

Brussels, Mon 29 June 2015.

Complaint to the European Parliament's Committee on Petitions (PETI) to highlight infringements by IRELAND of the 2008 EU Council [Framework Decision on combating certain forms and expressions of Racism and Xenophobia \(2008/913/JHA\)](#), with particular reference to Articles 3 and 4.

Complainant: ENAR Ireland, on behalf of its membership. [ENAR Ireland](#) is a membership organisation comprising over 50 Civil Society organisations in Ireland, including anti-racist, migrant, Traveller and Roma, religious organisations and the largest Trade Unions. It is the Irish coordination of the [European Network Against Racism, ENAR](#). ENAR Ireland works to ensure the highest standards of protection from racism for all minority ethnic communities in Ireland. ENAR Ireland is a member a high level Civil Society working group, including the University of Limerick's Hate and [Hostility Research Group \(HHRG\)](#), which is making proposals to legislators for the provision of Hate Crime legislation.

The 2008 Framework Decision on Racism and Xenophobia and Ireland:

Article 3 of the **Framework Decision** requires that member states to make adequate provision to prohibit "racist and xenophobic hate speech"(3.1.1), including "publicly inciting to violence or hatred, including by public dissemination or distribution of tracts, pictures or other material"(3.1.2).

In addition, **Article 3** also requires that member states make provision to prohibit, under specific circumstances, the "Public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes" as defined by the International Criminal Court (3.1.3); and, under specific circumstances, the "Public condoning, denial or gross trivialisation of the crimes defined in the Charter of the International Military Tribunal [appended to the London Agreement of 8 August 1945, i.e. the Holocaust]" (3.1.4)

Article 4 of the **Framework Decision** states: "For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties."

Ireland and Racist Crime.

With the sole exception of the problematic ***Prohibition of Incitement to Hatred Act 1989***, there is no legislation in Ireland which addresses the racist element of a crime. Ireland claims that this **Act**, meets the requirements under **Article 3.1.1** and **3.1.2**. Yet, it is criticised for being so constrained in its scope as to be almost completely ineffective; it is thought that fewer than 20 cases have been brought to court under the **Act** since 1989, and that there may have been very few convictions under the **Act**.

With respect to **Article 3.1.3** and **3.1.4**, there is [no provision](#) in Irish law for dealing with the public condoning, denial or gross trivialisation of genocide, crimes against humanity, war crimes, or of the Holocaust.

In relation to its obligation to implement the provisions of **Article 4** concerning racially aggravated crimes, Ireland, in its submission to the Commission and the Council [“simply state\[s\] that \[racist\] motivation can always be considered by the courts”](#). Ireland’s response here echoes its standard responses to the analogous recommendations made to Ireland, by ECRI, UN CERD, and UN CDESCR, namely that judges routinely take such factors into account during sentencing, and thus that no legislation is required.

With regards to this Ireland’s obligation to transpose **Article 4**, the view held by ENAR Ireland’s membership, by other civil society actors and by academic experts, reflected in [this research](#), published in 2014, is that, while judges can in theory take a racist motivation into account at sentencing in the same manner as any other aggravating or mitigating factor, there is little evidence that they do in practice.

Furthermore, without legislation there can no obligation on judges to take racist motivation into account, since the sentencing system in Ireland regarding all crimes is wholly discretionary; besides from setting out the legislative maximum and minimum sentences, there are no legislative guidelines on sentencing. Similarly, there are no judicial sentencing guidelines either, meaning that every individual judge has an absolute discretion in terms of what he or she deems to be an aggravating factor in the sentence.

Forthcoming research:

Following from this research, the Civil Society working group, led by the Irish Council for Civil Liberties, has funded the Hate and Hostility Research Group to conduct a large scale study into the manner in which a hate element is addressed by the criminal justice system. This study encompasses qualitative interviews with over 70 individuals including victims, CSOs, criminal justice professionals, members of the Probation service and members of An Garda Síochána (the Police), as well as a survey of barristers.

The research is due to be published in the coming months, but the authors (Amanda Haynes and Jennifer Schweppe) have indicated to ENAR Ireland that it will show that while individual judges will routinely treat a hate motivation as an aggravating factor, this is not always the case. Further, it will show that the absence of legislation pervades the system, impacting on [the manner in which a hate motivation is addressed by the police services](#). It will ultimately argue that hate crime legislation should be introduced as a matter of urgency.

It is the intention of ENAR Ireland to submit this new HHRG research to PETI in support of this petition, as soon as it becomes available.

ENAR Ireland would be happy to help facilitate any meeting or dialogue between PETI and any of the actors mentioned in this document.

ENAR Ireland .

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