has a notion of exclusion and racist tendencies in many countries. Legally, the international texts and instruments are dubious on this issue. For example, the UN Convention states: "this Convention shall not apply to distinctions, exclusions, restrictions and preferences, made by a state party to this Convention between citizens and non-citizens" (1965). The recent Race Directive of the European Union – which I'm very pleased with in other respects, is the same. Article 3, paragraph 2 reads "this Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of member states, and to any treatment which arises from the legal status of the third party nationals and stateless persons concerned." We have in Europe by now two classes of persons – those who enjoy citizenship and the others, and this also has major racist tendencies and implications.

[Zoran Pusic]

In the Third Reich Jews were used to ignite fear and to homogenise the majority, and this phenomenon we can find in contemporary events in, for example, the former Yugoslavia, where political violence is promoted as a legitimate way to achieve their goals. This is also common to both Fascism and Communism.

[Boris Tsilevich]

A report on extremist parties in Europe produced for the Parliamentary Assembly of the Council of Europe met powerful opposition, particularly the addendum, which contained concrete cases and pointed to some political parties. Finally it was adopted without the addendum. Of course, representatives of those political parties directly or indirectly mentioned in the addendum, expressed vociferous criticism. These parties are used to adopting a different rhetoric depending on whom they are talking to. In other words, racist ideas are manifested in very different forms. Taking this into account, isn't the scapegoating of Haider's party destructive in justifying those parties who do not demonstrate their extremist attitudes as explicitly as Haider's party?

Secondly, with regard to anti-globalisation – extremist parties direct their hatred towards local immigrants and minorities rather than against the forces of globalisation. The defence and preservation of cultural identity is also typical of minority groups, but globalisation is rarely seen as a threat according to this view. Thus, racist ideas have much to do with the attempts to preserve political power within the nation state, rather than with preserving cultural or national identity.

[Barry van Driel]

Soundbite politics: is there a high correlation between people's attitudes and their voting behaviour? If not then soundbites will have a strong bearing on politics.

[Anton Pelinka]

The typical Freedom Party voter is young and less educated. The less educated vote has moved from the left to the right. But education has an impact. The more educated a society is the more it is possible to look through the social factors that influence a given situation. Education – not only in racial sensitivity – but in general, is extremely important. Another difference between the Nazis and the Freedom Party is that the Nazis were very popular among university students, unlike the Freedom Party – an important change.

[Ferenc Eros]

Anti-correctness is not limited to politics, it is also visible in the anti-feminist and homophobic trends which are strong in this region. Homophobia has been controversial in Hungary recently. A connection between traditional Fascism and the modern right is their engagement in non political areas – such as sexual deviance. Also concentration on virility – as in football and homophobia.

[Andras Kovacs]

Regarding correctness. The behaviour of the political cultural and social elite defines the boundaries between legitimate and non-legitimate language, and if racist and xenophobic language is defined as non-legitimate then the chances of its dissemination will be much

less. But if these elite actors openly break this boundary between legitimate and illegitimate language, they create legitimacy for language which is racist, xenophobic etc.

As to how xenophobia can work as a code for a dispersed culture, for certain anomic and frustrated feelings, there are issues in the current postmodern, post-welfare societies which create serious conflicts for the individual – social problems, globalisation, Europeanness vs. non-Europeans, issues which come under the heading ‘the clash of civilisations’, conflicts which naturally create tensions in society. Xenophobia can function as a code for all these conflicts. This is the danger of the xenophobic discourse in Europe.

[Anton Pelinka]

I am less optimistic regarding the possibility that an elitist consensus not to use existing racist stereotypes will hold in the long run. In the long run, any stereotype, any prejudice that can be exploited politically will be exploited politically. In Europe we have an interesting, more optimistic, example in the death penalty. In the countries of the Council of Europe there is a broad elitist consensus not to exploit politically cutting the heads off criminals. But this might not hold another 30 years.

*Hooliganism:* Why in the US, where there are so many indicators showing a more violent culture than Europe, is there less violence in sports? In Europe ethnic cleavages are used by, or even created by, hooliganism. Hooliganism is an instrument to bring out ethnic violence. The question is why in Europe and why not in the US?

*Citizenship:* This is especially important because citizenship is access to voting rights: the necessary condition to give a certain group power, or potential power. If we are interested in building alliances in fighting racism, by bringing in victims of racism into the power game we find a much better possibility of building alliances. A sub-agenda of the current government is ‘integration’ – but a pre-condition of giving people voting rights is their cultural integration into Austrian society.

*Scapegoating the Freedom Party:* this is the only party that is both explicitly xenophobic and in government. The sanctions are directed at the bargaining coalition process that brought them into the government – as they weren’t directly elected into government.

*Globalisation:* is also a question of lifting borders. EU enlargement raises the possibility that a new wave of immigrants will come. Studies show that this is fear is exaggerated, but it exists. Globalisation has put the fear of dissolving borders on the agenda.

*Anti-correctness:* There is even such a thing as a ‘correct anti-correctness’. But there is a feeling in Europe that rules of ‘correctness’ are being imposed from outside – that Europe is becoming a periphery of the only empire still existing: the American empire. So anti-correctness is related to anti-Americanism and ultimately to anti-globalisation.

### 3.5 RACISM AND XENOPHOBIA

*Saskia Daru*

In this presentation I would like to point to a few trends where grassroots work against racism and xenophobia are concerned.

These discussions are very stimulating and inspiring but they don't reach an awful lot of people – they don't reach those doing grassroots work. The full title of my organisation is the European Network Against Nationalism, Racism, Fascism and in support of Migrants and Refugees. It is a network of 500 organisations in all European countries. The aim is to provide organisations with tools to strengthen their struggle. A theme we often return to is 'the danger of words'. Discussions about the exact definition of racism or other words are important, but should not become the focus of the meetings we have as a network. There is too much work to be done to get stuck in such grammatical debates.

Globalisation is a major theme for a lot of NGOs at the moment – the history of globalisation, also often called 'neo-colonialism', and its relationship to immigration. Stateless or undocumented people can be considered third class citizens in many countries – where national citizens are first class and migrants are second class. The situation of third class citizens is a touchstone of human rights. If their situation is not in order we cannot say that human rights are in order.

To counter racism and xenophobia we have the possibility of making new alliances, especially if we see these phenomena as violations of human rights. It will be possible, for example, to form alliances with lawyers and judges who come in contact with racist foreign laws. They may wish to protest the unconstitutional nature of these laws or the fact that they often violate human rights, such as the right to family life. We have formed alliances between anti-fascists, Jewish and Roma organisations and with other minority groups such as gays and lesbians or disabled people. This becomes even more relevant in view of the new legislation of the EU, which is based on Article 13 in the Amsterdam Treaty. This article sums up six grounds of discrimination. Such links are important, as shortly we will need all the alliances we can get.

There is a feeling that there are a number of small elites at the top who take all major decisions for us. This feeling may well fuel racism and xenophobia. It might create a feeling of powerlessness, which may induce a reaction to those who are considered even 'lower' on the power scale. However, we regard politics as the everyday conditions in which we live. We have to make sure that there is no barrier between politics and citizens.

In Central and Eastern Europe there are different vulnerable groups, with their own set of problems: the rights of national minorities in relationship with the state, the discrimination of Jews and Roma, the violence against African students, the inability of dealing with refugees and stranded persons. Organisations in our network worry about the function that Central Europe seems to assume, and is given, as a watchdog of Western European migration politics. What was shocking about the 58 people who died in Dover was that this incident got such a huge amount of attention, when hundreds of people have died in the Mediterranean and seventeen people died in a similar manner in Győr (Hungary) a few years ago.

We try to keep a European focus, rather than demarcating West and East, because policies transcend borders, as EU migration policy demonstrates, and even more so with the internet and globalisation. There is a great need for solidarity and support especially in those regions where the existence of NGOs is not considered logical or even legitimate. One of the greatest influences Central Europe has had on pan-European thinking is of racism as an infringement of human rights. Human rights are not dependent on citizenship, they are fundamental to each human being, and this may open up the idea of people as human beings rather than citizens of one state or another.

Current responses to racism and xenophobia include for example the UK initiative Operation Black Vote. This is an effort to bring minority groups to work together and hold politicians responsible for their decisions. It might serve as an example of good practice. Another interesting development is the use of the internet. The internet is not only a vehicle for spreading hate, but also for building networks against hate. One more trend in the struggle against racism is the use of codes of conduct. One has even been introduced for politicians.

A striking aspect of the European preparatory conference for the UN anti-racism conference is the wide representation given to civil society and NGOs – 80 of the 600 present will be official participants. They will debate on an ‘equal’ level with governmental representatives. We should ask ourselves what this means.

## DISCUSSION

[Barry van Driel]

NGOs don't work together because: (1) larger NGOs have nothing to gain from it; (2) it's less sexy – media friendly – than big scale events that can invite ministers; (3) the struggle for funds which are limited – this is particularly the case in the US. Regarding

hate on the internet: the Anne Frank House strategy is to go to the ISPs who are providing access to distributors of hate speech. It doesn't always work, but it is a possibility.

[Beate Winkler]

It is clear that racism is not linked to unemployment, nor to the rate of immigration nor to the number of minorities – often racism exists where there are low rates of immigrants and minorities. But it is deeply linked to the inability to deal with diversity. The solution to this is strong leadership. In Germany anti-Semitism began to disappear when it became very clear that publicly it is not allowed. Also training programmes to teach people to cope with diversity are needed. A code of conduct is not sufficient.

[Columbus Igboanusi]

How do we articulate what we have discussed and bring it into practice – how do we articulate our efforts and fight against this social evil. I almost didn't make it here today. The Hungarian police almost turned me back. I was sitting in a cabin with four people – a Spaniard and his wife, a British citizen. They took their passports and gave them back, they took mine and held it. They asked me to show them how much money I had, to open my bag, they want to see, I should show them my ticket, I should stand up they want to search me, I should come down the train. I asked, what about my fellow passengers in this cabin? Of all the others you have only asked me? You have just sighted me, I am the black man here. And you want to get all these things for me, why don't you ask all these people? It took more than thirty minutes until my fellow passengers started shouting at them. Then they let me go. I had to write down all their numbers. My fellow passengers said they would be witnesses, gave me their contacts, said whenever I need them they will be present. This is the issue. People are dying in trucks. A lot of evils are going on and we are debating academically. These things need to be solved practically. Most Roma are slaves in Slovakia. It's still going on. Everybody's covering it and no-one is doing anything about it. How do we go on? How do we put these things together to move ahead?

[Dimitrina Petrova]

Borders as the locus of racism. In Europe at least what you witness at borders is that the institutional racism has gone even beyond the popular attitude – people in the queues are resentful and show that attitude.

[Andras Sajo]

How is it possible that governments tacitly encourage the existing xenophobia among civil servants which is at the heart of the matter in this case. If this is the attitude in the civil service, institutionalised partly through law, and supported by governments within the margin of discretion granted by any rule of law system, then we have a real problem.

[Saskia Daru]

Anger makes you get things started. The border guard situation is a typical instance of 'the victim must be guilty'. If you see Blacks being harassed all the time it makes you think there must be something wrong with Blacks. Regarding NGOs, they do cooperate, but its often easier on the European than the national level. If it is not sexy we have to make it sexy, but it depends on what the media wants to publish.

## 4. Societal Responses to Racism

### 4.1 CONFRONTING RACISM IN EUROPE: IS THERE A STRATEGY IN EUROPE?

*Dimitrina Petrova*

The question is not only a practical or theoretical one – in racism there is no great gap between the two levels. The following paper deals with:

1. Why there is no one coherent understanding and approach to so-called racism in Europe.
2. The possibility of a theory of racism and race discrimination. Possible paradigms or solutions. Do we need one coherent strategy on racism?
3. The beginnings of a set of strategies and the main elements of a set of strategies.

#### 4.1.1 Why there is no coherent strategy in Europe

There is no coherent strategy to racism in Central Europe. The approaches to racism in Europe are created by the Cold War. There is a great gap between the understandings of how racism has functioned in the West, including the US and Canada, and how it has functioned in the Communist world. In the latter, the grand narrative of World War II was very different. When Communist schoolchildren were taught anything about the Holocaust it was overshadowed by another great story – the victory of the Red Army and the demise of Hitlerism, and not the role of Hitler and his allies as exterminators of the Jews. If this aspect was not completely absent it was significantly eclipsed. This was the division at the official level. Official Communism and official democracy had a different history of WW2 and the Holocaust and a different problematic, relating to ethnocentrism, racism, xenophobia, etc.

Secondly if we look below the official level, at the subcultures of crypto-opposition to Communism, or the dissident subcultures, we also see a different understanding of WW2 and the Holocaust. Communist crypto-oppositional actors, including dissidents and Western democrats trying to help dissidents in the Soviet camps had a different nightmare, a different understanding of what constitutes the greatest evil.

Another factor in the lack of coherent approach is the fact that, in the Communist time (and it's still the case in post-Communist Europe) when we heard of racism at all it was as something which is not applicable to Europe, East Europe or socialist society. It was a black/white issue, applicable in the context of the US and South Africa and not in any other context. This was the usual way – both in 'scientific Marxism' and in popular culture – in which the term racism functioned in the Communist context. The inertia of this understanding persists – Central and East European governments continue to think of racism in this way. They are still frequently outraged when situations and behaviours are defined as racist, or violations of human rights are referred to as racial discrimination. They keep asking, 'why do you call this race discrimination'? We keep pointing at Article 1 of the UN Race Convention. They keep shrugging their shoulders and saying this really doesn't apply here, we have no problem with racism, we have a problem with ethnic minorities.

At a recent expert seminar which was part of the preparation for the World Conference Against Racism, convened by the UN High Commissioner on Human Rights, it became clear that governments present were very much involved in this particular type of denial of racism. They didn't mind the discussion of ethnicity and ethnic problems, but they were not comfortable with defining the situation in their countries in terms of racial discrimination – and this is especially true of the governments of the former Soviet space. Both in officialdom and in popular culture there is a still existing Cold War division in the understanding of race and racism.

The difference between race and race discrimination is that the latter is used in a self-limiting legal sense, the former is a social phenomenon that is pervasive and present in all societies. We are not witnessing a surge of racism, we are witnessing a surge in the discourse of racism.

#### 4.1.2 The possibility of a theory and its applicability to practical work

There are several ways that racist phenomena can be approached by the actors – governments and governmental institutions, intergovernmental organisations and their bodies, concerned NGOs, civic actors and academics. There is a tendency at conferences towards a collective stream of consciousness where a discourse is formed and influenced. This does not lead to a coherent theory and many people would question the need for a theory. One approach which I would term, with reservations, 'postmodernist' is that a theory is not possible if it is to be a monolithic, monocausal theory which derives racism in a logical way from one or more root reasons. Rather there is a history of a concept: racism would appear as a socio-historical construct. This is quite a legitimate point of view. Terms like racism and even legal terms like 'racial discrimination' are constructs, and are as such loci of opposed interests.

It is, however, politically important to try and seek out the roots of racism and create a theory. There are several such theories and paradigms in existence. One such popular discourse, the guru of which is professor Will Kymlicka, a Canadian professor, surrounds the issue of minority rights, group rights and multiculturalism. There is an attempt to approach racism by identifying causal roots, and a fruitful approach starting with a classification of the victims. One notorious distinction that has been controversially criticised since 1995, when Kymlicka wrote *Multicultural Citizenship*, is that between 'old world' and 'new world' minorities. Old world minorities are, for example, ethnic minorities in Europe – and elsewhere – who have become part of a nation state involuntarily, as part of a conquest, ceding of territories between empires, or colonisation. This minority is willing to preserve its culture to some extent and to be the subject of its own destiny inside or outside the nation state. The new world minorities are immigrants, people who have chosen to abandon their community and try and integrate in another community. This is the case with migrants in Western Europe these days.

#### 4.1.3 The beginnings of a set of strategies and the main elements of a set of strategies

Whatever people are doing, the two issues walk hand in hand. People working in racism in the context of ethnic minorities and those working on migrant rights, immigration and asylum speakers are working together, because they feel they share a common agenda which comes down to something we call racism, whatever the definition. I am inclined to think of the possibility of a theory, which would have a lot to do with political power, statehood, and freezing a certain group within a social status.

Despite the lingering Cold War divide we are now witnessing the beginnings of a common set of strategies. The set of documents expressing this – and a cause for optimism – are the European Race Directive, Protocol No. 12 to the European Convention on Human Rights and the recommendations to the World Conference Against Racism, prepared recently by a seminar of experts – a set of strategies of six pages of points agreed by experts, governments and NGOs.

The Race Directive marks an important step forward, but contains certain limitations – its limited scope, its non-inclusion of discrimination on the basis of nationality and limitation of provisions to citizens of a given country, it does not press for a strong implementation – the text described to implement the provisions is pretty weak. Lastly, it does not press for comprehensive anti-discrimination legislation. However, these and other weaknesses make it something which creates a fruitful possibility to press further. Activists cannot say 'here is the new bible' – there is much to criticise. But this is a key moment in the struggle against racism. The ERRC will be looking at how to make to make good use of the Race Directive of the EU.

## DISCUSSION

[Zoran Pusic]

Events in the second world war played a more important role in the Communist regimes and propaganda, because they tried to compensate for their lack of legitimacy by stressing the role of Communist parties in the resistance to Fascism. In Konstanty Gebert's words, 'they changed the vocabulary but not the grammar.' Enemies of the state were not their political opponents – but they needed enemies and found them in minorities and ethnic groups.

[Gabriel Andreescu]

The division is clear, the consequences are not. In Romania, former Communists became nationalists and former dissidents became minority rights leaders. Today, however, we have a common strategy in Western and Eastern Europe.

[Boris Tsilevich]

Often the same phenomena are described using different notions and methodology. This causes a kind of competition between NGOs and organisations at the academic, conceptual, institutional and organisational levels, in particular, the competition for funding. Better cooperation between organisations both in the East and West must be promoted.

Minority rights do not need to be tied to group rights – minority rights are indissociable from the rights of the individual. So-called 'special rights' are necessary simply to guarantee full and effective equality. Sometimes equality can be guaranteed by equal treatment, but in other cases different persons have to be treated differently to achieve effective equality. This understanding of minority rights might be helpful to bridge the gaps between "the minority rights approach" and "the anti-discrimination approach".

[Theo van Boven]

There is the question of integrating discrimination into the broader human rights discourse, as happened in South Africa where the apartheid struggle became a platform for wider human rights action. But it is noticeable that European Commission on Human Rights and the European Court of Human Rights have been traditionally weak on discrimination. Protocol 12 brings racial discrimination into human rights discourse. Article 13 of the Treaty on European Community achieves something similar. These are gains in strength in the legal sphere. But European countries, although they are parties to the Convention on the Elimination of All Forms of Racial Discrimination – except Ireland and Turkey – have not been good at living up to their obligations under this treaty and many have not accepted the right to petition under the convention. There is a lot to do to introduce broader anti-discrimination legislation, which is missing in most European countries.

[Barry van Driel]

In the Czech Republic, 60–70% believe there is no discrimination against Roma. Teachers in schools, when asked what problems they have say the Roma are the problem. Roma teachers were found and their experience was discussed with other teachers for a couple of days. At the end of this time the problems appeared even more intractable as the teachers now realise the true extent of the problems.

## 4.2 AMERICAN RESPONSES TO RACISM

*Theodore M. Shaw*

America was a nation born in racism. At the Convention which gave rise to the Declaration of Independence in the Constitution there was great debate about racism which ended in compromise. The nation continued with slavery for some time and only a civil war ended that. Race discourse in the US still whitewashes slavery – in a film like *The Patriot* for example. It is Hollywood, but unfortunately younger generations get their history these days from Hollywood. And I have the impression race discourse is no different here in Europe.

The post-Civil War Reconstruction era was one in which Civil Rights legislation and three Constitutional amendments promised equality to African-Americans. There followed a period called Redemption, in which the South was readmitted to the Union, with a prerogative to govern itself again, and this saw the rise of the Ku-Klux Klan and eventually the Supreme Court's decision in 1896 – *Plessy vs. Ferguson*, which sanctioned apartheid in America. It took over six decades to overturn *Plessy* in a decision litigated by the NAACP Legal Defence Fund: *Brown vs. Board of Education*.

I both honour and lament the way *Brown* has led us to think about litigation. The possibilities of social change through litigation are real but limited, particularly in the US. In the US a lot of progressive people go into law thinking they can obtain social change through litigation, which is, in some ways, misleading. If we look to courts as the primary vehicle for social change we will be deeply disappointed – we have to have activism to create a context in which courts are more likely to be responsive. These days that activism is not sufficiently present.

Of course, *Brown* was not solely responsible for the end of apartheid in America – there was also the Montgomery bus boycott and the Civil Rights movement of the Sixties.

There was legislation that could be called the second Reconstruction, and Martin Luther King etc. When the Civil Rights movement ended in the late Sixties we were at a point where it should have included an attempt to address the economic inequality which is a function of centuries of racial discrimination in the US. The struggle focused once again in the Courts. There was conservative ascendancy – both politically (with Reagan) and with Supreme Court appointees. Conservatives have controlled the federal judiciary for quite some time – a lot of the victories of the 1960s and 70s have been reversed or threatened with reversal.

This reflects a broader social discourse in which much of the progressive movement has been demonised by the far right. Political correctness – which Mr Pelinka discussed earlier – is an attempt to take back ground from progressive forces. The whole notion of political correctness demonises anti-discrimination and progressive paradigms in a way that puts them on the defensive and puts reconstructed racist, homophobic, sexist and anti-progressive ideology back on the offensive. These ideologies can then claim victimisation status and cloak their old agenda – and appear neutral. This is exactly what has happened in the US and continues to happen. But the most cutting edge issue remains race.

Specifically there is a battle about *affirmative action* these days – a phrase which has been demonised to the point where it has become useless in the public arena. The struggle has spilled over into the criminal justice arena – the US incarcerates more people than any other country in the world. Disproportionally it incarcerates people of colour, particularly African Americans – over 50% of those incarcerated in US prisons are African American although they constitute only 12% of the population. Much of this is done in the name of the war on drugs – which is in essence a war on black communities. It has given licence to police to engage in conduct in communities which ends up with people getting shot.

There is a great deal of cooperation among civil rights organisations in the US – despite the competition for funds they continue to work together. There are also governmental civil rights agencies in the justice department and other federal agencies at state and local level. How effective they are depends on what administration is in office and what their ideology is. We work with them and pressure them as much as we can.

The demographic changes in the US are profound. There will be no majority in the middle of the twenty first century. The Latino population will be the largest ‘minority group’ and the Asian American population is growing tremendously. So the old paradigm when it comes to race – the black-white divide, which defined race in the States and still does – is no longer useful. We have to deal with race in a very pluralistic, diverse society.

Finally, without touching on the issue of reparations, the civil rights community has been very slow to think about these issues on an international basis and go beyond civil rights to human rights. But the rest of the world is undergoing globalisation and it makes no sense to think of human rights being limited by borders. The US is signatory to many international treaties including CERD – it has not filed its report in six or seven years. The NGO community is putting pressure on the government to that end.

## DISCUSSION

[James A. Goldston]

The statement that over 50% of incarcerated persons in the US are African American – similar statements are often made today in this part of the world. But, in the US that statement is used as evidence of discrimination in the criminal justice system. If you make a similar statement with regard to the Roma in Central/Eastern Europe the statement is used as evidence of the criminality of Roma. So many Roma will say, ‘don’t dare use those statements because they will be used against us, these statements are damaging.’ One challenge is how to get to the point where that statement is seen by majority as evidence of racism instead of evidence of crime. The other challenge in Europe is that nobody has these statistics – with the possible exception of the UK.

[Theodore M. Shaw]

*Brown vs. Board of Education* – in hindsight this case broke the link between formal, legally sanctioned segregation and segregated schools – it did not put an end to desegregated schools. We desegregated many schools around the country but then schools re-segregated as white families moved out of the areas where schools were desegregated. So we still have a situation around the country where many public schools are segregated. Even in immigrant schools there is the kind of tracking and ability grouping that takes place with regard to the Roma in Europe. There is also residential segregation.

In the US, the first Amendment only applies vertically. Most Americans believe it applies horizontally – that it addresses efforts by private citizens to suppress speech – but it doesn’t, it only applies to governmental suppression. When the US signed the UN Race Convention, they expressed reservations including that the US approach to hate speech is different to other countries. For example, there was a case where a cross was burned on the lawn of a black family. A statute making this illegal was ruled by the Supreme Court as a violation of the 1<sup>st</sup> Amendment. The Supreme Court comes down on the side of free

speech and against hate speech. There is a tension between the 1<sup>st</sup> Amendment and the 14<sup>th</sup> Amendment's equal protection clause, which attacks racism.

Sometimes the paradigm for the struggle against racism is one where we assume we are going to eliminate racism. I don't believe that. Collectively we have our demons and racism, or the need to define somebody as the other and treat that person differently, is one of the demons of humanity, and is something that every generation has to struggle against. The paradigm should be one of ongoing struggle, or as we used to say in the liberation struggle in Southern Africa, the struggle continues.

### 4.3 SOUTH AFRICAN RESPONSES TO RACISM

#### *Kabelo Lengane*

In a recent address to the nation, the President of South Africa, Thabo Mbeki, said 'Our successes in the struggle to move our country from apartheid to democracy have led many to the premature conclusion that racism in South Africa is dead.' The President there, to my mind, was introducing to the political arena an environment where a discourse of race would, for the first time, take place in South Africa. In the period from 1994 to now, there has not been an opportunity in South Africa that was conducive for a discourse on race, and action for strategies to combat racism, to take place. This was caused by the values which informed political action when democracy came to South Africa in 1994 – the values of reconciliation, which informed the priorities and urgent tasks in South Africa.

The contradiction in the goal of reconciliation was that speaking about race and racism would have flown in the face of this very goal of reconciliation. Instead of allaying the fears of the people who had perpetrated racism and racial discrimination, it would have consolidated the fears and increased the fears, and therefore threatened democracy itself. As Nelson Mandela said: "Nothing at all is being done or said in South Africa about race and racism so that we in fact have a politically stable country." Reconciliation comes at a price – you don't just stand up and tell the truth and say 'this is what I've done in the past' and that is the end of the problem: you must deal with the problem. The context of Mbeki's remark in his address to the nation is given by a racist diatribe quoted from an email of a white worker in South Africa, finishing with the line: "All I can say is that AIDS is not working fast enough."

The Promotion of Equality and Prevention of Unfair Discrimination Act is the first serious attempt to try and combat racism and race discrimination in South Africa. It is second in importance only to the Constitution itself. This represents the extent of the seriousness with which the government is prepared to deal with the problem of racism. A government of the majority which is attempting to deal, not so much with day to day racism, but with the profound legacy of racism in the past. For this reason responses based on law may have a better efficacy in South Africa than social action in other countries where the preparedness of the government to deal with the problem does not necessarily exist.

Also civil society – represented by the South African Human Rights Commission – has shown a great willingness to deal not only with institutional forms of racism, but with that mundane daily interaction between people that really represents racism. The Human Rights Commission has three major projects, all dealing with racism – racism in the police forces, racism in education and racism in the media – so it appears that government and civil society are working together to combat racism.

A National Conference on Racism begins in August in South Africa which will be informed by people at the receiving end of racism. It will be a consultative and participatory conference to prepare for the World Conference, also to be held in South Africa, next year.

The Human Rights Commission held an inquiry into racism in the media not long ago. The media argued that any investigation would violate their right to free expression. The inquiry was sparked by a letter to the newspapers from black professionals complaining about subliminal racism in the daily national media, portraying black professionals as innately and inherently corrupt and incompetent. They were pressing for laws to address this. The commission called for submissions from people in general and the media, to reply to the allegations. The results will be a main focus of the Conference in August.

## DISCUSSION

[Irena Maryniak]

(1) Toleration is a thin value unless it is accompanied by procedure. Perhaps we should pay more attention to procedure here in Europe as has been done in South Africa. (2) The truth lesson – it's about the acknowledgement of difference. Until historical racist attitudes are fully acknowledged in words in public – in Hungary, Poland, etc. – there's not much we can do about it.

[Kabelo Lengane]

Truth is necessary to establish a tolerant society that acknowledges and accepts diversity. But in South Africa there was a mistaken belief that truth would be an inevitable and necessary route towards peace and reconciliation. However, truth does not guarantee that outcome. There has to be deliberate social action and political will.

[Anton Pelinka]

It is worth noting that there is no parallel for the Truth and Reconciliation Commission in Europe.

[Beate Winkler]

(1) What is the experience of mediation in South Africa? (2) The media is also a focus in Europe – what were the results of the South African inquiry?

[Columbus Igboanusi]

To what extent has racially motivated violence occurred in South Africa since the demise of apartheid and the Truth and Reconciliation Commission, and what are the strategies of the authorities to address such violence?

[Theo van Boven]

The question of land rights of the indigenous peoples – is there a tendency in South Africa to redistribute property since the end of colonisation?

[Kabelo Lengane]

I'm not sure to what extent the Truth and Reconciliation Commission (TRC) has contributed towards a strategy to combat racism. It has certainly had the effect of dealing with the bitterness of the victims of racism and apartheid, and giving people a new beginning. Along with political stability, this was all the Commission achieved. The extent of racial violence in South Africa has not diminished as a result of the TRC and its processes. In fact, the erstwhile perpetrators of this violence, precisely because the TRC process was such a soft process, were not discouraged from continuing. And today they circulate information on the internet and emails. Hopefully when the government carries out its duty to popularise the Equality Act, people will be better empowered, knowing that they have protection and that the government has the political will.

Reporting on racial violence is something else. Perhaps because it is no longer sexy – racism is supposed to be over; human rights is no longer a big problem – so stories about violations don't sell newspapers any more. It probably makes more economic sense not to report these things. The Human Rights Commission inquiry into racism in the media is not yet out. The TRC did have a look at the role of the media – in its report they found that "more than any other institution the media played the most important role,

not only in supporting and buttressing the system of apartheid, but also in justifying it both to white people and black people.” There is a white press and a black press. But the message would be the same – the denigration of Africans.

*Land rights:* A very important area that South Africa has tried to deal with to address the imbalances of the past. Land rights are the only restitutive rights in the Constitution. The land problems of Southern Africa have been averted in South Africa. Compensation has been given to people whose land cannot be restored to them. And much of the land held by the state is being used to provide those whose lands were dispossessed because of the discrimination of the past.

*Regarding racism at the borders:* I was one of the first off the plane yesterday and the very last to get through customs. In South Africa there is unlikely to be discrimination at the borders. This is down to a combination of respect for your African brother and sister on the one hand, and fear of offending the white man on the other.

#### **4.4 BEYOND LAW: THE LIMIT AND POSSIBILITY OF LITIGATION AND LAW REFORM**

*Geoffrey Bindman*

The law has a limited role: you can't use the law only to deal with discrimination, and the law cannot deal with discrimination in every aspect. For example, you can't use the law to restrain people from exercising a democratic vote if you are concerned about racism affecting an electoral process – the voting process is not susceptible to legal restraint from the point of view of discrimination.

Legal measures can be used to deal with two aspects of racism. First, the civil law can be used to provide victims of discrimination with remedies, by way of compensation or court orders restraining acts of discrimination. Secondly, the criminal law can be used to prohibit racial incitement or racial conduct leading to violence, or to impose enhanced penalties on those who commit other crimes with racial overtones or motivations.

International instruments such as the recent Race Directive, Protocol No. 12 and the international covenants are broad sweeping provisions which can't be used effectively unless they're translated into domestic laws in the individual states. This must take

account of differences in legal cultures and systems – we cannot simply transplant remedies and structures that have been developed in one state and expect them to work in another.

Britain borrowed anti-discrimination laws very extensively from the US, rather than from Europe. In the States there is a developed acceptance of giving substantial powers to administrative agencies appointed by the government, with the courts in the background to order people to be present, give evidence, supply documents etc. This was adopted in Britain – but there was a different attitude in the courts: they didn't like this kind of body. When legislation was passed to set up a Race Relations Board and a Commission for Racial Equality to administer law and exercise powers, they got into constant battles with the courts, who consistently cut down their powers. The utility of the law against discrimination was severely curtailed because the resources of the organisation got locked up in legal battles, instead of being devoted to their primary task of challenging discriminators.

Looking towards implementation of the Race Directive – which requires EU member states to adopt their own measures to curb discrimination – we must ensure that when we lay down guidelines or general recommendations, we must take account of particular legal cultures and adapt to them.

A very appropriate measure of the effectiveness of legal regulation is to look at examples in practice. In this room today we have heard two examples of the law not having served individual participants. Perhaps because the law isn't there to protect them, perhaps because if there is a law, the mechanism isn't there to obtain redress under it. We must look first of all at the *scope* of the law – if someone is treated in a discriminatory offensive manner, we need the law to provide a remedy and a sanction. So, not only will there be recompense for the victim but also a deterrence effect so that behaviour will not be repeated.

The scope of civil law, which provides recompense or possibly injunctive relief, must be such as to embrace public officials. There are laws in the UK going back to 1965, but even now law still doesn't cover the activities of police and other public authorities. It is going through now for the first time, making the police and public authorities liable, as a result of the Stephen Lawrence case.

This case is an illustration of how it is possible, through the activities of groups which take up individual cases and campaign, to have a dramatic effect on public opinion and on what governments feel compelled to do. The government was forced as a result of the inquiry to look seriously at the shortcomings of legislation and at the huge gap – true in any society where the police are not bound by anti-discrimination law – which enabled the police to investigate a murder in a way which was plainly discriminatory, and remain inviolable to

any form of legal redress. This is an important point which should be borne in mind in any formulation of anti-discrimination law – it has to bind everybody: the police and all public authorities.

The Race Directive does apply to public authorities, but it must also bind private authorities, bodies, big corporations etc.

The scope should be wide enough to cover every possible discriminator. The definition of that which is prohibited is also important. In both the UK and the US discrimination was perceived as the deliberate act of an individual – not as something which could take place in an institutional form or an indirect form. Indirect discrimination entered US law through the Griggs case, where the term discrimination was interpreted very broadly. In the UK indirect discrimination was introduced quite explicitly.

The Race Directive deals with the burden of proof very effectively, by shifting it to the alleged discriminator. Once there is a *prima facie* case, that person has to prove there was no unlawful discrimination.

The law can be used to impose requirements on institutions and corporations, to monitor their performance and the proportions of ethnic minorities among their workforces. In Northern Ireland there is legislation which imposes requirements on corporations to file returns, which can they be monitored, and sanctions can then be imposed for discrimination which is based on knowledge supplied by the organisations themselves. The law can also be used to impose requirements on institutions and corporations to maintain equal opportunities programmes, to be worked out individually for each corporation in conjunction with officials from whatever body or commission is set up to supervise these activities.

Codes of conduct – these are of no use unless there is some form of sanction for those who fail to implement them. Such sanctions exist in the UK. Rather than having a whole lot of detailed requirements set out in the law, which can be very cumbersome, to set out a code – or variety of codes – for different industries, which can spell out what sorts of measures should be taken to avoid discrimination or prevent it.

Above all, the most important requirement for anti-discrimination law, is that there should be access to the legal machinery for everyone who is affected by it, for the victim. A problem in all societies is that of individuals, ordinary members of the public, getting access to information where it exists, access to advice and to representation in a court or tribunal. This is also a problem in Britain where in recent years there has been a reduction in government resources available to the public for access to the legal system. This is a vital element in any scheme for giving effect in practice to legal measures to restrain discrimination.

Through Protocol No. 12 and in the international covenants, we have an extension of the grounds of discrimination beyond race. But there are practical problems with introducing these into national law, if, as in the UK, there is a different law for each form of discrimination and a different commission or body for each one: racial, gender and disability. There is clearly a lot of merit in trying to set up machinery which covers all forms of discrimination and not simply racial discrimination. The UK is moving in this direction at the moment.

## DISCUSSION

[Saskia Daru]

What are the provisions for group action in the Race Directive?

[Dimitrina Petrova]

Regarding the assertion that anti-discrimination legislation is not sufficient to remove racism in electoral practices and voting rights: is there a legal approach to this? Perhaps not if we remain in the area of anti-discrimination law. But we can also look at the law as arranging political rights. Here, disadvantaged ethnic groups can claim in two opposite directions – either through more representation in local and central governments – through quota systems, or else they can claim more autonomy through self-government. Legislation, in terms of broadening political rights, brings us inevitably to group rights. Language rights and political rights are difficult to define in terms of individual rights, which brings us to the more general strategic issue of where do group rights end and where does social policy start. Can we go further with social policy as a solution against racism if we want to avoid this group rights quagmire?

[Theo van Boven]

The limits of litigation and the question of access to legal machinery. Often the thresholds are rather high or the procedures are unknown to many people. Class rights may be a useful solution in such instances, and also legal assistance by certain officers and persons. But it is a matter of experience that particularly those whose legal status is undefined – the most vulnerable, the *sans-papiers*, the undocumented – fear to make use of these procedures because the first step they expect is to be expelled rather than to have access to justice. This is also true for trafficked persons, domestic servants etc. The utilisation of international and national recourse procedures is extremely important but is often not easily available to the many who are most in need of it.

[Theodore M. Shaw]

Political participation and voting – in the US there is a whole line of civil rights jurisprudence following the 15<sup>th</sup> Amendment which guarantees the right of recently freed slaves to vote and the 1965 voting rights act. But in recent years there has been an attack on this jurisprudence on the grounds that it discriminates against white people – so called reverse racism.

[Geoffrey Bindman]

Group actions: in Britain our machinery for group actions is not very satisfactory. We want to improve that – undoubtedly group/class actions in the US have played a major role in their legal processes against discrimination. Wherever possible they should be used. In cases where there is no identifiable victim, if there is a commission set up to administer legislation, which is almost the universal practice and seems to be a sensible way forward, you can give that body the power to carry out investigations, and to do so in circumstances where no-one is named. That is a helpful way forward. We have done that in Britain to some extent although the courts have tried to limit our powers.

## 5. Concretising Strategies

### 5.1 CONCEPTUALISING A RESPONSE: ANTI-DISCRIMINATION VS. MINORITY PROTECTION

*Gabriel Andreescu*

The title may look provocative – why ‘versus’. The reason is that in the late 1990s the Romanian Helsinki conceived that the system of protection of national minorities will solve the basic problems of national minorities. And our understanding was logically based on the anti-discrimination principle and, secondly, special measures. Over the years the major debates in Romanian society were all about special measures – whether Hungarians have the right to pass exams, or go to university in their mother tongue, and so on.

This happened because of the particularly heterogeneous nature of Romanian society – major minorities have a long, cultural tradition and coherent policy inside Romanian society, and a tradition of high standards. In the 70s the tradition arose to allow minorities to use their mother tongue from primary school to university. Of course Hungarians and Germans only could use this standard, but it was nevertheless a positive framework.

The fate of Hungarians in Romania was a regional concern – given that relations with Hungary affected the stability of the region. So in this context, the major evolution with respect to minority protection was related to special measures. After 1996 Hungarians entered in power-sharing in the government – there was clear legislative improvement in minority rights.

During these years nothing essential happened with regard to anti-discrimination rules and procedures. Non-discrimination is not the same for different minority groups. It is relevant mainly in the case of Roma – but not only with Roma. But Roma are the victims of a policy of non-discrimination which has a basis at state level as well as societal level. Why did this happen? There is a legislative gap – there are some provisions in the criminal code which sanction chauvinism, but this has only been used once in 1999 against someone who expressed anti-Jewish sentiment, and it has only become useful today.

A draft law on the elimination of all forms of discrimination was recently put on the government’s table. This draft law involves the state institutions – the department for

the protection of national minorities and also civic groups such as the OSI foundations. If it is adopted this law will entirely change the environment with respect to non-discrimination in Romania. Some phrases are connected to the EU directive. What will matter will be the establishment of a national council for the elimination of discrimination, a body which would really fight against current manifestations of discrimination – in the media, hate speech, employment, professional discrimination, legal administration and public services.

This system of protection of national minorities will not be sufficient, even together with international instruments with relation to discrimination. We need instruments related directly to non-discrimination – fortunately this year we see the EU directive and the discussion of Protocol No. 12. Secondly, in a society such as Romania, we need to make a distinction between the ethno-cultural minorities and national minorities. In the past it appeared that immigrants, refugees etc, could enjoy the system of protection of national minorities. But this is no longer true today – because such a situation will undermine the general system.

The realities in all transition countries change constantly – in Romania for example we now have 8,000 Kurds, larger than many of the smaller national minorities. They come to the Romanian Helsinki and ask for national minority status or access to education in Kurdish for their children. If we have high standards, it is problematic to apply them to these new minorities. In Romania, minorities have a collective right to representation in the Parliament. Should Kurds receive this right or not? I do not believe that to open this debate would improve the situation for minorities in Romania.

Therefore in a society such as Romania and others in Eastern Europe, the legislative framework must include distinct references to non-discrimination provisions, to national minorities and also to ethno-cultural minorities.

## 5.2 EDUCATION

*Barry van Driel*

Education makes a difference. We are not born racist – it is something that is learned and can therefore be unlearned even though it can be difficult (although biological determinists still exist, such as James Q. Wilson in Harvard). An education conference three years ago brought together people in CEE countries involved in human rights education, multi-cultural/intercultural education, civics education and Holocaust education, and allowed for the identification of problems encountered in trying to implement anti-

racist education. There have been a great number of EU and Council of Europe resolutions and recommendations on the subject. But the starting point for most human rights education programmes remains Article 26 of the Universal Declaration of Human Rights:

Everyone has the right to education. Education shall be directed to the full development of the human personality, and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace.

These are lofty ideals, but in the classroom – in formal education – we see very little of these. What are the barriers?

A first barrier is society itself. How important is it to address these issues in education and to what extent? Should education be restricted to reading, writing etc, or should it also focus on citizenship? In most European countries only one hour a week is devoted to civics or citizenship.

*Teacher education institutions:* courses in intercultural and multi-cultural education exist, they are encouraged, but they are not mandatory. They are attended in the main by ‘disadvantaged groups’. Majority groups imagine it will not be of interest to learn about, for example, the Roma.

*Teachers themselves:* When there are racist problems in classrooms – such as violence – teachers don’t know how to deal with it because they have not been trained. In a case in Latvia, for example, teachers were unanimous in declaring there was no racial violence. Students, however, said there was – but that when once they approached the teacher the situation became worse, and so violence was never discussed. It is an issue of the professionalisation of teachers.

*Students:* if they do not receive information about different communities in their society – if they encounter no information at all about, for instance, Roma history and culture – they will have distorted views about these groups, at the least. A strategic approach must be brought to the curriculum, teaching methods and the school environment. And even wider – in the community at large. Parents can be brought into schools as participants in their children’s education. This is important within the Roma community, who often see the school as an alien institution.

*Curriculum:* For example, the Holocaust and what happened to the Roma is not in school curricula. Cultures, migrants, refugees are almost never mentioned in history books, or literature – only in civic education.

*Methods:* It is very difficult to promote democracy in an institution which is inherently undemocratic, i.e. in most schools. Head teachers are crucial throughout Europe – they have the power, their support is vital, they're mostly interested in grades and not in the problems of students falling behind – who are mostly from disadvantaged groups.

*Solutions:* One of the key issues is creating a safe space in the classroom for children to learn. If not children will be alienated and marginalised – they have to have their voice heard. Too often children from minorities or disadvantaged groups will sit at the back of the classroom, do not participate in activities in the classroom, quickly fall behind, are intimidated or bullied. Situations can be created for building friendships between children for interaction, and involving all the parties – teachers, parents, etc. There must also be an integration of methods and content – in human rights for example, methods are necessary that human rights are protected in the process of teaching. In Mostar, a poetry slam gave children from East and West a chance to create a safe space for themselves. If they can find that common ground they will start to appreciate their differences. The focus must be on skill builders, creating equal access, removing status.

## DISCUSSION

[James A. Goldston]

(1) Efforts to produce intercultural, education etc, presumably involve the participation – hopefully enthusiastic – of government officials, which raises the question of collaboration. (2) Have these activities and techniques been tracked over time anywhere, so that their a measurement can be taken of their ability to affect attitudes with respect to racism and whether some areas are considered better – either whole countries or just regions – than others?

[Barry van Driel]

Martin Emerson has a programme in Bulgaria collecting materials on the Roma. He now has a mentoring programme with young Roma. The big problem is that educators are not fond of evaluation and statistics. There is much anecdotal evidence, but there is also hard evidence, such as studies in Romania by Felicia Tibbets on human rights education. She worked with certain schools and used other schools for comparison, and the attitudes changed completely in one school, while there was no change in the others. Leaders in this field are Sweden and Norway. Norway includes provisions for intercultural education. In England it's very problematic to get training for teachers in intercultural education.

[Ferenc Eros]

(1) According to a comparative study in Hungary between parents and children in two towns, children tend to be more intolerant and xenophobic, especially in the more affluent areas. They get their attitudes not from their parents, but from their environment – the school environment, which is extremely intolerant, among both teachers and peers, particularly against Roma. (2) There was also a programme in multi-cultural education funded by the Soros Foundation. A follow up study showed very low impact. It was more effective only when it could combine multicultural programme with a human rights programme, especially in one case where the multicultural programme was designed as a special activity. (3) The academic/university level is also important. For example a programme in the psychology department of one Hungarian university is attempting to explain the different childbirth rates of Hungarians and Roma according to biological inheritance and genetic structure of the groups. Racism in the social sciences is becoming more popular.

[Boris Tsilevich]

Does state support for education in minority languages and bilingual education actually help to avoid racism and intolerance or is it a hindrance?

[Dimitrina Petrova]

The Anne Frank House has produced teaching materials, including the ‘winter children’ – a metaphor for a despised minority. I had the opportunity to teach this story to 12 year olds at the American school here. Children born in the winter months were put to the back of the class, and by the time the story was enacted, the skinheads in the class were holding back their tears. Methodology for teachers, based on feedback, would be very useful.

[Barry van Driel]

One third of our materials are used wrongly, and one third aren't used at all. There is a need for a manual, although teachers rarely read manuals. We are putting teacher training materials up on a website at <[www.teachers.nl](http://www.teachers.nl)>. Schools with a strong right wing culture – it's hard to enter them. Parents with right wing views are the most difficult to do anything about. Often although teachers give the socially desirable responses when asked about these things, in their attitudes and behaviour they send out different messages. Bilingual education is an important issue which needs to be supported. Many Roma, for instance, speak three or four languages – but it often appears as a deficiency rather than as a strength.

### 5.3 MONITORING HATE SPEECH

*Irena Maryniak*

Index on Censorship is an international, bi-monthly magazine published in London which monitors, promotes and debates freedom of expression. It was originally launched in 1972 by a group of leading western artists and intellectuals, in response to an open appeal for support from Soviet dissidents at a time when many writers in the Soviet Union were being arrested and silenced. Since then Index has been an outlet for suppressed voices, it has fought censorship in all its forms from the most subtle to the most blatant, and defended free speech and its allied rights of freedom of religion and conscience.

We're an international magazine with a cross-cultural focus and many of the issues we deal with are contentious and often uncomfortable. Just to give you an idea – our latest issue is on privacy and the internet; the one before that was on the way women censor in order to protect themselves. This issue also carries what we call a 'file' on racism in Central and Eastern Europe. The 'file' was a series of articles which included a satirical piece by the Czech writer Ludvik Vaculik which reflects very well, if provocatively, the suspicion, antagonism and lack of understanding towards outsiders which many people in the region seem to feel. There was a piece by the Hungarian writer Gyorgy Konrad on the difficulties of gaining admittance to traditionally orientated and protective communities fearful of instability; we had the chair of the Russian Presidential Appeal Committee, Anatoly Pristavkin, on racism in Russia today, and Rafal Pankowski from the Polish anti-Fascist organisation 'Never Again' who looked at rising racism in Polish politics, which is being aided, he says, by apathy in the media and the indulgence of otherwise moderate politicians.

I'd also like to show you the issue on hate speech we did two years ago. Hate speech is a particularly tricky issue to address, and our attempt to do this put us at the forefront of the international debate on the subject. I believe it was Hans Magnus Enzenburger who once said: 'With democracy all the dirt comes out'. But is hate speech to be the price we must pay for safeguarding free expression above all other rights? We've seen the consequences in Nazi Germany. We've seen the effect of hate radio in Rwanda or media hate speech in the former Yugoslavia. Sometimes it seems as though it only takes words to provoke genocide. The question, as we put it in Index, is whether we're prepared to accept the price, and who pays it, and whether there are circumstances in which speech should be censored or even criminalised to protect those who really do get hurt. We're all very aware of the vulnerability of Roma people today; it's also worth considering the position of people from the Caucasus in Russia now.

It seems to us that there is so much anecdotal and scattered evidence that racism, racist speech, and xenophobia are on the rise in former Communist countries, that there is a real need to monitor systematically the extent of all this, to build up an objective, coordinated picture and make it known to the public at large.

Monitoring is central to Index's brief and has been since the magazine first appeared. In every issue we devote 30 pages to a country by country chronicle of free expression abuses worldwide. This is compiled with the help of a group of volunteers (about 16 at the present time) who read and note reports from international news agencies, from the press and from human rights organisations and NGOs. It's a painstaking and hugely laborious job. It's also one of the main reasons we continue to exist.

What we'd like to do now, in addition, is to produce a special monitor for hate speech in Central and Eastern Europe. We want to monitor attacks, discrimination and their coverage in the national media initially in three countries – Russia, Poland and Hungary – with a control monitor on a West European country, probably Austria. Why these three? Hungary and Poland because of their possible early EU accession and Russia because it's too significant to be ignored. Later we also hope to look at Croatia, Romania, the Czech Republic, and Slovakia. We want to look at print and electronic media across the political spectrum, and of course to include the internet (skinhead and neo-fascist web-sites, nationalist sites, sites run by religious extremists).

We plan to do this with a partner organisation in each of the countries concerned, who will carry out detailed monitoring and liaison with legal, advisory and support groups and human rights organisations, and particularly monitor a range of local newspapers, magazines, TV and radio stations, national and regional, representing a spread, politically, from left to right. The partners would also monitor parliamentary proceedings, reports of debates and committees (which are made available – though perhaps with some delay – in all three countries).

Index would then carry a six page monitor of flashpoints in each issue for a year, recording progress. At the end of the first year a report would be published including discursive essays and analysis, witness statements, interviews and comments from our partners. It would be published separately in English, Russian, Polish and Hungarian, with a digest in Index. The project and its findings would be publicised in the mainstream media through syndication of articles, a launch seminar and a symposium at the end. The interim monitors and the final report would appear on the Index web-site and on the web-sites of our partners.

But the most important aspect of the project would be publicity in local media. Our sister magazine in Russia, *Dos'e na tsenzuru*, has said that it will devote an entire issue to

the findings of the project. We'd also expect to have material reproduced or discussed in papers like *Izvestiya*, *Segodnya*, *Moscow news*, *Itogi* and *Obshchaya gazeta*, on the *Ekho Moskvy* radio station and on NTV. In Hungary we hope to publish the short Index reports in the weeklies *Elet es Irodalom* or *Magyar Narancs* and perhaps also in the monthly *Beszelo*. The human rights journal published by our partner organisation here, *Fundamentum*, will be another outlet. And in Poland the publisher would be the journal *Nigdy Wiecej* (Never Again) and/or the Polish-Jewish cultural magazine *Midrasz*, with possible syndication elsewhere.

That is a big project to coordinate and we're still working on putting the funding side of it together. In the meantime, we've already decided in the immediate future to start a regular column in Index which will be called 'unrepresented peoples', and which will deal with the issue of racism and minorities in a broader more discursive way. But we do feel that right now what is needed is a systematic study of public attitudes, and a serious analysis of what these might portend.

I'd like to end by quoting something which our partner in Poland, the journalist Konstanty Gebert once wrote. This is what he said: 'When you translate from the language of Communism to the language of democracy you need to change both the vocabulary and the grammar. It is a very complicated task. However if you want to translate from the language of Communism into the language of nationalism, all you need to change is the vocabulary. The grammar remains the same. The type of mental structures that the new system builds up are based on the foundations that already existed under Communism. It is us versus them, it is inclusion versus exclusion, and violence is a legitimate way of achieving previously ideological, and now national, goals.' It seems to us that it is indeed language, speech, the use of words that needs to be addressed, in order to encourage a transition from the long-petrified grammar of ideology to the more flexible and exploratory grammar of democracy. And by giving ourselves and particularly our partners an opportunity to look the beast in the eye, by encouraging a step in the direction of greater self-awareness and questioning of the use of words and of the time-worn conceptual formulae that underlie xenophobic attitudes, we hope to address something quite central to the problem of racism.

## DISCUSSION

[Saskia Daru]

Konstanty Gebert eventually said he believed only in the 'free market of ideas'.

[Nils Muiznieks]

Free no matter how hateful – this is an issue area that most human rights activists don't want to touch. But this is an area where the legal instruments are useful and good. The problem is that nobody wants to enforce these laws. It's an issue that legislation alone will not resolve. Prosecutors need to go out there and start using it.

[Barry van Driel]

The educational community is divided about how to deal with racist comments in the classroom. Rather than shutting them up, listening to them, taking them seriously and asking why. Which appears to oppose slapping hate speakers on the wrist.

#### 5.4 MEDIA: A TOOL FOR GOOD AND EVIL

*Gordana Jankovic*

The debates within the media are often related to human rights developments, and cooperation with human rights organisations encourages the development of a responsible media. In Central and East European countries and Central Asia, the transitional processes mark the development of the media and its role in society at large. The media changed in parallel with political change. The first appearance of political pluralism was reflected in pluralism of the media, although some diversification was apparent in the late 80s. What was significant in this change was the differentiation between the roles of different sectors of the media, e.g. public and private. The media addressed political processes, such as human rights debates which were taken up by the media in many countries as central transition debates.

In this transformation, few governments were willing to give up their influence on the media. In some countries however, their role was very negative, such as in the former Yugoslavia where they contributed to the beginning of the war. The media were often weak and vulnerable to political manipulation, often becoming instruments of the new political leadership. Media which resisted influence also arose in the most authoritarian countries. So, the independent media in, for example, highly authoritarian Belarus and in relatively open Yugoslavia, both took up issues of discrimination and human rights. There is more often debate in societies where rights are an issue, and human rights frameworks are less developed.

The media in general are event-driven: reporting on the events is often an instrument for

developing certain tendencies towards certain social groups. The media are thus contributing to the beginning of debate.

Monitoring is already carried out at a high level in this region. Public debate is a problem – unless debate is owned by the public, it cannot be effective. Work goes ahead on codes of practice – but unless they were debated and were the product of the professional group themselves, they will never receive a first hearing.

The experience here is in some ways parallel to that of South Africa – where minority media are represented but the majority is nevertheless often justified. A difference is community radio in South Africa which developed well, but that didn't happen here.

## DISCUSSION

[Irena Maryniak]

Why did the media fail to spark debates in CEE countries? Why did media monitoring projects fail?

[Gordana Jankovic]

Debate was prevented by the lack of a culture of debate in the region; the lack of knowledge on how to initiate a debate on the part of human rights groups; and the focus on particular segments of society when opening a debate. Intellectual debate does reach society through the media, but is often very simplified for digestion. Also there is the rise of an irresponsible, yellow type of journalism, which is blooming now. The debate has to be owned by many participants, it has to be inclusive and it has to be targeted when it starts. This has failed until now – collected data was used mainly to report on the media in general terms – the lack of professional standards etc. A monitoring organisation in Yugoslavia were the victims of their own success – the media response was horrible, simply because they weren't used to this kind of objective criticism.



P A R T   I I I

*Legal Texts*

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1. Council Directive 2000/43/EC of 29 June 2000  
Implementing the Principle of Equal Treatment  
Between Persons Irrespective of Racial or Ethnic  
Origin (European Union 'Race Directive')

*Official Journal L 180, 19/07/2000 p. 0022*

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community and in particular Article 13 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Having regard to the opinion of the Committee of the Regions(4),

Whereas:

(1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.

(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

(4) It is important to respect such fundamental rights and freedoms, including the right to freedom of association. It is also important, in the context of the access to and provision

of goods and services, to respect the protection of private and family life and transactions carried out in this context.

(5) The European Parliament has adopted a number of Resolutions on the fight against racism in the European Union.

(6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term “racial origin” in this Directive does not imply an acceptance of such theories.

(7) The European Council in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.

(8) The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

(9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

(10) The Commission presented a communication on racism, xenophobia and anti-Semitism in December 1995.

(11) The Council adopted on 15 July 1996 Joint Action (96/443/JHA) concerning action to combat racism and xenophobia (5) under which the Member States undertake to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour.

(12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

(13) To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the

Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.

(14) In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.

(16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members.

(17) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.

(18) In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.

(19) Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.

(20) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.

(21) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.

(22) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.

(23) Member States should promote dialogue between the social partners and with non-governmental organisations to address different forms of discrimination and to combat them.

(24) Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.

(25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

(26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

(27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.

(28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives,

## HAS ADOPTED THIS DIRECTIVE:

### CHAPTER I

#### General Provisions

##### *Article 1 – Purpose*

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

##### *Article 2 – Concept of discrimination*

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:
  - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
  - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

### *Article 3 – Scope*

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
  - (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
  - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
  - (c) employment and working conditions, including dismissals and pay;
  - (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
  - (e) social protection, including social security and healthcare;
  - (f) social advantages;
  - (g) education;
  - (h) access to and supply of goods and services which are available to the public, including housing.
  
2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

### *Article 4 – Genuine and determining occupational requirements*

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

### *Article 5 – Positive action*

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

### *Article 6 – Minimum requirements*

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## **CHAPTER II**

### **Remedies and Enforcement**

#### *Article 7 – Defence of rights*

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

### *Article 8 – Burden of proof*

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any proceedings brought in accordance with Article 7(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

### *Article 9 – Victimisation*

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

### *Article 10 – Dissemination of information*

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

### *Article 11 – Social dialogue*

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry

with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

#### *Article 12 – Dialogue with non-governmental organisations*

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.

### **CHAPTER III**

#### **Bodies for the Promotion of Equal Treatment**

#### *Article 13*

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
  - without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
  - conducting independent surveys concerning discrimination,
  - publishing independent reports and making recommendations on any issue relating to such discrimination.

## CHAPTER IV

### Final Provisions

#### *Article 14 – Compliance*

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared, null and void or are amended.

#### *Article 15 – Sanctions*

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

#### *Article 16 – Implementation*

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003 or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, Member States shall ensure that by 19 July 2003, management and labour introduce the necessary measures by agreement, Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

### *Article 17 – Report*

1. Member States shall communicate to the Commission by 19 July 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.
2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

### *Article 18 – Entry into force*

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

### *Article 19 – Addressees*

This Directive is addressed to the Member States.

Done at Luxembourg, 29 June 2000.

For

- The Council
- The President
- M. Arcanjo

- (1) Not yet published in the Official Journal.
- (2) Opinion delivered on 18.5.2000 (not yet published in the Official Journal).
- (3) Opinion delivered on 12.4.2000 (not yet published in the Official Journal).
- (4) Opinion delivered on 31.5.2000 (not yet published in the Official Journal).
- (5) OJ L 185, 24.7.1996, p. 5.



## 2. Protocol No. 12 to the European Convention on Human Rights

On 26 June 2000, the Committee of Ministers of the Council of Europe adopted Protocol No. 12 to the European Convention on Human Rights. This new Protocol provides for a general prohibition of discrimination. The Protocol will be opened for signature by member States in Rome on 4 November 2000, date of the 50th anniversary of the Convention, on the occasion of the European Ministerial Conference on Human Rights. Its entry into force requires ten ratifications.

### **PROTOCOL NO. 12 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

*The member states of the Council of Europe signatory hereto,*

- Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;
- Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”);
- Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

*Have agreed as follows:*

#### *Article 1 – General prohibition of discrimination*

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

#### *Article 2 – Territorial application*

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any state may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. Any state which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

#### *Article 3 – Relationship to the Convention*

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

#### *Article 4 – Signature and ratification*

This Protocol shall be open for signature by member states of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member state of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### *Article 5 – Entry into force*

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member states of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.
2. In respect of any member state which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### *Article 6 – Depositary functions*

The Secretary General of the Council of Europe shall notify all the member states of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at ....., this ..... day of ..... 2000, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

## EXPLANATORY REPORT

### Introduction

1. Article 1 of the Universal Declaration of Human Rights proclaims: "All human beings are born free and equal in dignity and rights". The general principle of equality and non-discrimination is a fundamental element of international human rights law. It has been recognised as such in Article 7 of the Universal Declaration of Human Rights, Article 26 of the International Covenant on Civil and Political Rights and in similar provisions in other international human rights instruments. The relevant provision in the European Convention on Human Rights (ECHR) in this respect is Article 14. However, the protection provided by Article 14 of the Convention with regard to equality and non-discrimination is limited in comparison with those provisions of other international instruments. The principal reason for this is the fact that Article 14, unlike those provisions in other instruments, does not contain an independent prohibition of discrimination, that is, it prohibits discrimination only with regard to the "enjoyment of the rights and freedoms" set forth in the Convention. Since 1950, certain specific further guarantees concerning only equality between spouses have been laid down in Article 5 of Protocol No. 7 to the ECHR.

2. Various ways of providing further guarantees in the field of equality and non-discrimination through a protocol to the Convention have been proposed or studied from the 1960s onwards by both the Parliamentary Assembly and the competent intergovernmental committees of experts of the Council of Europe. An important fresh impetus was given by work carried out in recent years in the field of equality between women and men and that of combating racism and intolerance. The European Commission against Racism and Intolerance (ECRI), the Steering Committee for Equality between Women and Men (CDEG) and the Steering Committee for Human Rights (CDDH), have actively considered a possible reinforcement of ECHR guarantees in these two areas.

3. Participants at the 7th International Colloquy on the European Convention on Human Rights (Copenhagen, Oslo and Lund, from 30 May to 2 June 1990) affirmed that the principles of equality and non-discrimination are fundamental elements of international human rights law. With regard to the possibility of broadening, through the development of the Strasbourg case-law, the protection offered by Article 14 of the Convention beyond the above-mentioned limit (see paragraph 1 above), participants recognised that there was little scope for further expansion of the case-law on this score since the prohibition in Article 14 is clearly accessory to the other, substantive guarantees in the Convention.

4. Since 1990, the examination of a possible strengthening of the Convention's guarantees with regard to equality and non-discrimination was initially pursued separately, and from specific standpoints, by the Steering Committee for Equality between Women and Men and the European Commission against Racism and Intolerance.

5. In the course of its work, the CDEG underlined the fact that there is no legal protection for equality between women and men as an independent fundamental right in the context of the binding instruments of the Council of Europe. Considering that a legal norm to that effect is one of the prerequisites for achieving *de jure* and *de facto* equality, the CDEG focused the major part of its activities on the inclusion in the European Convention on Human Rights of a fundamental right of women and men to equality. The work of the CDEG resulted in a reasoned proposal to include such a right in a protocol to the ECHR. In 1994, the Committee of Ministers instructed the Steering Committee for Human Rights to consider the necessity for and the feasibility of such a measure, taking into consideration, *inter alia*, the report submitted by the CDEG. On the basis of the work of its Committee of Experts for the Development of Human Rights (DH-DEV), the CDDH agreed in October 1996 that there was a need for standard-setting work by the Council of Europe in the field of equality between women and men but expressed reservations, from the point of view of the principle of universality of human rights, about a draft protocol based on a sectoral approach. Further to a request made by the CDDH, the Committee of Ministers subsequently (in December 1996) instructed the CDDH to examine, and submit proposals for, standard-setting solutions regarding equality between women and men other than a specific draft protocol to the ECHR.

6. In the meantime, work in the Council of Europe on the problem of racism and intolerance had intensified as a direct result of the 1st Summit of Heads of State and Government of its member States, held in Vienna on 8 and 9 October 1993. The Declaration and Plan of Action on combating racism, xenophobia, anti-Semitism and intolerance adopted at this meeting expressed alarm over the resurgence of these phenomena as well as the development of a climate of intolerance. As part of a global approach for tackling these problems set out in the Plan of Action, the heads of state and government agreed to establish the European Commission against Racism and Intolerance and gave it, among other things, the task of working on the strengthening of the guarantees against all forms of discrimination and, in that context, studying the applicable international legal instruments with a view to their reinforcement where appropriate.

7. Having studied all existing international human rights instruments which deal with discrimination issues, ECRI submitted its findings to the Committee of Ministers. ECRI considered that the protection offered by the ECHR from racial discrimination should be strengthened by means of an additional protocol containing a general clause

against discrimination on the grounds of race, colour, language, religion or national or ethnic origin. In proposing a new protocol, ECRI recognised that the law alone cannot eliminate racism in its many forms vis-à-vis various groups, but it stressed also that efforts to promote racial justice cannot succeed without the law. ECRI was convinced that the establishment of a right to protection from racial discrimination as a fundamental human right would be a significant step towards combating the manifest violations of human rights which result from racism and xenophobia. It emphasised that discriminatory attitudes and racist violence are currently spreading in many European countries and observed that the resurgence of racist ideologies and religious intolerance is adding to daily tension in our societies an attempt to legitimise discrimination.

8. In the light of ECRI's proposal, the Committee of Ministers decided in April 1996 to instruct the Steering Committee for Human Rights to examine the advisability and feasibility of a legal instrument against racism and intolerance taking account of ECRI's reasoned report on the reinforcement of the non-discrimination clause of the ECHR.

9. On the basis of preparatory work done by the DH-DEV, which included the identification of arguments for and against possible standard-setting solutions (namely, an additional protocol based on ECRI's proposal; an additional protocol broadening, in a general fashion, the field of application of Article 14; a framework convention or other convention; or a recommendation of the Committee of Ministers), the CDDH adopted, in October 1997, a report for the attention of the Committee of Ministers concerning both the question of equality between women and men and that of racism and intolerance. The CDDH was of the opinion that an additional protocol to the ECHR was advisable and feasible, both as a standard-setting solution regarding equality between women and men and as a legal instrument against racism and intolerance.

10. It was on the basis of this report that, at the 622nd meeting of the Ministers' Deputies (10–11 March 1998), the Committee of Ministers gave the CDDH terms of reference to draft an additional protocol to the European Convention on Human Rights broadening in a general fashion the field of application of Article 14, and containing a non-exhaustive list of discrimination grounds.

11. The CDDH and its committee of experts, the DH-DEV, elaborated the draft protocol and an explanatory report in 1998 and 1999. As had been the case during previous stages of this activity, the CDEG and ECRI were associated with this work through their representatives. During this period, further support for the rapid conclusion of the elaboration of the draft protocol was expressed by the participants at the European regional colloquy "In Our Hands – The Effectiveness of Human Rights Protection 50 Years after the Universal Declaration" (Strasbourg, 2–4 September 1998), organised by the Council of Europe as a contribution to the commemoration of the 50th anniversary

of the Universal Declaration of Human Rights, and in the political declaration adopted by the Committee of Ministers on 10 December 1998 on the occasion of the same anniversary.

12. The CDDH, after having consulted the European Court of Human Rights and the Parliamentary Assembly, finalised the text of the draft protocol at an extraordinary meeting held on 9 and 10 March 2000 and decided to transmit it, together with the draft explanatory report, to the Committee of Ministers.

13. The Committee of Ministers adopted the text of the Protocol on 26 June 2000 at the 715th meeting of the Ministers' Deputies and opened it for signature by member states of the Council of Europe on ..... 2000.

## COMMENTARY ON THE PROVISIONS OF THE PROTOCOL

### Preamble

14. The brief Preamble refers, in the first recital, to the principle of equality before the law and equal protection of the law. This is a fundamental and well-established general principle, and an essential element of the protection of human rights, which has been recognised in constitutions of member states and in international human rights law (see also paragraph 1 above).

15. While the equality principle does not appear explicitly in the text of either Article 14 of the Convention or Article 1 of this Protocol, it should be noted that the non-discrimination and equality principles are closely intertwined. For example, the principle of equality requires that equal situations are treated equally and unequal situations differently. Failure to do so will amount to discrimination unless an objective and reasonable justification exists (see paragraph 18 below). The Court, in its case-law under Article 14, has already made reference to the "principle of equality of treatment" (see, for example, the Court's judgment of 23 July 1968 in the "Belgian Linguistic" case, Series A, No. 6, paragraph 10) or to "equality of the sexes" (see, for example, the judgment of 28 May 1985 in the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Series A, No. 94, paragraph 78).

16. The third recital of the preamble refers to measures taken in order to promote full and effective equality and reaffirms that such measures shall not be prohibited by the principle of non-discrimination, provided that there is an objective and reasonable justification for them (this principle already appears in certain existing international provisions: see, for example, Article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 4, paragraph 1, of the

Convention on the Elimination of All Forms of Discrimination against Women and, at the regional level, Article 4, paragraph 3, of the Framework Convention for the Protection of National Minorities). The fact that there are certain groups or categories of persons who are disadvantaged, or the existence of de facto inequalities, may constitute justifications for adopting measures providing for specific advantages in order to promote equality, provided that the proportionality principle is respected. Indeed, there are several international instruments obliging or encouraging states to adopt positive measures (see, for example, Article 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 4, paragraph 2, of the Framework Convention for the Protection of National Minorities and Recommendation No. R (85) 2 of the Committee of Ministers to member states on legal protection against sex discrimination). However, the present Protocol does not impose any obligation to adopt such measures. Such a programmatic obligation would sit ill with the whole nature of the Convention and its control system which are based on the collective guarantee of individual rights which are formulated in terms sufficiently specific to be justiciable.

*Article 1 – General prohibition of discrimination*

17. This article contains the main substantive provisions of the Protocol. Its wording is based on the following general considerations.

18. The notion of discrimination has been interpreted consistently by the European Court of Human Rights in its case-law concerning Article 14 of the Convention. In particular, this case-law has made clear that not every distinction or difference of treatment amounts to discrimination. As the Court has stated, for example, in the judgment in the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*: “a difference of treatment is discriminatory if it ‘has no objective and reasonable justification’, that is, if it does not pursue a ‘legitimate aim’ or if there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realised’” (judgment of 28 May 1985, Series A, No. 94, paragraph 72). The meaning of the term “discrimination” in Article 1 is intended to be identical to that in Article 14 of the Convention. The wording of the French text of Article 1 (“sans discrimination aucune”) differs slightly from that of Article 14 (“sans distinction aucune”). No difference of meaning is intended; on the contrary, this is a terminological adaptation intended to reflect better the concept of discrimination within the meaning of Article 14 by bringing the French text into line with the English (see, on this precise point, the Court’s judgment of 23 July 1968 in the “Belgian Linguistic” case, Series A, No. 6, paragraph 10).

19. Since not every distinction or difference of treatment amounts to discrimination, and because of the general character of the principle of non-discrimination, it was not

considered necessary or appropriate to include a restriction clause in the present Protocol. For example, the law of most if not all member states of the Council of Europe provides for certain distinctions based on nationality concerning certain rights or entitlements to benefits. The situations where such distinctions are acceptable are sufficiently safeguarded by the very meaning of the notion “discrimination” as described in paragraph 18 above, since distinctions for which an objective and reasonable justification exists do not constitute discrimination. In addition, it should be recalled that under the case-law of the European Court of Human Rights a certain margin of appreciation is allowed to national authorities in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of appreciation will vary according to the circumstances, the subject-matter and its background (see, for example, the judgment of 28 November 1984 in the case of *Rasmussen v. Denmark*, Series A, No. 87, paragraph 40). For example, the Court has allowed a wide margin of appreciation as regards the framing and implementation of policies in the area of taxation (see, for example, the judgment of 3 October 1997 in the case of *National and Provincial Building Society and Others v. the United Kingdom*, Reports of Judgments and Decisions 1997-VII, paragraph 80).

20. The list of non-discrimination grounds in Article 1 is identical to that in Article 14 of the Convention. This solution was considered preferable over others, such as expressly including certain additional non-discrimination grounds (for example, physical or mental disability, sexual orientation or age), not because of a lack of awareness that such grounds have become particularly important in today’s societies as compared with the time of drafting of Article 14 of the Convention, but because such an inclusion was considered unnecessary from a legal point of view since the list of non-discrimination grounds is not exhaustive, and because inclusion of any particular additional ground might give rise to unwarranted a contrario interpretations as regards discrimination based on grounds not so included. It is recalled that the European Court of Human Rights has already applied Article 14 in relation to discrimination grounds not explicitly mentioned in that provision (see, for example, as concerns the ground of sexual orientation, the judgment of 21 December 1999 in the case of *Salgueiro da Silva Mouta v. Portugal*).

21. Article 1 provides a general non-discrimination clause and thereby affords a scope of protection which extends beyond the “enjoyment of the rights and freedoms set forth in [the] Convention”.

22. In particular, the additional scope of protection under Article 1 concerns cases where a person is discriminated against:

- i. in the enjoyment of any right specifically granted to an individual under national law;

- ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
- iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
- iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot).

23. In this respect, it was considered unnecessary to specify which of these four elements are covered by the first paragraph of Article 1 and which by the second. The two paragraphs are complementary and their combined effect is that all four elements are covered by Article 1. It should also be borne in mind that the distinctions between the respective categories i-iv are not clear-cut and that domestic legal systems may have different approaches as to which case comes under which category.

24. The wording of Article 1 reflects a balanced approach to possible positive obligations of the Parties under this provision. This concerns the question to what extent Article 1 obliges the Parties to take measures to prevent discrimination, even where discrimination occurs in relations between private persons (so-called "indirect horizontal effects"). The same question arises as regards measures to remedy instances of discrimination. While such positive obligations cannot be excluded altogether, the prime objective of Article 1 is to embody a negative obligation for the Parties: the obligation not to discriminate against individuals.

25. On the one hand, Article 1 protects against discrimination by public authorities. The Article is not intended to impose a general positive obligation on the Parties to take measures to prevent or remedy all instances of discrimination in relations between private persons. An additional protocol to the Convention, which typically contains justiciable individual rights formulated in concise provisions, would not be a suitable instrument for defining the various elements of such a wide-ranging obligation of a programmatic character. Detailed and tailor-made rules have already been laid down in separate conventions exclusively devoted to the elimination of discrimination on the specific grounds covered by them (see, for example, the Convention on Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, which were both elaborated within the United Nations). It is clear that the present Protocol may not be construed as limiting or derogating from domestic or treaty provisions which provide further protection from discrimination (see the comment on Article 3 in paragraph 32 below).

26. On the other hand, it cannot be totally excluded that the duty to "secure" under the first paragraph of Article 1 might entail positive obligations. For example, this question could

arise if there is a clear lacuna in domestic law protection from discrimination. Regarding more specifically relations between private persons, a failure to provide protection from discrimination in such relations might be so clear-cut and grave that it might engage clearly the responsibility of the State and then Article 1 of the Protocol could come into play (see, *mutatis mutandis*, the judgment of the Court of 26 March 1985 in the case of *X and Y v. the Netherlands*, Series A, No 91, paragraphs 23-24, 27 and 30).

27. Nonetheless, the extent of any positive obligations flowing from Article 1 is likely to be limited. It should be borne in mind that the first paragraph is circumscribed by the reference to the “enjoyment of any right set forth by law” and that the second paragraph prohibits discrimination “by any public authority”. It should be noted that, in addition, Article 1 of the Convention sets a general limit on state responsibility which is particularly relevant in cases of discrimination between private persons.

28. These considerations indicate that any positive obligation in the area of relations between private persons would concern, at the most, relations in the public sphere normally regulated by law, for which the state has a certain responsibility (for example, arbitrary denial of access to work, access to restaurants, or to services which private persons may make available to the public such as medical care or utilities such as water and electricity, etc). The precise form of the response which the state should take will vary according to the circumstances. It is understood that purely private matters would not be affected. Regulation of such matters would also be likely to interfere with the individual’s right to respect for his private and family life, his home and his correspondence, as guaranteed by Article 8 of the Convention.

29. The first paragraph of Article 1 refers to “any right set forth by law”. This expression seeks to define the scope of the guarantee provided for in this paragraph and to limit its possible indirect horizontal effects (see paragraph 27 above). Since there may be some doubt as to whether this sentence on its own covers all four elements which constitute the basic additional scope of the Protocol (the question could arise in particular with respect to elements iii and iv – see paragraph 22 above), it should be recalled that the first and second paragraphs of Article 1 are complementary. The result is that those four elements are at all events covered by Article 1 as a whole (see paragraph 23 above). The word “law” may also cover international law, but this does not mean that this provision entails jurisdiction for the European Court of Human Rights to examine compliance with rules of law in other international instruments.

30. The term “public authority” in paragraph 2 has been borrowed from Article 8, paragraph 2, and Article 10, paragraph 1, of the Convention and is intended to have the same meaning as in those provisions. It covers not only administrative authorities but also the courts and legislative bodies (see paragraph 23 above).

### *Article 2 – Territorial application*

31. This is the territorial application clause contained in the Model Final Clauses adopted by the Committee of Ministers in February 1980. Paragraph 5 follows closely Article 56, paragraph 4 of the Convention.

### *Article 3 – Relationship to the Convention*

32. The purpose of this article is to clarify the relationship of this Protocol to the Convention by indicating that all the provisions of the latter shall apply in respect of Articles 1 and 2 of the Protocol. Among those provisions, attention is drawn in particular to Article 53, under the terms of which “Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party”. It is clear that this article will apply in the relations between the present Protocol and the Convention itself. It was decided not to include a reference to Article 16 of the Convention in this Protocol.

33. As has already been mentioned in paragraph 21 above, Article 1 of the Protocol encompasses, but is wider in scope than the protection offered by Article 14 of the Convention. As an additional Protocol, it does not amend or abrogate Article 14 of the Convention, which will therefore continue to apply, also in respect of States Parties to the Protocol. There is thus an overlap between the two provisions. In accordance with Article 32 of the Convention, any further questions of interpretation concerning the precise relationship between these provisions fall within the jurisdiction of the Court.

### *Article 4 – Signature and ratification*

### *Article 5 – Entry into force*

### *Article 6 – Depositary functions*

34. The provisions of Articles 4 to 6 correspond to the wording of the Model Final Clauses adopted by the Committee of Ministers of the Council of Europe.

**END**

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