

Address by Pierre Baussand, Director of Social Platform - panelist on 'Effectively responding to hate crime: From legislation to practice'

Fundamental Rights Conference 2013: Combating hate crime in the EU – Giving victims a face and a voice

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(Check against delivery)

1) How do we move forward after this conference? What concrete action do we want the EU to take about hate crime in the EU?

What do we want? Legally binding instruments in all EU countries to make sure that perpetrators are systematically identified, prosecuted and engaged in restorative justice or punished and that the victims are systematically protected.

Therefore **we need broader legislation that covers more ground than the current 2008 directive.**

For three reasons:

1) What is the purpose of legislation? It has a symbolic value that states what is not acceptable in our society. It demonstrates society's rejection of crimes based on hate. Then, crime motivated on any ground listed in the victim package is not acceptable. In fact crime motivated by any ground is acceptable in our society.

This what Martin Luther King Jr said in 1962: "It is neither education nor legislation; it is both legislation and education. I quite agree that it is impossible to change a man's internal feelings merely through law. But this really is not the intention of the law. The law seeks rather to control the external effects of those internal feelings. For instance, the law cannot make a man love - religion and education must do that - but it can control his effort to lynch".

My question to you: Is the following acceptable in the EU?

- **Transgender crime:** Can you please tell to my friend Richard who represents Transgender Europe today that it is acceptable that 53 transgender people died in the EU just because of their gender! That the hate against them should not be made visible in the legislation
- **Gender crime:** Can you please tell my friends from the European Women's lobby that it is acceptable that 7 women die every day from domestic violence and that between 40 and 50% of women report some form of sexual harassment in the workplace.
- **Migration status:** many undocumented migrant face hate crime in several EU countries.

- 2) **Then there is the issue of consistency within EU legislation. If the victims is recognised, the crime should be recognised, be made visible. Therefore characteristics reflected in the victims' directive should be reflected in the hate crime legislation.**

The victims' rights directive means that it is applicable to victims of a hate crime which is not included under existing hate crime laws. The base crime will be prosecuted normally though the victim may be entitled to the particular attention the directive requires.

It will make the motivation more visible to society and it will be more visible that it is not acceptable.

FRA states that legislators should consider enhanced penalties for hate crimes to stress the severity of these offenses.

- 3) **We need to guarantee the safety of those seeking greater equality in our society.** The EU has to act with responsibility. We have adopted and promoted several anti-discrimination laws on gender equality and in 2000 on race, disability, religion and belief, sexual orientation, and age. These laws were meant to bring changes in our societies. Changes may create tensions. Tensions may trigger hate. Hate may lead to a crime. It would be a responsible answer to protect those who are struggling for greater equality from crimes due to their characteristics.

Martin Luther King Jr: "Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. There is a type of constructive nonviolent tension that is necessary for growth".

A revised directive on hate crime would take into account the possible consequences to be faced by the groups promoting their rights: gay and lesbian being more visible in gay pride, people with disability being integrated in mainstream education, women having the right to have an independent life outside marriage or earning more than men.

- 4) **Hate crimes do not occur in a vacuum:** they are violent manifestation of prejudice. Hate crimes are distinguished from other types of crime by the motive of the perpetrator.

The offender deliberately targets the victim because of a protected characteristic, but not actual hatred or hostility is necessary to prove the offense (example from Bulgaria, Denmark and French legislation). The offender select the victim based on prejudices or stereotyped information about victim vulnerabilities.

The offense is motivated in whole or part by bias/prejudice.

- 5) **What we are asking for is not a dream – it already exists in some EU member states**

Gender, age, mental or physical disability and sexual orientation are quite frequently protected characteristics.

It is possible – see the Belgian law: the article 33-42 of Belgian law of May 2007 provide that “hatred against a person on the grounds of his so-called race, colour or skin, descent, national or ethnic origin, sex, sexual orientation, birth, age, wealth, belief of philosophy of life, current and future state of health, disability, language, political conviction or social origin” are aggravating circumstances that can double the penalty of the crimes (then a list)

These are the reasons why we need a broader legislation than the council framework decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal laws.

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