

96/443/JHA: Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia

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JOINT ACTION of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia (96/443/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative from the Kingdom of Spain,

Whereas the Member States regard the adoption of rules in connection with action to combat racism and xenophobia as a matter of common interest, in accordance with Article K.1 (7) of the Treaty in particular;

Whereas regard should be had to the conclusions on racism and xenophobia adopted by the European Council in Corfu on 24 and 25 June 1994, in Essen on 9 and 10 December 1994, in Cannes on 26 and 27 June 1995 and in Madrid on 15 and 16 December 1995;

Whereas the Consultative Commission on Racism and Xenophobia, established by the Corfu European Council, adopted recommendations;

Whereas, despite the efforts made over recent years by the Member States, racism and xenophobia offences are still on the increase;

Concerned at the differences between some criminal law systems regarding the punishment of specific types of racist and xenophobic behaviour, which constitute barriers to international judicial cooperation;

Acknowledging that international cooperation by all States, including those which are not affected at domestic level by the problem of racism and xenophobia, is necessary to prevent the perpetrators of such offences from exploiting the fact that racist and xenophobic activities are classified differently in different States by moving from one country to another in order to escape criminal proceedings or avoid serving sentences and thus pursue their activities with impunity;

Emphasizing that the right to freedom of expression implies duties and responsibilities, including respect for the rights of others, as laid down in Article 19 of the United Nations International Covenant on Civil and Political Rights of 19 December 1966;

Determined, in keeping with their common humanitarian tradition, to guarantee that, above all, Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 are complied with;

Wishing to build upon the work begun within the framework of Title VI of the Treaty during 1994 concerning the criminal aspects of the fight against racism and xenophobia,

HAS ADOPTED THIS JOINT ACTION:

TITLE I

A. In the interests of combating racism and xenophobia, each Member State shall undertake, in accordance with the procedure laid down in Title II, to ensure effective judicial cooperation in respect of offences based on the following types of behaviour, and, if necessary for the purposes of that cooperation, either to take steps to see that such behaviour is punishable as a criminal offence or, failing that, and pending the adoption of any necessary provisions, to derogate from the principle of double criminality for such behaviour:

(a) public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin;

(b) public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations;

(c) public denial of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 insofar as it includes behaviour which is contemptuous of, or degrading to, a group of persons defined by reference to colour, race, religion or national or ethnic origin;

(d) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;

(e) participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.

B. In the case of investigations into, and/or proceedings against, offences based on the types of behaviour listed in paragraph A, each Member State shall, in accordance with Title II, improve judicial cooperation in the following areas and take appropriate measures for:

(a) seizure and confiscation of tracts, pictures or other material containing expressions of racism and xenophobia intended for public dissemination, where such material is offered to the public in the territory of a Member State;

(b) acknowledgement that the types of behaviour listed in paragraph A should not be regarded as political offences justifying refusal to comply with requests for mutual legal assistance;

(c) providing information to another Member State to enable that Member State to initiate, in accordance with its law, legal proceedings or proceedings for confiscation in cases where it appears that tracts, pictures or other material containing expressions of racism and xenophobia are being stored in a Member State for the purposes of distribution or dissemination in another Member State;

(d) the establishment of contact points in the Member States which would be responsible for collecting and exchanging any information which might be useful for investigations and proceedings against offences based on the types of behaviour listed in paragraph A.

C. Nothing in this Joint Action may be interpreted as affecting any obligations which Member States may have under the international instruments listed below. Member States shall implement this Joint Action consistently with such obligations and will refer to the definitions and principles contained in such instruments when so doing:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,
- the Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967,
- the United Nations Convention on Genocide of 9 December 1948,
- the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966,
- the Geneva Conventions of 12 August 1949 and Protocols I and II of 12 December 1977 to those Conventions,
- Resolutions 827(93) and 955(94) of the United Nations Security Council,
- Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime (1), in cases of criminal proceedings for the types of behaviour listed in paragraph A, if witnesses have been summoned in another Member State.

TITLE II

Each Member State shall bring forward appropriate proposals to implement this Joint Action for consideration by the competent authorities with a view to their adoption.

The Council will assess the fulfilment by Member States of their obligations under this Joint Action, taking into account the declarations annexed to it, by the end of June 1998.

This Joint Action and the annexed declarations, which are approved by the Council and are without prejudice to the application of this Joint Action by Member States other than those whom these declarations concern, will be published in the Official Journal.

Done at Brussels, 15 July 1996.

For the Council

The President

D. SPRING

(1) OJ No C 327, 7. 12. 1995, p. 5.

ANNEX

DECLARATIONS REFERRED TO IN TITLE II

1. Declaration by the Greek delegation re Title I.B (b):

'Greece interprets Title I.B (b) in the light of those provisions of its Constitution which prohibit any action being taken against persons facing prosecution on political grounds.'

2. Declaration by the French delegation re Title I.C, fifth indent:

'France points out that Additional Protocol I of 8 June 1977 to the Geneva Conventions of 1949 cannot be invoked against it, in that France has neither ratified nor signed that instrument and that it cannot be taken as a translation of international customary law applicable in armed conflicts.'

3. Declaration by the United Kingdom delegation re Title I:

'The United Kingdom delegation declares that for the purposes of the application of the Joint Action by the United Kingdom, and taking into account the provisions and general principles of United Kingdom criminal law, the United Kingdom will apply Title I, paragraph A, points (a) to (e) and references thereto where the relevant behaviour is threatening, abusive or insulting and is carried out with the intention of stirring up racial hatred or is likely to do so.

This would include, in accordance with Title I.B and Title II, enabling the relevant United Kingdom authorities in this context to search for and seize tracts, pictures or other material in the UK which is intended for dissemination in another Member State and which is likely to incite racial hatred there.

If problems arise from the application of this declaration, the UK will consult with the Member State concerned with a view to overcoming the problems raised.'

4. Declaration by the Danish delegation re Title I:

'The Danish delegation declares that for the purposes of the application of the Joint Action by Denmark, and taking into account the provisions and general principles of Danish criminal law, Denmark will apply Title I, paragraph A, points (a) to (e) and references thereto only where the relevant behaviour is threatening, insulting or degrading.'