



International Convention on the Elimination of All Forms of Racial Discrimination

Committee on the Elimination of Racial Discrimination

Eighty-first session

Summary record of the 2197th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 28 August 2012, at 3 p.m.

Chairperson: Mr. Avtonomov

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Thematic discussion on hate speech (*continued*)

The meeting was called to order at 3.10 p.m.

Thematic discussion on hate speech (*continued*)

Racist hate speech in political life and in the media, including the Internet

1. **Mr. Leyenberger** (European Commission against Racism and Intolerance (ECRI)) said that ECRI shared the Committee's concerns about the increase in racist speech in public discourse, particularly political discourse. ECRI, mandated to combat racism, anti-Semitism and xenophobia, found it very hard to strike the right balance between the exigencies of two fundamental rights: the right to be protected from racism and the right to express oneself freely. Article 10 of the European Convention on Human Rights enshrined the principle of freedom of expression but also recognized certain restrictions on the exercise of that right, which were confirmed by the extensive case law of the European Court of Human Rights, which made it clear that freedom of expression was a conditional rather than an inviolable right. Although there was no universally accepted definition of "hate speech", in its case law the European Court of Human Rights had defined political hate speech in terms that excluded it from the scope of any protection that the principle of freedom of expression might afford. As illustrated in a July 2009 ruling convicting a Belgian politician who had made statements stigmatizing the immigrant community on charges of public incitement to hatred and discrimination, the Court always sought to ascertain whether or not human dignity had been violated. In the aforementioned case, it had placed the rights of the affected community before the principle of freedom of expression, which was consistent with the spirit of ECRI general policy recommendation No. 7.

2. ECRI was dismayed to find that racist and xenophobic statements were no longer the preserve of extreme right-wing parties, but were increasingly permeating traditional parties, threatening to normalize and legitimize such speech and perpetuate anti-minority stereotypes and prejudices. It was also disturbing to note the ease with which the Internet allowed racist speech to be propagated. In any event, States needed, as a matter of urgency, to criminalize any conduct that might incite racial hatred, particularly in political discourse. The dissemination of racist statements and images, especially on the Internet, should also be criminalized. Nonetheless, States had failed to agree on how best to prevent use of the Internet for racist purposes, and several were even reluctant to accede to international instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Council of Europe Convention on Cybercrime. ECRI believed that combating the dissemination of racist ideas called not only for the adoption of national legislation but also for self-regulation and compliance with codes of ethical conduct on the part of Internet service providers. Public awareness-raising and education were also of paramount importance if States were to effectively combat the dissemination of racist content on the Internet. Being in a position to influence public opinion, political parties had a key role to play. They should consider adopting self-regulatory measures and applying the Charter of European Political Parties for a Non-Racist Society. States, meanwhile, should ensure that criminal law provisions dealing with racist offences were effectively enforced and that any group that incited racism or hatred was punished. In conclusion, organizations that disseminated hate messages should be denied State funding, including political parties that used hate speech.

3. **Mr. Ruteere** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that the issue of hate speech was at the centre of his mandate and had been one of the key topics addressed in his report to the Human Rights Council at its twentieth session (A/HRC/20/38). An in-depth study on the use of the Internet to propagate racist rhetoric and xenophobic discourse, to which various stakeholders were contributing, was currently under way. The global economic crisis and its attendant social anxieties had created an environment conducive to the dissemination of racist and xenophobic attitudes in the media, especially on the Internet. It was distressing to see political parties giving growing credence to xenophobic discourse disseminated through the Internet, and to find the electronic media being used to recruit members of extremist groups and organize rallies. Estimates suggested that the number of hate websites had grown to some 8,000 by 2008, not including the numerous social media that helped to disseminate racist and xenophobic ideas. Faced with that problem, States had a key role to play by adopting

legislative and regulatory measures designed to combat the propagation of hate speech and by concluding the pertinent regional agreements. The Council of Europe Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems was an important advance in that direction. In addition, in accordance with their international obligations every State should enact laws designed specifically to prevent the propagation of xenophobic ideas, basing themselves on the conclusions of the outcome document of the Durban Review Conference.

4. He shared the view of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that any restrictions on the content disseminated via the Internet should be applied on a clearly defined legal basis and in a manner compatible with international human rights law, the aim being to determine to what extent freedom of expression and opinion needed to be restricted in order to combat racism. The fight against the dissemination of xenophobic messages via the Internet called for consultation among all stakeholders, including Internet service providers, multimedia companies, and States, with a view to agreeing on self-regulatory initiatives. NGOs could also play a crucial role, being in a position to exert pressure on website administrators and persuade them to remove racist content even in the absence of legal provisions requiring them to do so. To conclude, if coordinated solutions were to be found, it was vital that the dissemination of racist content via the Internet and in political circles should be discussed in international forums.

5. **Mr. McGonagle** (University of Amsterdam) said that it was difficult to define highly politicized racist hate speech as everyone had a different interpretation of the concept. "Racist hate" was not a term of art and had no precise legal meaning. It had not been developed in international human rights law, and academics had not agreed on an authoritative definition. It was better described as a term of convenience that, for example, allowed Committee experts to refer to the notion without having to cite article 4 of the Convention in its entirety. The term should be used with care, however, because it could be taken to refer to a whole spectrum of discourse and conduct, encompassing incitement to hatred, insults, abuse, prejudice and defamation, that did not all enjoy the same legal protection. Hate speech was reprehensible both in and of itself and for what it did. To prohibit or regulate it, however, a clear definition was needed, as not all forms were equally harmful or effective. A distinction must also be made among the different forms of hate speech – direct or indirect, uttered once or repeatedly, backed or not by the authorities, accompanied by threats or not. Some forms of hate speech should be subject to criminal action, while others called for preventive measures to stamp out such expressions before they gained momentum. Once established, the notion of hate speech could be examined in the context of the Convention provisions. It would then be possible to determine which types of hate speech were covered by the Convention and other instruments and thus to address them in a more targeted and effective manner than would ever be possible under the vague, all-embracing notion of hate speech.

6. Although it went without saying that the media could contribute to the dissemination of hate speech, the reality was somewhat more complex. For example, in the *Jersild v. Denmark* case, a Danish journalist had been convicted for aiding and abetting the dissemination of racist statements after broadcasting a televised interview with a group of young extremists who had made abusive remarks about immigrants. The conviction had been overturned by the European Court of Human Rights, on the ground that failing to explicitly contradict racist statements did not necessarily constitute aiding and abetting their dissemination. The use of the media for totalitarian propaganda during the Second World War had bred justified apprehension about the right to freedom of expression. However, the media could also be used to counter hate speech. Ubiquitous in our everyday life, the media served as channels for all forms of communication and information. Exercise of the right to information was therefore contingent on access to the media, the influence of which was enormous and could be used positively, the media being also important vectors of culture. They could help preserve the identities and languages of minority cultures that were often marginalized, disadvantaged or discriminated against, and were a powerful antidote to hate speech. The media could also encourage dialogue and communication and play a key role in the functioning of a democratic society. In that regard, the approach adopted by ECRI, which had reminded the media of their social responsibility under the Framework Convention for the Protection of National Minorities and had expedited the development of best practice in that area, was exemplary. Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination could also be used for that purpose.

7. With the advent of the Internet, the media were becoming increasingly instantaneous, international and interactive and racist hate speech could be propagated, amplified and made quickly accessible to all. Any individual could access the Internet and spread their message directly. The new possibilities afforded by the Internet, notably discussion groups and social media, had allowed racist movements to organize themselves more effectively than in the past in terms of recruitment, training, fundraising, sale of publications, etc. Those technological advances had created legal challenges in terms of liability and jurisdiction. The fact that liability could be attributed either to the author of the racist statements or to the Internet service provider often led hate-mongers to choose the service provider that would give them the best protection. Hate-mongers also tended to host sites in countries where hate speech was not criminalized under domestic law. The anonymity afforded by the Internet also exacerbated the harm inflicted on victims of racist hate speech. For the Committee to combat hate speech effectively, it must expand its field of action to the media and the Internet and come to understand them in depth.

8. **Ms. Hivonnet** (European Union) said that the Council of the European Union's Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law respected the right to freedom of expression as defined in article 10 of the European Convention on Human Rights and article 11 of the Charter of Fundamental Rights of the European Union. Since the right to freedom of expression was not an absolute right, as the European Court of Human Rights had confirmed in a number of decisions, in a democratic society it might sometimes be necessary to punish forms of expression inciting hatred based on intolerance. It was for the courts to determine, on the basis of the specific circumstances and context, whether or not speech constituting incitement to racial hatred or violence or xenophobia was protected by freedom of expression. Besides the problems already raised by earlier speakers, she highlighted others inherent in the fact that the boundary between public and private life was extremely blurred, especially on social networks. With regard to hate speech in political life, scrutiny should not be limited to political parties but should also extend to the role of leaders and public figures, including religious and community leaders.

9. **Mr. Kashaev** (Russian Federation) said that political extremism with nationalistic overtones, which was far more dangerous than popular extremism, had been fed by the geopolitical upheavals of the previous 20 years. The Russian Federation appreciated the

steps that the European Union had taken to combat the dissemination of racist and xenophobic ideologies, as well as the recommendations of ECRI, particularly the recommendation calling for a ban on the dissemination of Nazi symbols. He would like Mr. Leyenberger to explain how ECRI assessed the extent to which its recommendations, particularly those concerning the prohibition of the activities of extremist organizations, were implemented. Sharing the view that freedom of expression was not an absolute right, he wondered whether States that defended freedom of expression in all circumstances were aware of the risks involved in unbridled, unmonitored dissemination of hate-filled ideologies. He would also like to know what regional and international measures should be taken to combat unrestricted dissemination of racist hate speech through social networks and the blogosphere, in the absence of international regulations governing Internet use.

10.**Mr. Leyenberger** (ECRI) said that his Commission assessed implementation of its recommendations by visiting the countries concerned. It had no specific instruments on which to base the assessment, but could monitor legislative advances in the fight against racism. In its recommendations, ECRI reminded journalists of the ethics by which they were required to abide in their work, while journalists' training should in any case always include human rights instruction. Where States failed to fully implement its recommendations, ECRI reminded them of their obligations. It could not impose penalties but could publicly denounce violations of the European Convention of Human Rights if necessary.

11.**Mr. McGonagle** (University of Amsterdam) said that, while he concurred with the view that the same rules should apply to all media, some media, given their scope and impact had far greater power than others. The boundary between public and private was very difficult to delineate, especially at a time when the social networks themselves were tending to diversify and provide new services. While international regulations governing new media were not essential, a co- or self-regulatory structure in which as many partners as possible participated should be established as a matter of priority.

Racist hate speech and freedom of opinion and expression

12.**Mr. Ruteere** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that the problem lay less in the fact that the main political parties were taking racist positions than that they were adopting the racist attitudes and ideologies propagated by extremist movements and groups. Such speech should be punished in the religions as well as politics, given the influence that religious leaders had exerted in situations of inter-ethnic conflict in the past.

13.**Mr. La Rue** (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) said that, in his view, the only way to combat discrimination in all its forms was to broaden and defend freedom of expression. That freedom was not absolute and did not apply, for example, to speech detrimental to the reputation of others or to national security, nor to statements inciting genocide. However, the difficulty lay in identifying the less direct and less blatant expressions, which circulated in all countries, especially on the Internet. While States needed to suppress hate speech and speech inciting racial hatred, they needed at the same time to address their root causes, all too often linked to the educational and cultural values promoted by the States themselves and to the extent to which the various ethnic components of society were or were not recognized and respected in their territory. The media, for their part, had an essential role to play in promoting intercultural understanding. Codes of professional conduct for the media and journalists should reflect the principle of equality, and effective action should be taken for their enforcement.

14.**Ms. Dah** (Moderator) said, that because lack of audibility was making interpretation impossible, Mr. La Rue's statement via audio link from Guatemala had to be terminated. She would be grateful if the Special Rapporteur would provide the Committee with a written copy.

15.**Ms. Callamard** (Article 19, International Centre Against Censorship) said that there was no universally accepted definition of hate speech in international law although the expression was frequently used. The numerous studies on the subject carried out by her organization had revealed a growing normalization of hate speech. Article 19 was endeavouring to find ways to prevent everyday small-scale racism from proliferating. For Article 19, as for most philosophers and sociologists who had studied the issue of racism, freedom of expression was essential to the protection of democracy, human rights and human dignity. Freedom of expression was not the prerogative of Western nations, but a right to be enjoyed by all. The constituent elements of hate speech were enunciated in articles 19 and 20 of the International Covenant on Civil and Political Rights and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, but the approach in each of the two instruments differed. Article 19 of the Covenant established the right to freedom of expression but provided that it might be restricted to respecting the reputation of others or protecting national security or public order, while article 20 of the Covenant required States parties to prohibit incitement to discrimination, propaganda for war, and advocacy of national, racial or religious hatred by law. Article 4 of the Convention went further in that it required States parties to adopt immediate and positive measures to criminalize not only incitement to hatred, but also the dissemination of ideas based on racial hatred. Article 4 also contained a core obligation, namely that States parties should not permit public authorities or public institutions, whether national or local, to promote or incite racial discrimination.

16. Article 19 would like to suggest a number of lines of thought to the Committee. Firstly, there was a need to identify the points of convergence in the various international instruments that dealt with hate speech. Secondly, it was necessary to define the point at which hate speech became so severe that it should be treated as a criminal offence. The concept of severity was important because not all hate speech was destructive and likely to incite genocide. Thirdly, the focus should be on defining the criminal penalties applicable to hate speech considered to be of sufficiently alarming severity, based on the following elements: the speaker's intent; the form and content of the speech; the speaker's status in society, and the target audience; the means used to transmit the message and the size of the target audience; and, lastly, the imminence and probability of the potential harm caused by the statements. Article 19 was adamant that the fight against racism in all its forms involved defending and promoting genuine freedom of expression, which was based on protecting media freedom. The media should not be subject to censorship of any kind and must be able to address all issues relating to situations of ethnic conflict. Although hate speech targeted specific population groups, its ultimate goal was to undermine the foundations of democracy.

17.**Ms. Lynch** (Irish Network against Racism (ENAR Ireland)) said that for a number of years the organization she represented had

been closely monitoring the emergence of extreme-right parties in certain countries and their progressive institutionalization, as evidenced by their accession to government power. Such situations were on the increase even in countries — notably in Scandinavia — where no one would ever have expected to witness a surge of right-wing extremism. They were explained mainly by deterioration of the social fabric which was driving more and more voters into the arms of those parties and by the formation of coalitions between moderate and extreme-right parties. No State was immune from the scourge. While, given its normalization, racist discourse might no longer shock, the speed with which it spread and gained ground must give cause for concern. The day-long thematic discussion organized by the Committee presented a good opportunity to reflect on ways of halting that progression. However, the urgency of the situation, as highlighted by Mr. Doudou Diène at the previous meeting, made prompt action essential.

18.**Mr. Charlier** (Centre for Equal Opportunity and Opposition to Racism) said that the fight against racial discrimination was predicated on a relatively simple principle: prohibition of discrimination was the rule, and differences in treatment were the exception. However, the issue was more complicated where racist hate speech was concerned: freedom of expression was the rule, and restrictions on that freedom were the exception. Room for manoeuvre was therefore more limited. The Centre for Equal Opportunity and Opposition to Racism had carried out studies of speech act theory, which showed that a boundary was crossed when a word was no longer just a word but tantamount to an act. That criterion made it possible to determine whether or not statements were objectionable. No other speaker had raised the subject of humour and its various interpretations in that connection although it was closely linked to the issues being discussed. The Centre for Equal Opportunity and Opposition to Racism was not in favour of taking upstream action against racist speech by adopting laws prohibiting its dissemination, considering it preferable to use awareness-raising and educational activities to prevent such discourse.

19.**Mr. Mulrean** (United States of America) said that a written submission setting forth his Government's position had been provided to the Committee in advance of the thematic discussion and that an electronic copy could be consulted on the website of the Mission of the United States of America to the Office of the United Nations at Geneva (<http://geneva.usmission.gov>). Highlighting the most important points of the submission, he said that his Government was firmly convinced that banning hate speech was the wrong approach to the problem. Such prohibitions would inappropriately restrict universal human rights, namely the freedoms of expression, association and assembly. The Government of the United States had opted for alternative approaches that enabled it to combat intolerance and discrimination while protecting fundamental freedoms. It had enacted laws against crimes motivated by hatred and laws prohibiting discrimination in access to public accommodations, and had implemented educational programmes against bullying, and law enforcement community outreach programmes. Experience had shown that the most effective antidote to offensive speech was more speech. In the United States, Government officials and NGOs regularly raised their voices against statements of intolerance.

20. The United States Government took the view that article 4 of the Convention should be interpreted in a manner consistent with the principle that expression should be curtailed only in very limited circumstances, such as incitement to imminent violence. That was why it had entered a reservation to the article in question, as some 20 or so other States parties to the Convention had done. Accordingly, the authorities questioned the wisdom of devoting more time and resources to the topic of hate speech. If the Committee wished to further examine the question, it should concentrate on ways of addressing hate speech that were respectful of other rights, including the right to freedom of expression.

21.**Ms. Dawkins** (Australia) said that, as one in four Australians had been born abroad, diversity was a fundamental part of Australian national identity. Her Government applied multicultural policies aimed at promoting mutual understanding through preventive and awareness-raising initiatives and combating intolerance and discrimination. While Australia had an extensive legal arsenal prohibiting racial discrimination, the Government believed that the legal provisions alone could not suffice to prevent and combat hate speech effectively and that they must be buttressed with awareness-raising programmes. In August 2012, the Government had launched a new anti-racism strategy, to be implemented between 2012 and 2015, that would focus on public awareness and youth engagement. Development of the strategy had been informed by a broad consultation process involving diverse sectors of the population, including groups particularly affected by racism. In conclusion, the Government of Australia encouraged the Committee to use its extensive experience to turn the spotlight on good practices that helped prevent hate speech rather than on penalizing it.

22.**Mr. Thornberry**, summing up the day's discussion, said that all participants agreed on the toxicity of hate speech and the need to combat it. They had stressed that such discourse knew no borders and was spreading rapidly over the Internet and social networks. Various interpretations of the notion of racist hate speech had been invoked, but the fact that there was no universally accepted definition was not an obstacle to reflection. Any initiative addressing hate speech must take account of the infinite diversity of situations and contexts in which such expressions were uttered. Some speakers had also highlighted the importance of the context in which preventive and punitive measures were taken. The Committee did not adopt a rigid approach to interpretation of the Convention. It always took account of emerging phenomena and new realities, and accorded particular attention to the junctions between racial discrimination and other forms of discrimination, including discrimination against women, religious minorities and, more recently, persons living in poverty.

23. Although the provisions of article 4 of the Convention were relatively explicit, speakers had highlighted certain ambiguities in its provisions, particularly with regard to the dissemination of racist ideas. The Committee would need to reflect further on that and other issues raised during the discussion, including the delineation between private and public life in the context of Internet use, use of stereotypes, negationism and the links between article 4 and other articles of the Convention, including article 7. Article 4 of the Convention had considerable preventive value and there was a need to guard against playing the prohibition of hate speech off against freedom of expression. As several speakers had pointed out, it should not be forgotten that racist hate speech condemned other voices to silence, including those of indigenous minorities.

25. Noting that the NGOs present would have liked the Committee to draft a general recommendation on racist hate speech, he emphasized that the organized Committee's thematic discussions did not necessarily lead to a general recommendation. The Committee had not yet decided on the matter but would probably do so before the end of the current session. Whatever the

outcome, if a new general recommendation were issued, the term “racist hatred speech” would not appear in the title because it did not appear in the Convention.

26. **The Chairperson** commended the fruitful exchanges that had taken place during the thematic discussion and thanked all those present for their contributions.

The meeting rose at 6 p.m.