**Hanna Suchocka**

**Racist hate speech: politics and challenges, good practices and data collection**

***General topics – European context***

**Definitions**

The only internationally adopted definition of hate speech in theCommittee of Ministers Recommendation No. R (97) 20 on “hate speech”, adopted in 1997, reads:

‘The term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.’

Today Council of Europe uses an updated working definition of hate speech, which reads,

‘Hate speech entails the advocacy, promotion or incitement to denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat to such persons on the basis of a non-exhaustive list of personal characteristics or status that includes race, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.’[[1]](#footnote-1)

ECRI Recommendation includes a definition of racism, understood as,

‘“racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.’[[2]](#footnote-2)

Recently (on April 9th, 2019), ECRI glossary has included an official definition of people of African descent

‘Black persons shall mean persons that identify themselves as Black, often in the sense of belonging to a/the Black community. Many times the term Black is used by the persons/communities concerned as a political identity symbol in the fight for their rights.’[[3]](#footnote-3)

**Racist hate speech in Europe - current politics and challenges**

**Political context:**

* 2015-2017 migration crisis in Europe benefitted persons who express radical views; racist and xenophobic rhetoric in public sphere has become more widespread and acceptable (various national opinion polls provide data supporting this claim);
* extreme-right wing parties has had moved closer towards political establishment in many countries in Europe;
* a string of terrorist attacks in the EU member states was another important factor[[4]](#footnote-4) (starting with Charlie Hebdo attack and November attacks in Paris 2015, 2016 truck attack in Nice, 2016 truck attack in Berlin, 2016 Brussels bombings, 2018 attack in Strasbourg); it is often cited in literature on hate crime and hate speech that prejudice-based violence escalates after such attacks;
* social uncertainty and anxiety has been reinforced by political events, such as brexit, that is the UK’s planned exit from the European Union;
* there is also a concern over lack of suitable media and telecommunications regulations, especially online regulations, that would prevent and effectively tackle online hate speech.

**What is currently framed in Europe as major challenges:**

* Some of the most pressing challenges in Europe include racism, also against Roma and Sinti, as well as prejudice based on religion.[[5]](#footnote-5)
* Afrophobia, prejudice and discrimination against people of African descent, is also increasingly acknowledged as a major challenge, along anti-Black racism,
  + 2017 High Level Group on combating racism, xenophobia and other forms of intolerance focus session on Afrophobia followed up by a "conclusions paper on Afrophobia; acknowledging and understanding the challenges to ensure effective responses",
  + In 2018 EU Fundamental Rights Agency published report Being Black in the EU.[[6]](#footnote-6) The survey examines the experiences of almost 6,000 people of African descent in 12 EU Member States.
  + In March 2019, the EU Commission published a report on Countering racism and xenophobia in the EU, with a section discussing Afrophobia[[7]](#footnote-7).
  + On 6th of March 2019, MP Claude Moraes asked the European Commission[[8]](#footnote-8) which steps it could consider, and within which time-frame,
    - * for setting up, within its relevant structure, a specific unit dedicated to combating Afrophobia, responsible for coordinating resources and support to effectively engage communities in the response to hate speech and hate crime, and any form of violence against People of African Descent,
      * closely liaising with international actors such as the OSCE, the UN, the African Union and the Council of Europe, as well as other international partners, in order to combat Afrophobia at international level.

There are also new challenges posed by development of technology, including enabling the speech on social networks and racial discrimination in algorithmic decision making - the new challenges to which Europe has been now learning to respond, also through regulatory means. This is an important topic for both Committee of Ministers and Parliamentary Assembly of Council of Europe.[[9]](#footnote-9)

ECRI and Inclusion and Anti-Discrimination Programmes recently published a study entitled “Discrimination, Artificial Intelligence and Algorithmic Decision-Making”.[[10]](#footnote-10)

**Data on hate speech and harassment**

**European Union Fundamental Rights Agency (FRA) reports**

In 2018 the Second **FRA Survey on discrimination and anti-Semitic hate crime** was published.[[11]](#footnote-11) It showed that respondents tend to rate antisemitism as the biggest social or political problem where they live. They assess antisemitism as being most problematic on the internet and on social media (89 %), followed by public spaces (73 %), media (71 %) and in political life (70 %). Respondents most commonly come across anti-Semitic statements online (80 %), followed by media other than the internet (56 %) and at political events (48 %). Nearly half of the respondents worried about being subjected to antisemitic verbal insults or harassment (47 %). The dedicated Eurobarometer on Antisemitism published in January 2019 shows that 50% of the European population considers Antisemitism a persistent problem.

According to **2017 FRA Second European Union Minorities and Discrimination Survey**[[12]](#footnote-12), 39 % of surveyed Muslims felt discriminated against in the five years before the survey because of their ethnic or immigrant background in one or more areas of daily life. 79 % of Muslim respondents did not report their experiences with discrimination. 31 % of surveyed Muslim women who wear a headscarf or niqab in public experienced harassment because of their ethnic or immigrant background and 22 % of surveyed Muslim women experienced insults or offensive comments.

According to 2018 Being Black in the EU Survey[[13]](#footnote-13), which examined experiences of people in 12 EU Member States (Austria, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal, Sweden and the United Kingdom). One third of respondents (30 %) say they experienced racist harassment in the five years before the survey; one fifth (21 %) say they did so during the 12 months preceding the survey. Yet only 14 % of victims of racist harassment reported the most recent such incident to any authority. Experiences of racist harassment most commonly involve offensive non-verbal cues (22 %) or offensive or threatening comments (21 %), followed by threats of violence (8 %).

**Responses**

**Responses at Council of Europe level**

**European Commission against Racism and Intolerance (ECRI) standards[[14]](#footnote-14)**

Hate speech is a major cause for concern for the Council of Europe. Most recently adopted standards include:

* Combating Hate Speech ECRI General Policy Recommendation No.15 - adopted on 8 December 2015;
* Safeguarding irregularly present migrants from discrimination ECRI General Policy Recommendation No.16 - adopted on 16 March 2016;
* ECRI General Policy Recommendation N°7 (revised) on national legislation to combat racism and racial discrimination - adopted on 13 December 2002 and revised on 7 December 2017[[15]](#footnote-15)

**European Court of Human Rights**

* European Court of Human Rights has developed a rich jurisprudence on hate speech.[[16]](#footnote-16)
* ECtHR case law is an important source of information for courts in member states – including how to unmask bias motives in crimes. The Fundamental Rights Agency of the EU published a report with related case law, available at <<https://fra.europa.eu/en/publication/2018/unmasking-bias-motives>>.
* The ECtHR has also pronounced on protection of immigrants and foreigners in CoE Member States and reitarated how important it was for States to combat racial discrimination in all its forms and manifestations. In a case Feret v. Belgium[[17]](#footnote-17), the ECthR underscored, that the states are obliged to,

‘ensure the repression of racist discourse in relation to a freedom of expression that is used irresponsibly to undermine the dignity, or even the safety, of such population groups. Political discourse which incites hatred based on religious, ethnical or cultural prejudices represents a danger for social peace and political stability in democratic States.’

* Furthermore, ECtHR has ruled in several cases related to effectively responding to online hate speech. The court pronounced on responsibility of online news portals for the offensive comments posted by its readers (*Delfi AS v. Estonia*) and on liability of Internet content providers for vulgar and offensive online comments posted on their websites (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*).

**Responses on the European Union level**

Relevant EU law in addition to Treaties and provisions of EU Fundamental Rights Charter include notably the Council Framework Decision [2008/913/JHA](https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32008F0913) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.[[18]](#footnote-18)

In 2014, the Commission issued a report on the implementation of the Framework Decision on combating racism and xenophobia which highlighted transposition gaps in a number of Member States, in particular in relation to the offences of incitement to racist and xenophobic violence and hatred, the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction.

Since 2014, the Commission has had the power to oversee the application by Member States of the Framework Decisions and has held bilateral talks at both technical and political level with almost all the Member States to ensure the full and correct legal transposition of this instrument. Some good progress can be reported, with several Member States adopting amendments to bring their laws in line with the Framework Decision. This work must continue to ensure effective enforcement of this hate crime and hate speech legislation as well as to address transposition gaps.[[19]](#footnote-19)

* European Commission[[20]](#footnote-20) actions include amongst others the nomination of the two coordinators on [combating Antisemitism](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/combating-antisemitism_en) and [Anti-Muslim hatred](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/combating-anti-muslim-hatred_en) and the implementation of the [European Framework of National Roma Integration Strategies](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/roma-and-eu/roma-integration-eu-countries_en#nationalromaintegrationstrategies).
* European Commission acts with businesses and IT companies to combat racism and xenophobia. In 2016 The European Commission agreed with Facebook, Microsoft, Twitter and YouTube to set up the [Code of conduct on countering illegal hate speech online](https://ec.europa.eu/info/files/code-conduct-countering-illegal-hate-speech-online_en) to help users notifying illegal hate speech in this social platforms, improve the support to civil society as well as the coordination with national authorities. Since 2018, Instagram, Google+, Snapchat, Dailymotion and most recently jeuxvideos.com, announced their intention to join the Code which now covers approximately 86% of the market share of social media platforms in Europe.
* Under the Rights Equality and Citizenship Programme, the European Commission awarded 12 million euros annually for [projects](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-funding-tackle-racism-and-xenophobia_en) across the European Union to fight with discrimination, hate crime and speech, racist and xenophobic narratives.[[21]](#footnote-21)
* FRA opened a database of national and international legislation and case law related to hate speech against Muslims.[[22]](#footnote-22)

**Key developments in national legislation**

In 2018 NGO Article 19 published a report on comparative responses to hate speech in six EU countries: Austria, Germany, Hungary, Italy, Poland and the United Kingdom.[[23]](#footnote-23)

**Other actions**

European Network Against Racism published ‘10 equality demands: ending racism within the EU’, ahead of the EU elections which take place in May 2019.[[24]](#footnote-24)

**Data collection**

Main challenges of data collection include:

* Individual countries have different criteria for identifying and classifying such crimes.
* Many countries do not keep statistical records on hate speech, classify it, or conduct it fairly.
* Underreporting is a major obstacle in assessing the phenomenon.
* The survey findings suggest that people face so much hate speech and other abuse that some of the incidents they experience appear trivial to them. FRA 2018 Anti-Semitism survey results showcase that ‘that eight in 10 respondents (79 %) who experienced antisemitic harassment in the five years before the survey did not report the most serious incident to the police or other organisation. The main reasons given for not reporting incidents are the feeling that nothing would change as a result (48 %); not considering the incident to be serious enough to be reported (43 %); or because reporting would be too inconvenient or cause too much trouble (22 %).’[[25]](#footnote-25)

**Responses to the problem:**

At the EU level, since 2016, the EU Commission’s High Level Group (HLG) to combat racism, xenophobia and other forms of intolerance, includes a specific Subgroup that works to develop methodologies for recording and collecting data on hate crime.

Moreover, in 2019 EU Fundamental Rights Agency FRA published [the 11 guidelines on improving the collection and use of equality data](https://fra.europa.eu/sites/default/files/fra_uploads/ec-july-2018-guidelines-equality-data-collection.pdf). The guidelines describe a number of concrete institutional and operational steps that EU Member States can take to enhance the collection and use of equality data.

OSCE / ODIHR is highly focused on hate crime reporting.

1. Council of Europe Thematic Factsheet. Hate Speech, Apology of Violence, Promoting Negationism and Condoning Terrorism: the Limits to the Freedom of Expression [↑](#footnote-ref-1)
2. ECRI General Policy Recommendation N°7 (revised) on national legislation to combat racism and racial discrimination - adopted on 13 December 2002 and revised on 7 December 2017 [↑](#footnote-ref-2)
3. <https://rm.coe.int/ecri-glossary/1680934974> [↑](#footnote-ref-3)
4. See EU Terrorism Situation and Trend Report (TE-SAT) 2018, <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2018-tesat-2018> [↑](#footnote-ref-4)
5. <https://ec.europa.eu/info/sites/info/files/swd_countering_racism_and_xenophobia_in_the_eu.pdf> [↑](#footnote-ref-5)
6. <https://fra.europa.eu/en/publication/2018/eumidis-ii-being-black> [↑](#footnote-ref-6)
7. <https://ec.europa.eu/info/sites/info/files/swd_countering_racism_and_xenophobia_in_the_eu.pdf> [↑](#footnote-ref-7)
8. <http://www.europarl.europa.eu/doceo/document/O-8-2019-000022_EN.html> [↑](#footnote-ref-8)
9. <https://www.coe.int/en/web/artificial-intelligence/home> [↑](#footnote-ref-9)
10. <https://rm.coe.int/discrimination-artificial-intelligence-and-algorithmic-decision-making/1680925d73> [↑](#footnote-ref-10)
11. <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey_en.pdf> [↑](#footnote-ref-11)
12. <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf> [↑](#footnote-ref-12)
13. <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf> [↑](#footnote-ref-13)
14. <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-standards> [↑](#footnote-ref-14)
15. <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae> [↑](#footnote-ref-15)
16. <https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf> [↑](#footnote-ref-16)
17. Féret v. Belgium, no. 15615/07, 16 July 2009, 16 July 2009 (French only) [↑](#footnote-ref-17)
18. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al33178> [↑](#footnote-ref-18)
19. <https://ec.europa.eu/info/sites/info/files/swd_countering_racism_and_xenophobia_in_the_eu.pdf> [↑](#footnote-ref-19)
20. <http://europa.eu/rapid/press-release_MEX-19-1772_en.htm> [↑](#footnote-ref-20)
21. <https://ec.europa.eu/info/sites/info/files/swd_countering_racism_and_xenophobia_in_the_eu.pdf> [↑](#footnote-ref-21)
22. <https://fra.europa.eu/en/databases/anti-muslim-hatred/home> [↑](#footnote-ref-22)
23. <https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf> [↑](#footnote-ref-23)
24. <https://www.enar-eu.org/IMG/pdf/eu_election_demands.pdf> [↑](#footnote-ref-24)
25. <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey_en.pdf> [↑](#footnote-ref-25)