



NEWS REPORT

Date: 08 December 2011
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Title: Transposition of Council Framework Decision on combating racism and xenophobia
Country: Cyprus
Context

Issue at stake: Council Framework Decision on combating racism and xenophobia through criminal law is transposed

Ground of discrimination: Race/ ethnic origin

Source: Legislation (Law N. 134(I)/2011)
Field: All fields
Legislative provisions: Law on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law N.134(I)/2011

Content

Legislative development : On 21 October 2011 a law came into effect (Law N. 134(I)/2011) transposing the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. The Framework Decision set up a deadline for transposition on 28 November 2010, however consultation amongst stakeholders produced disagreement (and hence a delay) over two issues: first, whether Courts will be *obliged* to take racist and xenophobic motivation into consideration or whether it will be left up to judicial discretion; and secondly whether the prosecuting authorities be specifically and expressly entitled to commence self-initiated investigations and prosecutions on matters covered by the Council Framework Decision even in the absence of a complaint from or the consent of the victim or the victim's closest relative where the victim is deceased. The law which eventually was enacted provides that the Courts *must* take racist and xenophobic motivation into consideration and the police *are* granted the right to investigate in the absence of a complaint.

The background to the adoption of this law is indicative of the dilemmas posed. Even though the Ministry of Justice had initially expressed¹ its conviction that the Council Framework Decision 2008/913/JHA would be transposed into Cypriot legislation within the deadline provided by the said instrument (28.11.2010) this did not happen.

From the expert's investigation it emerged that the reason for the delay was the fact that the Legal Affairs Parliamentary Committee which was reviewing the bill presented by the Ministry of Justice did not accept the specific draft and asked for its revision. Discussion of the bill at the Parliamentary Committee included consultation with stakeholders, two of whom, namely the Head of the Anti-discrimination Authority² and the Head of the Police Anti-discrimination Unit, posed objections on the provision of the bill which purported to transpose Article 4 of the Council Framework Decision. Whilst the Council Framework Decision provides that measures must ensure that racist and xenophobic motivation is considered an aggravating circumstance or alternatively that it may be taken into consideration by the Courts in the determination of the penalties, the bill presented to the Parliamentary Committee provided that racist and xenophobic motivation *may be* taken into consideration by the Courts, i.e. it adopted the second option of Article 4 of the Council Framework Decision.

The arguments in favour of the first option, i.e. of creating a binding obligation to consider racist motivation as an aggravating circumstance, were twofold: Based on the fact that Cypriot legislation so far did not provide for racist motive to be an aggravating factor, there is no strong judicial tradition in this context upon which further judicial practice may be premised. The Head of the Anti-discrimination unit stated that if the intention is to send out a message to potential perpetrators that racist motivation *will* be taken seriously, then the first option must be adopted, as the second option (judicial discretion) provides less of a deterrent. Besides, Cypriot legislation already provides that the type and seriousness of the offence may be taken into consideration by the

¹ Communication with Mrs Kate Andreou, Senior Legal Officer of the Ministry of Justice dated 13.10.2010.

² The Anti-discrimination Authority is one of the two bodies comprising the national equality body, dealing with racism and discrimination beyond employment.



Courts in order to impose a sentence; so far this provision was not utilised by the Courts in imposing a tougher sentence for offences involving a racist motivation. A number of counter-arguments were presented that this will interfere with judicial discretion, which were rejected on the basis that other laws, and in particular the domestic violence law already provides an obligation for the Courts to take into consideration certain aggravating circumstances.

The objection put forward by the Police was that prosecuting authorities be specifically and expressly entitled to started self-initiated investigations and prosecutions on matters covered by the Council Framework Decision even in the absence of a complaint or the consent of the victim or the victim's closest relative where the victim is deceased.³ The arguments in favour of this were premised upon previous experience, which showed that in the absence of such a right the police's hands would be tied, rendering it difficult to play a role in combating racist crime.

The Parliamentary Committee sustained the objections of the Equality Body and the Police but adjourned discussion on the bill for several months until this was finally enacted.

Internet link source: The law is not available on line.

³ This was based on the fact that existing legislation requires the consent of the deceased victim's closest relative in order to start prosecution on the offence of insulting the memory of a deceased person.