

**Legislative Provisions for
Hate Crime across EU
Member States**

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1. General Summary

Across the EU, States have far more measures to confront discrimination than hate crimes. Although measures are increasingly being introduced, in the main the legislation focuses on racial hatred at the expense of other forms of hatred such as religion and sexual orientation. Few countries provide for hatred against homosexuals as a group. Certain States perhaps understandably focus their hate laws in the context of right-wing extremism and National Socialism. There is a widespread problem of the reporting and recording of hatred incidents, in particular those of an anti-Semitic nature.

1.1 Constitutional measures

Apart from general protections for equality before the law, few states have constitutional protections against hatred, although there are notable exceptions. **Austria** has enshrined in its constitution prohibition of holocaust denial and **Italy's** constitution protects religious equality. **Luxembourg's** constitution provides against general discrimination of all foreigners

1.2 National-Socialism and right-wing extremism

Some European countries focus their “hatred” laws in the context of National-Socialism and Right-wing extremism. **Austria** and **Belgium** both have laws criminalizing holocaust denial, as does **France** whose law extends to criminalisation of the denial of crimes against humanity “as tried at Nuremberg”. **Germany** extends criminal liability for neo-Nazi, xenophobic and racist crimes. Germany also has a wide-ranging law that criminalises disturbance of the peace of the dead. The scope covers improper behaviour in former concentration camps. Germany has the provision to ensure that crimes of hatred committed by Germans abroad would be punishable regardless of whether that conduct is criminal under the law of the place where it occurred. Germany is also fairly unique in having a public authority dedicated to preventing the rise of right-wing extremism in East Germany (CIVITAS). **Italy** has a law prohibiting the reconstitution of the Fascist Party.

1.3 Collection and reporting of data

A common identifiable problem across a number of states is the problem of accurate collection and reporting of incidents of hate crimes and this is particularly so with anti-Semitic crimes. **France**, for example, entrusts the collation of data on hate crimes to the Ministry of the Interior. Yet the data is rarely complete and figures collated by the *Conseil Représentatif des institutions Juives en France* (Representative Council of Jewish Institutions in France) is usually much higher than the official ones. One possible explanation offered for this occurrence is that victims may report a crime to the CRIF but not to the police.

1.4 Hatred as a motivating factor

Austria, Belgium, Germany, Sweden and the **UK** (excluding Northern Ireland, although this is proposed by the Criminal Justice (Northern Ireland) Order 2004) now have provision to include any motivation for crime as an aggravating factor and to be taken into consideration in sentencing.

1.5 Incitement to racial hatred

Incitement to racial hatred is the most comprehensively covered measure yet few countries have specific provision for incitement to religious hatred. **Austria, Belgium, Denmark, Finland, Germany**, have incitement to racial hatred laws, which include in their wording hostile acts towards a person on account of religion.

Ireland is quite unique in having an “Incitement to Hatred Act” as opposed to an ‘incitement to *racial* hatred’ – hatred is therefore more widely defined, although there is no provision against hatred because of political beliefs. **Sweden** has provision for both racial agitation and racial incitement. Most states also have prohibition on inciting hatred through broadcasting.

1.6 Anti-Semitism

Provisions for dealing with incidents of an anti-Semitic nature are varying in scope and measures. With the exception of anti-Semitism, hatred on the grounds of religion

is rarely given legal protection, although most discrimination laws include religious grounds.

1.7 Sexual Orientation

Very few countries have specific legal measures providing protection from hatred on grounds of sexual orientation. Ireland's 'Incitement to Hatred Act' includes hatred aimed towards people on account of their sexual orientation. As of February 2001 the Swedish government were considering the criminalisation of agitation against homosexuals as a group.

1.8 States with few measures

A number of states are lacking in comparison with other EU states. **Greece** has only one law relating to hate crimes and that is incitement to racial discrimination, hatred or violence. Furthermore there is no specific legal definition of anti-Semitism and few specific anti-racism laws. Any existing provisions are formulated in the interests of public order rather than in protection for the rights of the individual. There is no official body to monitor anti-Semitic attacks. **Luxembourg** has only one relevant law, which covers discrimination, violence and hatred together. The **Netherlands** has no laws relating to hatred, only to discrimination.

1.9 States with comprehensive measures

A number of states have far more comprehensive measures to legally protect against hatred crimes. **France** is very well covered with anti-hate laws. Measures it has taken in addition to those found in common with a number of European States includes the extension of the definition of 'acts of hatred' to include the wearing of uniforms associated with perpetrators of crimes against humanity. Attacks against the person on grounds of race or religious reasons are protected, as too are attacks against property with the same motivation. Racial hatred and racial defamation are provided for. France prohibits denial of the holocaust and any form of "negationism", including any denial of crimes against humanity as established at Nuremberg or being an apologist for crimes against humanity.

There are some notably examples of provisions by various states:

- Sweden has 3 Ombudsmen with wide and effective remits. These are the Ombudsman Against Ethnic Discrimination, the Ombudsman Against Discrimination on Grounds of Sexual Orientation and the Disability Ombudsman.
- Sweden also reverses the burden of proof onto the defendant in cases of victimisation.
- Two states have measures regarding respect for the dead – **France** protects against desecration of graves and **Germany** prohibits any ‘disturbance of the peace of the dead’.
- The notion of personal identity is protected by **Finland** and **Portugal** thereby protecting all physical identity from hatred or violence. **Germany’s** penal code subjects offences involving actual bodily harm to substantially higher penalties – though not directly related to hatred on grounds of race, religion, sex/orientation, it is recognition by the government of the importance of physical integrity.
- **Germany** and **Ireland** both have legislation that forbids acts of hatred within or outside the national boundaries.

Country by Country Reports

Austria

Overview

1. Legislation on racist violence focuses on crimes in the context of Nazism ideology, e.g. the constitutional prohibition on National-Socialism. Specific legislation against racial and religious discrimination contains detailed provisions for sanctions in the context of neo-nationalist-socialist ideology. Other racist ideologies and acts are not given such emphasis though there are provisions in criminal law to fight racism.
2. Constitutional equal treatment provisions and penal provisions exist to combat hatred and discrimination. Other criminal law and penal provisions (beyond neo-national-socialist activities) have been enacted in order to comply with the ICERD (International Convention on the Elimination of all forms of Racial Discrimination).
3. There is no protection against racial or religious discrimination in civil law, but there are equal treatment clauses.
4. There is a lack of consistency in recording complaints of racial discrimination in general and anti-Semitism in particular¹.

Constitutional Provisions

- **Equality before the law** - Art. 2 of the Basic Law of the State. Article 7 of the Austrian Federal Constitution.
Scope: Article 7 includes disability: “Privileges of birth, sex, rank, class and creed are excluded. Nobody must be discriminated against because of his/her disability. The Republic (Federal State, Lander and municipalities) declares its will to guarantee the equal treatment of disabled persons in all spheres of daily life”.
N.B – constitution last amended 1998. ICERD ratified in 1972. Extended Art. 7 of the constitution as a result (the ‘equal treatment’ article).
- **Protection of minorities** - Section V, III part of the State Treaty of Germain 1919
Scope: art. 63(1) provides Austria will protect all without distinction of birth, nationality, race or religion and 63(2) provides for freedom of religion. Article 66 provides for protection of all civil rights without religious discrimination.
- **Equality of access to public services** - Art. 14(6)
- **Prohibition of direct and indirect discrimination of citizens in all areas of law based on their race, sex, language or religion** - Article 6(2) Treaty of Vienna (1955)
- **Special rights granted to Austria’s national minorities** - Art. 7 Treaty of Vienna (1955)
- **Prohibition of National-Socialism** - “Austria will dissolve all national socialist or similar organisations and will penalise the existence and the activities of such organisations” – Article 9 Treaty of Vienna (1955)
- **Criminalisation of holocaust denial** – Constitutional prohibition statute §3(h) – most recent amendment to the Prohibition Statute.

¹ Source: EUMC www.eumc.at

Legislative Provisions

- **Prohibition of National-Socialism** - Act Prohibiting the National Socialist German Workers' Party (Prohibition Statute *Verbotsgesetz* 13/1945) prohibits the organisation.
There are a number of offences relating to this act (§3a to 3g) including the dissemination of National-Socialist ideas.
- **Incitement to racial hatred** – penal code (criminal provision) § 283
Scope: publicly inducing or inciting – in a manner likely to endanger public order – the commission of a hostile act against a church or religious community existing in the State or against a group determined by appurtenance to such a church or religious community, race, nation, ethnic group or state. It also extends to publicly agitating against such a group or insulting or disparaging it in a manner violating human dignity.
- **Incitement to hatred through media** – penal code §281/2
- **Hostility to foreigners** – penal code §117 subject to prosecution.
- **Aggravation of motivation** – penal code §33
- **Insult** - §115 penal code. Scope: publicly insulting, deriding, maltreating another person.
- **Genocide crimes** – penal code §321
- **Racism and xenophobia as a motive for crimes** – penal code (prohibition statute) section 33
- **Various anti-discrimination provisions including the Equal Treatment Act 1993 and Act on Employment of Disabled Persons 2002**
- **Civil law** - Art. 9(1) no. 3 EGVG (Introductory Provisions to the Code of Administrative Procedure) 1977 provides that treating persons in a discriminatory manner on grounds of race, colour, national or ethnic origin, religion, creed or disability or preventing them from use of services is an administrative offence.

Other initiatives

- The **Federal Ministry of the Interior** issues data collected in connection with anti-Semitism under the heading “right-wing extremism” in its annual reports.
- The **Forum against Anti-Semitism** - Tasks include recording anti-Semitic incidents.
- The **Documentation Centre of Austrian Resistance** - Collects data on right-wing extremism post 1945.
- **Ludwig Boltzmann Institut für Menschenrechte** – national focal point for the EU RAXEN scheme.

Belgium

Overview

1. The key laws to counter racial and anti-Semitic harassment are the Law Against Racism and Xenophobia (1981) (amended 1994), the Holocaust Denial Law (1995) and the General Anti-Discrimination Law 2003.
2. There is no official monitoring system for anti-Semitic incidents. Data and information on complaints is available from the Centre for Equal Opportunities and Opposition to Racism.

Constitutional Provisions

- **Equality before the law** - Articles 10
- **Non-discrimination** – Article 11
There is a general principle of non-discrimination with special mention of ideological and philosophical minorities.
- **Freedom of religion** - Article 19

Legislative Provisions

- **Law Against Racism and Xenophobia 1981 (“Moureaux Law”)** – amended 1994. Covers all aspects of social life, prohibiting:
 - Incitement to discriminate, hatred or violence against a person or group on account of his race, colour, origin, or national or ethnic descent
 - Belonging to or collaborating with a racist group or association
 - Discrimination in the supply of goods and services, in the workplace and by public servants and officials.
- **Criminalisation of acts with a racist or xenophobic motive** – Act of 1994 section 1(1). Scope: The 1994 Act introduced the following definition of discrimination: "any distinction, exclusion, restriction or preference aimed at, or which has the effect of destroying, jeopardising or limiting the recognition, enjoyment or exercise, on equal conditions, of human rights and fundamental freedoms in the political, economic, social or cultural fields or in any other sphere of social life."
- **Incitement to discrimination, hatred or violence in respect of a person** – Act of 1994 section 1(2)
Scope: This law covers all incitement to racial discrimination and hatred vis-à-vis a private individual. (Includes the public announcement of intention to discriminate).
- **Membership of a group or association which openly and repeatedly practices or advocates discrimination or segregation** – Act of 1994 Section 3
- **Harassment is a criminal offence** – art. 442bis penal code (inserted 1998)
Scope: Makes harassment a criminal offence, including harassment on the grounds of race, ethnic origin or sex. Complaints can only be prosecuted if lodged by the person claiming to be the victim.
- **Criminalisation of holocaust denial** – Law of 1995
- **Negation, minimisation, justification or approval of genocide** - Act of March 1995 Section 1

- **General Anti-discrimination Law 2003** – provides for:
 - Single approach for all grounds of discrimination extending to gender, nationality, philosophic conviction, civil status, birth, wealth, present or future state of health, physical characteristic
 - Contains definitions of discrimination (direct and indirect harassment, instruction to discriminate, absence of reasonable accommodation)
 - Amendments to the penal code to include discriminating conduct of civil servants and aggravating punishments in case of discriminating intention
 - No specific exemption on age (a maximum age in employment remains effective).
 - Shift in the burden of proof – the suspicion of discrimination can be based on statistics and on situation testing
- **Civil Law Provisions:**
 - **Compensation against discrimination** - Article 1382 civil code.
 - **Law on Equal Treatment between Men and Women 1999**
 - **Prohibition on incitement to hatred based on sex, race, religion and nationality on broadcasting networks** - Flemish Council Decree 4 May 1994 Article 20, paragraph 2

Other Initiatives

- **Centre for Equal Opportunities and Opposition to Racism (CEOOR)** – CEOOR publishes an annual report on developments in the field of racism, anti-Semitism and xenophobia and on complaints registered. It is a statutory public body (established by 1993 law) that has jurisdiction at federal level and a power of co-ordination between community, regional and local authorities. Wide remit, able to mediate, initiate legal proceedings, draw up inquiry reports, make recommendations to public authorities and propose legislative amendments. The Centre can also perform tasks on behalf of authorities. National focal point for the EU RAXEN scheme.
Since the adoption of the General Anti-discrimination Law 2003 the CEOOR's remit has been widened to combat all forms of discrimination, except gender.
- Proposed **Equality Institute** – control of gender discrimination.

Denmark

Overview

1. Non-discrimination provisions mainly exist in criminal law. None of the constitutional articles expressly prohibit racial discrimination, though Article 70 does contain a clause prohibiting any restriction of civil or political rights for reasons of creed or descent.
2. None of the constitutional articles expressly prohibit racial discrimination, though Article 70 does contain a clause prohibiting any restriction of civil or political rights for reasons of creed or descent. Article 71 refers to political or religious convictions.
3. The two criminal law provisions focus on opposing the spread of racial hatred and combating refusals to supply a public service on grounds of race. Existing provisions of general criminal law (rather than hate-specific law) have been used on several occasions to punish racist offences (e.g. abuse, bodily injury, prohibited mail consignments).
4. Unlike many other countries, Denmark has specific legislation criminalizing agitation against homosexuals as a group. (Article 266b, amended 1987).
5. In most prosecutions, a racist motive is not considered as an aggravating factor².
6. Statistics held by the Danish police and security service cover only 'racist' incidents without categorising as 'anti-Semitic', 'Islamaphobia' etc.

Legislative Provisions

- **Expressing and spreading racial hatred** – penal code (1987) Article 266b and 626
“Persons who publicly or deliberately disseminate statements or other reports by which any group of people are threatened, ridiculed or degraded on account of their racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation are liable to fines, short-term detention or imprisonment for up to two years.
Scope: This scope of this provision is fairly narrow. The preamble to Article 266b stresses that it must be interpreted narrowly, as freedom of expression is enshrined in the constitution. As such it has not given rise to much case law. This law covers any threatening, vilifying or insulting statement intended for the general public or a wide circle of persons. In practice less serious cases are not punished.
- **Prohibition of incitement to racial hatred on broadcasting networks** – Local Broadcasting Act, Art.3(2) of Decree 1996/1258.
- **Prohibition of incitement to racial or religious hatred on television programmes** - Art.3(2) of Act 1993/100 on broadcasting by satellite or cable.
- **Spreading of racial hatred is actionable** – Article 719 (2) Code of Procedure.
- **Crimes of genocide** - Act 1955 section 132
- **Integration of Aliens** – Act of 1998
- **Prohibition of discrimination on grounds of race** - Prohibition against Discrimination based on Race and Ethnic origin Act 1971.

² EUMC – country report

- **Prohibition of discrimination in employment** - Proposed amendments to the Act of Prohibition of Different Treatment in the Labour Market. Concerns all grounds except age and disability.
- **Refusal to supply a public service / denial of access to a public event on grounds of race** - Act 1971 section 289(1) & (2)
- **Equality in treatment** – Act on Equal Treatment
- **Act on the Prohibition of Differential Treatment 2003**

Other Initiatives

- **Danish Centre for International Studies and Human Rights** – mandate to promote equal treatment and assist those facing discrimination. National Focal Point for EU RAXEN scheme. Composed of various human rights institutes. The task includes research and information on human rights in general. Established by law 2002.
- **Board for Ethnic Equality** – Publications, conferences etc.
- **Documentation and Advisory Centre on Racial Discrimination** – NGO. Raise awareness.
- **Council of Ethnic Minorities**

Finland

Overview

1. Finland's racism legislation was adopted after ratification of the ICERD (1970). The main provisions are penalties for unjustified discrimination in the social or economic field. There is no general law on ethnic equality but provisions prohibiting discrimination do exist under the penal code. The scope for discrimination protection is wider than that in EU directives, covering also language, opinion, health, or 'any other reason that concerns his or her person'. There is little legislation in the way of provisions for hatred.
2. The constitution provides for general prohibition of discrimination Article 6(1)(2).
3. There is no systematic monitoring of anti-Semitic incidents and no reliable research or statistics.
4. "Wide-spread problem of non-reporting"³ of harassment or discrimination.

Constitutional Provisions

- **Equality of treatment, principle of human dignity** – Section 1(1).
- **Non-discrimination** - Section 6(1)(2).

Legislative Provisions

- **Spreading of racial hatred** – penal code article 8(11).
Scope: the declarations must be such as to threaten, denigrate or humiliate a group of persons.
In 1995 Parliament widened the scope of the provision to cover groups that may be "assimilated to racial, ethnic, religious or national groups" making it possible to punish incitement to hatred against immigrants, asylum seekers or foreign workers.
- **Prohibition on agitation against ethnic groups** – penal code section 8(11)
- **Refusal to supply a service intended for the public** – penal code article 9(11)
Scope: The provision makes it an offence to refuse access to a public event, to supply a service or, more generally, to treat a person less favourably on account of his/her race.
- **Genocide** - penal code article 6(11). Penalises, in particular, the elimination of groups of people because of their race.
- **No discrimination on grounds of race, national or ethnic origin, colour, language, age, gender, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity** – penal code article 9
- **Prohibiting labour discrimination** - penal code chapter 47, section 3
- **Equality** – Act on Equality Between Women and Men 1986. Prohibition of gender-based discrimination.
- **Single Equality Act 19 July 1993**

Other Initiatives

Finland has no specific body for combating racism or anti-Semitism.

³ EUMC

Hate Crime Legislation Review

- **Finnish League for Human Rights** – national focal point for EU RAXEN scheme.
- **Advisory Board on Ethnic Relations (ETNO)** - connected to the Ministry of Labour.
- **Board of Discrimination (BD)**
- **Minorities Ombudsman**

France

Overview

1. France is generally well equipped with anti-racism laws. The Act of 1881, amended in 1994, contains most of the provisions but these are mainly concentrated on discrimination rather than hate crimes.
2. France currently has no specific law protecting homosexuals from verbal hatred on grounds of their sexual orientation, though discrimination within employment on “lifestyle” grounds is prohibited (penal code, code of labour).
3. Of the bodies responsible for the collection of statistics on incidents of hate crimes there are some variance in findings. The official statistics of the Ministry of the Interior are not exhaustive and those figures provided by CRIF are higher than those of the interior, understandable as some victims may report crimes to the CRIF they may not to the police⁴.
4. An anti-defamation law protects only natural and legal persons (1881 Act section 32(2)).
5. There is provision in the constitution for general equality before the law (Article 2).

Constitutional Provisions

- **Equality before the law** – Article 2

Legislative provisions:

- **Verbal hatred on grounds of racial or ethnic origin, nationality or religion** – penal code art. R-624-2, 4, 7
- **Non-public incitement to discrimination, hatred or racial violence, including the wearing of uniforms associated with perpetrators of crimes against humanity** – penal code art. R625-7
- **Provision for increase in penalties when assaults or damage to property are committed for racial or religious reasons** – penal code art. 322-3 (adopted 2003)
- **Prohibition of hatred or discrimination on racial grounds** – 1881 Act section 24(5)
- **Incitement through the press to racial discrimination, hatred or violence because of origin or membership of a race or religion** – 1881 Act section 24(6)
Scope: the purpose of the incitement may be to provoke hostile reactions among the public to the racial groups in question.
- **Provision for the suppression of existing associations or groups which instigate discrimination or racial hatred** – Act of 1972
Scope: provides for the dissolution of any militant group of which constitutes a group or militia within the meaning of Section 1 which provides that the group is so constituted if it brings together former collaborators and glorifies collaboration or that it whips up racial hatred and violence.
- **Racial abuse** – 1881 Act section 33(3)
- **Racial defamation** – 1881 Act section 32(2)

⁴ EUMC

Scope: defamation arises from any precise, false allegation or insinuation casting a slur on the honour or reputation of a person or group of persons because of their race, religion, nationality or membership of an ethnic group.

Abuse need not include any specific allegation; public abuse can arise from the use of any contemptuous term or offensive expression, as indicated by some of the jurisprudence: two cases have held that insulting words had been used and defamation had occurred - 10 June 1993 ("Y, the swarthy, podgy Jewess bulging out of her clothes...") and 12 December 1992 (LICRA described as "an association of notorious Jewish lawbreakers".)

- **Prohibition on recording data on race** – 1978 Act article 31 and 42. Article 226-19 penal code prohibits the storing of personal data that denotes the race, political or religious opinions, membership of unions or customs of those concerned.
- **Genocide** – penal code art. 211-1
- **Other crimes against humanity** – penal code art. 212-1
- **War crimes** – penal code art. 212-2
- **Discrimination or denial of goods and services on group grounds** – penal code art. 225-1, 225-2
- **“Destruction of property with respect to places of worship, schools and educational or leisure facilities, or vehicles for the transport of children” is now an offence** – penal code art. 322-3. New offence created 2003
- **Prohibition of the publication of banned foreign publications** – 1881 Act section 14
- **Prohibition of the denial of crimes of humanity as tried at Nuremberg “negationnisme”** – 1881 Act section 24bis. Follows article 6 of the statute of Nuremberg.
- **Prohibition of being an apologist for crimes against humanity** – 1881 Act section 24(3)
- **Prohibition on discrimination within employment on grounds of lifestyle** – penal code 1985, code of labour 1990
- **Prohibition of the desecration of graves** – penal code article 225-18
- **Code of Labour**

Other Initiatives

- **The French Human Rights Commission** (*Commission Nationale Consultative des Droits de l’Homme* CNCDH) and CRIF collect data and information on anti-Semitism.

Human Rights Commission has an official role in collection and analysis of data on racism, xenophobia and anti-Semitism in France. It is a public authority with independent status. Annual report of the CNCDH gives information and analyses on the situation of racism in France. Uses four indicators: statistics of racist and anti-Semitic acts of the Ministry of the Interior, statistics of sentences regarding racial discrimination of the Ministry of Justice, results of a qualitative survey and observations of organisations which are close to victims.

- The **Ministry of the Interior and Ministry of Justice** collect statistical data on racism, xenophobia and anti-Semitism. Gives the government information on racist, xenophobic and anti-Semitic phenomena in order to prevent social unrest.

- The **CRIF** (*Conseil Représentatif des Institutions Juives en France*) (**Representative Council of Jewish Institutions in France**) collects broad range of information on anti-Semitic violence in France. The only NGO in France to have developed its own reporting system.
- **Agency for the Development of Intercultural Relations** – national focal point for EU RAXEN scheme.

Germany

Overview

1. Many legislative provisions against racist hatred are formulated in the context of National-Socialism. The penal code was amended in 1994 to extend criminal liability for neo-Nazi, xenophobic and racist crimes. The amendments also lowered the requirement for punishment (penal code §130).
2. Supplementary legislation to criminal offences of incitement and use of symbols of unconstitutional organisations was passed in 1994. Additional measures were also taken to ensure effective prosecution of crimes.
3. There is provision within the constitution for general equality before the law (art. 3(1). There is also the principle of equal treatment or non-discrimination in art. 3(3) which states: “No person shall be advantaged or disadvantaged on basis of sex, parentage, race, language, homeland and origin, faith or religion or political opinion. No person shall be disadvantaged because of disability”.
4. There have been many criminal cases reported where racism played a role in motivation.

Constitutional Provision

- **Equality before the law** - Article 3.1
- **Non-discrimination** – Article 3.3

Legislative Provisions

- **Prohibition on discrimination against disabled people** – Act on the Equalisation of Disabled Persons 2002
Scope: far-reaching law with some links to civil law as well. It includes recognition of sign language as an official language.
- **Incitement to racial hatred on broadcasting networks** – broadcasting treaty
- **Prohibition of criminal agitation and incitement to racial hatred** – penal code §130
Scope: racial hatred is defined as “hatred against a national, racial, religious or ethnically distinct group”. The requirements for punishment have been reduced as a result of amendments in 1994 – an attack against human dignity (which previously hindered convictions) is not only required in the case of more severe punishment for insulting, maliciously degrading or defaming segments of the population; inciting hatred against segments of the population or fomenting arbitrary or violent action or fomenting arbitrary or violent action against them is punishable independently of whether human dignity is attacked or not. Penalties for causing bodily harm were increased.
- **Protection of the honour of members of religious and racial groups** – penal code §§185.
Scope: includes prohibition on different forms of assault including verbal and physical.
- **Protection of physical integrity** – penal code.
Scope: as a result of changes introduced in 1998 within the framework of "*Sechstes Gesetz zur Reform des Strafrechts*", offences involving actual bodily

harm are subject to substantially higher penalties. Attempted causation of actual bodily harm is now generally punishable. In its report under ICERD the government emphasised that although these measures were not directly related to right-wing extremism, they emphasise the importance that government attaches to 'physical integrity'.

- **Formation of armed militia** – penal code §127
Scope: extends to groups with access to dangerous implements other than arms.
- **Disturbance of the peace of the dead** – penal code §168
Scope: application of this law has been extended to cover funeral premises and memorials to the dead in general, e.g. improper behaviour in former concentration camps constitutes an offence.
- **Inflicting actual bodily harm on the basis of hatred against a part of the population or against a group characterised by nationality, race, religion or ethnicity or some other base motivation** – penal code §224a.
Scope: another purpose of the draft was to ensure that propaganda offences and public incitements to hatred committed by Germans abroad would be punishable regardless of whether that conduct is criminal under the law of the place where it occurred.
- **Provision of a new independent sentencing guideline for crimes committed on the basis of "hatred or other base motivations against parts of the population or groups characterised by nationality, race, religion or ethnicity"** – penal code §46(2)
- **Genocide** – penal code §220a
- **Prohibition of discrimination and harassment on race, ethnic origin, sex, religion or belief, handicap, age or sexual identity** – civil code (anti-discrimination) bill §319a.

Other initiatives

There are a number of non-federal bodies with varying powers as well as government bodies.

- The **Federal Government's Commissioner for the Concerns of Foreigners**. Deals with concerns of all foreigners bar asylum seekers. Assists and advises the government. Each year, the Commissioner reports on the situation of foreigners in Germany. This report summarises facts, indicates problems and makes recommendations for their resolution. It deals with the social, political and legal aspects of such matters as education, employment, social security, housing, religion, political participation, and discrimination by legislation and by private persons, violence against foreigners and the law concerning aliens.
- **Federal Ministry of the Interior / Federal Ministry of Justice** – Official recording of incidents.
- **KPMD-PMK** – new register of racist incidents in operation since 2001. Based on perpetrators' motivation.
- **"Alliance for Democracy and Tolerance - against Extremism and Violence"**. Government established in 2000. Alliance consists of an office, an advisory council and a support network. Has the objectives of contributing to the social reinforcement of the so-called constitutional consensus and in particular to co-

ordinate persons, groups, initiatives and programmes directed against xenophobic, racist and anti-Semitic tendencies.

- **Mobile Employment Unit Against Force and Hatred of Foreigners (MEGA)** – police initiative. Police investigate and record all incidences of racial hate.
- **European Forum for Migration Studies** – national focal point for EU RAXEN scheme.
- **CIVITAS** – Initiative Against Right-Wing Extremism in Eastern Germany
Initiated by the German Ministry for the Family, Senior Citizens, Women and Youth to strengthen the structures and processes of civil society in the eastern German states. Established in 2001 as a response to the existence of racist and extreme right-wing activities.

Greece

Overview

1. In Greece there is a general protection for religious freedom and equality before the law (article 4(1) within the constitution (article 13). Article 5(2) provides that “all persons living within Greek territory shall enjoy full protection of their life, honour and freedom, irrespective of nationality, race or language and religious or political beliefs. The extradition of foreigners prosecuted for their action as freedom fighters shall be prohibited”. However there is no specific legal definition of anti-Semitism and few specific anti-racism laws.
2. The provisions relating to race in the penal code are formulated in the interests of public order rather than in protection for the rights of the individual (penal code art. 192). There are only general protections against discrimination. There is no official body in Greece registering anti-Semitic incidents though NGOs keep records. The absence of a monitoring agency means that the press are frequently relied upon for information on anti-Semitic / racist attacks.
3. There is no specific provision for harassment in relation to race or ethnic origin or belief of a person or a group of persons is not covered and no systematic monitoring of anti-Semitic incidents.

Constitutional Provisions

- **Religious Freedom** – Article 4(1)
- **Equality before the law** – Article 13
- **Non-discrimination** – Article 5(2)

Legislative Provisions

- **Incitement to racial discrimination, hatred or violence** - Section 1(1) of Act 927/25.6.1979, supplemented by Section 24 of Act 1419/8.3.1984 1984 and amended by section 72 of Act 2910/2001.
Scope: covers any person who publicly, whether orally, in writing or by any other means, promotes acts liable to provoke discrimination, hatred or violence towards individuals or groups because of their racial, ethnic or religious origin. However there is no provision relating to issuing instructions to someone to discriminate on the grounds of racial or ethnic origin or religion or belief⁵
- **Prohibition of propaganda or activities aimed at racial discrimination** - Section 1(2) of Act 927/25.6.1979, supplemented by Section 24 of Act 1419/8.3.1984.
Scope: constitution or membership of an organisation whose aim is to organise propaganda or activities of any nature involving racial discrimination.
- **Public expression of offensive ideas** – Section 2 of Act 927/25.6.1979
Scope: covers the expression in speech, via the press, in writings, by pictures or by any other means of any ideas offensive to an individual or group of individuals by virtue of any ideas offensive to an individual or a group of individuals by virtue of their racial or ethnic origin or their religious affiliations.

⁵ EUMC

- **Refusal to provide a service on grounds such as race** - Section 3 of Act 927/25.6.1979.
- **Prejudice to personality** – Art. 57 of the Greek Civil Code. Case law indicates this includes discrimination on grounds of race.
- **Social law on the employment of disabled persons** – Law 2348/1998 on the Compulsory Employment of Disabled people (quota system).

Other initiatives

Greece has no body specialising in the fight against racism. Two related bodies:

- The Greek Commission for Human Rights
- The Ombudsman.
- There is also the Information Centre for Racism, Ecology, Peace and Non-violence, the national focal point for the EU RAXEN scheme.

Ireland

Overview

1. Constitutional and legislative guarantees against discrimination on the basis of religion are essentially aimed at the two main denominations. The greatest level of non-religious discrimination is aimed at travelling community.
2. There is constitutional provision for general equality before the law (art. 40.1).
3. The main legislative provision is the Prohibition of Incitement to Hatred Act 1989, which defines 'hatred' more widely than the British Race Relations Act.
4. There is no provision for hatred against people because of their political beliefs.
5. There is no specific anti-Semitism legislation, though a number of provisions address the issue indirectly (such as the Prohibition of Incitement to Hatred Act). Anti-Semitic incidents are recorded by the police.

Constitutional Provisions

- **Equality before the law** – article 40

Legislative provisions

- **Prohibition of Incitement to Hatred Act 1989**

Scope: 5 specific offences concerning incitement to racial hatred:

1. Publishing or distributing written material to stir up hatred (Material must be threatening, abusive or insulting. Publication or distribution must be intended or likely to stir up hatred, including racial hatred) 2(1)(a)
2. Using words or behaviour or displaying written material to stir up hatred (Words, behaviour or material must be threatening, abusive or insulting. Use or display must be intended or likely to stir up hatred, including racial hatred. An exemption exists for use or display inside a private residence when it is not heard or seen outside). 2(1)(b)
3. Distributing, showing or playing a recording of visual images or sounds to stir up hatred 2(1)(c)
4. Broadcasting an item to stir up hatred. Section 3
5. Preparing or possessing written material or recordings of visual images or sounds to stir up hatred. Section 4.

If conduct is to be punishable it must amount to "hatred". Subsection 1(1) defines hatred:

"In this Act "hatred" means hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". Hatred extends to people living out side the country as much as inside. The conduct addressed in each provision, if it is to be punishable, must either be intended by the accused "to stir up racial hatred", or, having regard to all of the circumstances, be likely to stir up racial hatred.

Therefore, whether or not prosecution will follow largely depends upon the person to whom the racist conduct is directed. If the material is not likely to 'stir them to racial hatred' then Part 3 does not cover it. However if the material is sent to a

confirmed racist the sender may be subject to prosecution under Part III, because their hatred can be increased or reinforced.

There is no barrier to the encouragement of hatred against a group of persons solely on account of their political beliefs.

- **Video Recordings Act 1989** – prohibits the supply of video recordings where the recording is likely to stir up hatred against a group of persons on account of race, colour, nationality, religion, ethnic or national origins, membership of the Travelling community or sexual orientation.
- **Employment Equality Act 1998** – protection from discrimination in employment.
- **Equal Status Act 2000** – forbids discrimination in goods and services, accommodation, education and private clubs on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.

Other initiatives

- **National Consultative Commission on Racism and Inter-culturalism NCCRI**
National focal point or EU RAXEN scheme. Records incidents relating to racism.
- Publishes a report every six months, providing an overview of racist incidents, establish trends etc.
- **PULSE** - new Garda information system recording anti-Semitic incidents.
- **Equality Authority**
- **Human Rights Commission 2000**

Italy

Overview

1. The main legislative provision in Italian law for combating hatred is a 1993 Act, which strengthened a 1975 law to introduce preventative measures with an increase in the penalties available under criminal law in response to a rise in racial violence, intolerance and xenophobia.
2. The principle legislation concerning discrimination based on racial or ethnic origin was introduced in 1998 in the context of immigration law. There was prior to that legislation concerning “hate speech”. Discrimination was a low priority for politicians and not high on the political agenda. The debate has focused on immigration law rather than anti-discrimination law. In Italy racial discrimination is often disguised as legitimate discrimination against “non-EU” citizens.
3. There is general constitutional provision for equality before the law and Article 3 does refer to racial discrimination. Article 8 of the constitution refers to religious freedom and religious equality.
4. There is no official monitoring system of anti-Semitic incidents, no reliable research or statistics and a reliance on newspaper coverage.
5. The EU Directive on race discrimination has been incorporated into domestic law.

Constitutional Provisions

- **Equality before the law** – Article 3
- **Religious freedom** – Article 8

Legislative provisions:

- **External or ostentatious displaying of symbols of racist organisations; gaining access to sports events with such symbols** – 1993 Act section 2
- **Prohibition of the spread of ideas rooted in racial hatred or superiority** – 1993 Act section 3(1)(b)
- **Incitement to commit or the commission of violent acts or provocation for racial, ethnic, national or religious reasons** – 1993 Act section 3(1)(b)
Scope: in 1993 a more precise distinction was drawn between “discriminatory acts” and “violent acts or provocation” and additional penalties were introduced.
- **Prohibition of any association, organisation, group or movement, the purpose of which is incitement to racial discrimination or hatred** – 1993 Act section 3(2)
Scope: the mere participation in or giving of assistance to, an association or organisation of this kind is punishable; the penalty is aggravated for those who promote or act as leaders of such an organisation or group.
- **Genocide** – 1967 Act sections 1-5 and 6(2)
- **Prohibition of the reconstitution of the fascist party** – 1952 Act
- **Prohibition of abuse and defamation** – penal code articles 594 and 595
- **Provisions for discrimination and harassment** – Immigration Act 1998
Scope: The debate has focused on immigration rather than harassment / discrimination. Provision for remedies against racial and ethnic discrimination. Protection extends to nationality. Special procedural rules for anti-discrimination

legal action. There are not many reported cases under the Immigration Act 1998⁶. The act still does not unify in one document all anti-discrimination rules (rather than laws) into one act. Forbids direct as well as indirect discrimination. Harassment is also defined and prohibited. The ‘minimum level’ required is higher than the EU Directive – the new act states that the law must have the effect of “creating an intimidating, hostile, degrading, humiliating and offensive environment”. Occupational requirements can allow an exception to the prohibition of discrimination. The decree makes no provisions for social dialogue and dialogue with NGOs.

- **Disability Law of 1999** – does not totally ban discrimination on grounds of disability but aims to promote integration.

Other initiatives

- **Co-operation for the Development of Emerging Countries** – NGO that provides anti-racism training. At national level there are no positive action or specific programmes targeted at racial or ethnic minorities. National Focal Point for the EU RAXEN scheme.
- **Department for Equal Opportunities** (*Dipartimento per le Pari Opportunita*). Until recently was dealing uniquely with gender discrimination. Statutory body. Activities to include “independent” assistance to victims of discrimination in pursuit of complaints, to promote the adoption of specific measures. The office should report every year to the parliament and to the executive.
- **UCEI** - UCEI has signed an agreement with the Italian government to formalise the institution’s relationship to the Italian authorities. It was established as part of the law against racist discrimination.

⁶ See Executive Summary on race equality directive – State of play in Italy October 2003
www.europa.eu.int

Luxembourg

Overview

1. There are few legislative provisions for hatred or discrimination.
2. There is no official monitoring system of racist or anti-Semitic incidents and a lack of statistical data.
3. However, reports suggest that Luxembourg does not have a great problem with anti-Semitism / anti-Semitic incidents.

Constitutional Provisions

- **Equality of all nationals before the law** – Article 10
- **Protection against discrimination for all foreigners** – Article 111

Legislative Provisions:

- **Incitement to racial discrimination, hatred or violence** – penal code, article 457-1.
Scope: covers anyone who encourages the acts referred to in Article 455, as well as racial hatred or violence towards a person or group of persons on the basis of a distinction prohibited by Article 454, by means of any words spoken in public, written material, printed matter, pictures or emblems, published, displayed, distributed, sold, placed on sale or exposed to the public view.
- **Membership of an organisation with racist goals** - Article 457-1 (2) Act of 1997
- **Publication of racist writings** - Article 457-1 (3) Act of 1999. Prohibition of negationism and revisionism.
- **Discrimination** – penal code, article 454. Covers a variety of discriminations.
454 states:
“Any difference of treatment applied to natural persons on grounds of their racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion shall constitute discrimination”. Carries penal sanctions.
- **Publication of racist writings** – 1869 Press Act Section 15 (2)

Other provisions:

- **Association for the Support of Immigrant Workers** – national focal point for the EU RAXEN scheme.

The Netherlands

Overview

1. There are no specific legislative provisions concerning hatred, although there does exist provisions for discrimination.
2. Article 1 of the constitution provides for equal treatment before the law.
3. The Dutch government supports a network of approximately 35 anti-discrimination agencies.
4. There are several sources of anti-Semitism statistics including official bodies, NGOs and research organisations. Police data is collected and centralised.
5. Criminal law is less used to protect victims of racial discrimination.

Constitutional Provisions

- **Equality before the law** – Article 1

Legislative provision

- **Prohibition of discrimination** – General Equal Treatment Act 1994.
Scope: prohibits all forms of discrimination on sex, race, belief etc. and covers indirect as well as direct discrimination. There is protection for religious, ideological and political organisations.
- **Equality** – Equal treatment for Men and Women 1980
- **Discrimination** – forbidden by criminal code on grounds of race, religion, belief, sexual preference and sex.

Other initiatives

- **Equal Treatment Commission** – powers to investigate and mediate discrimination cases. Established by the General Equal Treatment Act 1994. Provides independence, expertise and easy access.
- **Anne Frank House** – national focal point for the EU RAXEN scheme.
- **National Discrimination Expertise Centre (LECD)** of the Public prosecution Service.
- LBL, Expertise Centre Age and Society established to deal with age discrimination.

Portugal

Overview

1. Portugal has a variety of constitutional provisions to protect from discrimination (Article 13(2)). The constitution protects the right to personal identity and legal protection from discrimination (Article 26(1)). The constitution also specifically prohibits racist organisations (Article 46(4)).
2. There are several provisions addressing anti-Semitism although there is almost a total lack of data and sources on racial violence and discrimination.
3. There are difficulties in assessing incidents from official statistics since no ethnic or religious categorisations are allowed by the Portuguese constitution. There is a reliance on media and informal reporting.
4. The size of Jewish population is very small and anti-Semitism is a “marginal phenomenon”⁷.

Constitutional Provisions:

- **Non-discrimination** - Article 13(2): “No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances”.
- **Personal Identity** - “Everyone is recognised as having the right to his or her personal identity, personality development, civil capacity, citizenship, good name and reputation, and likeness, the right to speak out and the right to the protection of the privacy of his or her personal and family life and to legal protection against any form of discrimination” – Article 26(1)
- **Prohibition of racist organisations** - “Armed, quasi-military, militarised or paramilitary associations, other than those of the State or the Armed Forces, and racist organisations or those that adopt fascist ideology are not permitted” – Article 46(4)

Legislative Provisions:

- **Prohibition of crimes with the motivation of racial, religious or political hatred** - penal code art. 132 2(e).
Scope: to establish such motivation requires a particular level of severity.
- **Such motivation is considered a serious offence against physical integrity and carries increased sanctions** – penal code art. 146(2)
- **Prohibition of any attempt to destroy a national, ethnic, religious or social group** – penal code art. 189
- **Prohibition of any form of discrimination** – penal code art. 189(2)
- **Genocide** – penal code art. 239
- **The definition of a crime of racial or religious discrimination** - penal code art. 240.
Scope: 240(1) makes it an offence to establish organisations or engage in organised propaganda that incite or encourage racial or religious discrimination,

⁷ EUMC

hatred or violence. It also prohibits participation in any of these activities. 240(2) punishes anyone who publicly (orally or written) provokes acts of violence against an individual or group of individuals on grounds of their race, colour or ethnic, national or religious origin with the intention of inciting to or encouraging racial or religious discrimination.

- **Right to religious freedom** - Religious Freedom Law 22 June 2001 (Law no. 16/2001)

Other Initiatives:

- **NUMENA** – Research centre on human and social sciences – national focal point for EU RAXEN scheme.
- **High Commissioner for Immigration and Ethnic Minorities**
Wide-ranging powers including consulting with immigrants or ethnic minority bodies. Carries out research, co-operates with trade unions, social welfare institutions and other public and private bodies, contributes to the elimination of discrimination, racism, xenophobia and exclusion and works with government authorities responsible for the entry, residence and departure of foreign nationals in Portugal and proposes legislative measures to help minorities.
- **Portuguese Ombudsman** – defend and promote human rights.

Spain

Overview

1. The Spanish constitution provides specifically against racist discrimination (art. 14).
2. Individual acts of racism or incitement to hatred were not specifically covered by Spanish legislation until reform of the Penal Code (1996).
3. There is no monitoring system of anti-Semitic incidents and a lack of data from government ministries. As such there is a reliance on data from the media as information sources.
4. In cases of allegations of sex discrimination there is a reversal of the burden of proof so the onus is on the respondent.

Constitutional Provisions

- **Prohibition of racist discrimination** – Article 14

Legislative provisions:

- **Act of Equal Treatment 2002**
Scope: non-discrimination on grounds of racial or ethnic origin for non-employment fields. Regarding employment, non-discrimination on grounds of sex, racial or ethnic origin, religion or convictions, disability, age and sexual orientation.
- **Discrimination as an aggravating circumstance to a crime.** The motive may be racism, anti-Semitism, ideology, religion or belief, race or ethnic origin or nationality, sex, sexual orientation or disability – penal code arts. 22(4), 170(1), 197(5), 314, 510, 511, 512, 515(5), 607(1)(2) and 611(6) respectively.
Scope: Under this provision the commission of a crime for racist or anti-Semitic motives, or because of ideology, religion or beliefs of the victim, the victim's ethnic, racial or national affiliation, is deemed to be an aggravating circumstance.
- **Prohibition of crimes against ethnic groups** – penal code art. 137
- **Prohibition of racial and ethnic discrimination in the public service** – penal code art. 165
- **Prohibition of the promotion of and incitement to racial discrimination** – penal code art. 713(4)
- **Prohibition of racial and ethnic discrimination by public officials** – penal code art. 181
- **Prohibition of provocation to discrimination** – penal code art. 510(1)
Scope: provides against the offence of provocation to discrimination, hate or violence against groups or associations for racist or anti-Semitic motives.
- **Prohibition of the dissemination of offensive information** – penal code art. 510(2)
- **Prohibition of the denial of the holocaust** – penal code art. 607(2)
- **Laws on the rights and freedom of foreigners** – Law on Rights and Freedoms of Foreigners
Scope: contains definitions of direct and indirect discrimination on grounds of race, colour, ethnic or national origin, religion or belief.

- **Various employment laws regarding discrimination** – Workers Statute article 4(2)
- **Reversal of the burden of proof** – in Law on Labour Tribunal Procedural Rules art. 96 provides that in sex discrimination cases the respondent has to prove that there is no discrimination

Other Initiatives:

- **Movement for Peace and Liberty** – national focal point for EU RAXEN scheme.
- **Institute for Women**
- Draft proposals for the establishment of a Council promoting equal treatment and combating discrimination on the grounds of race or ethnic origin.

Sweden

Overview

1. The Swedish constitution protects general equality (Chap. 1(2)) and forbids racist discrimination (art. 15).
2. Sweden has three Ombudsmen to protect minorities (the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation and the Disability Ombudsman).
3. Anti-Semitic crimes are defined by the Protection of the Constitution Section and covers presumed as well as actual Jewish victims.
4. The European Convention on Human Rights has been incorporated into national legislation.
5. The Swedish security police are responsible for compiling a formal record of anti-Semitic incidents. There is recognition of the threat of hatred against homosexuals as a group (The Cohabitees Act 2003:376).
6. In discrimination cases there is a reversal of the burden of proof and the government plans to extend this to victimisation cases too.

Constitutional Provisions

- **Equality before the law** – Article 12
- **Prohibition of racist discrimination** – Article 15

Legislative provisions:

- **Racial agitation** – penal code 16(8)
Scope: Arousing of hostility towards a group of the population (Any form of expression or propagation of racial hatred outside a purely private circle).
Punishes anyone expressing or spreading hatred on grounds of race, skin colour, nationality or ethnic origins. The previous version of this provision, which was in force until 1989, required offenders to have expressed themselves publicly. This condition has been dropped: it is now sufficient for the offender to spread his ideas within a circle of people. Agitation is forbidden in the private sphere. It is therefore possible to prosecute comments made within an extremist organisation or association. In addition, the Supreme Court considered that the said provision applies not only to words, writings or pictures, but also to racist behaviour, such as the public wearing of emblems or symbols reminiscent of Nazi uniforms.
Agitation against a national or ethnic group is prohibited in all media forms (word, film, sound or media). Special consideration is given to the culture of the Sami, Sweden's native inhabitants.
- **Racial incitement** – penal code 16(5)
The criminal act consists in orally before a crowd or congregation of people, in a distributed publication or in some other message to the public, urging or otherwise attempting to entice people to, for example, commit a criminal act.
- **Leading young people astray** – penal code 16(12)
Criminalises the distribution of material to children which content may endanger the moral nurture of the young. This includes racist propaganda.
- **Racism as an aggravating factor to an offences** – penal code 2(29)

- **Motive is to be taken into account in sentencing** – penal code 29(1). In assessing the penal value of a crime, consideration shall be given to any motive.
- **Unlawful discrimination** – penal code 16(9)
Scope: the criminal act consists in a person during the conduct of his or her business, or in organising a public assembly or gathering, discriminating against another person on the basis of race, colour, national or ethnic affiliation, religious belief or homosexual orientation.
- **Insulting behaviour** – penal code 5(3)
The criminal act consists in vilifying another person by an insulting epithet or accusation or by other opprobrious conduct, for example by alluding to race or ethnic affiliation or homosexual orientation.
- Other provisions within the penal code cover such crimes as assault, unlawful threat, etc.
- **Functions of the Office of the Ombudsman against Discrimination on grounds of Sexual Orientation (HomO)** – Decree 1999:170
- **Equal treatment of Students at Universities Act (2001:1286)**
- Incorporation of European Convention for the Protection of Human Rights and Fundamental Freedoms – Act 1994:1219
- **The Registered Partnership Act (1994:1117)**
- **The Cohabitees Act (2003:376)** – government of the opinion that there are strong reasons for criminalizing agitation against homosexuals as a group. (see Written Government Communication 7 February 2001).
- **Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999)**

New Proposals:

- Shift of the burden of proof will be applicable not only to discrimination but to victimisation too.
- Extension of the field of supervision by all three Ombudsmen.

Other Initiatives:

- **The Ombudsman against Ethnic Discrimination (DO).**
Duties:
 - Investigate reports of discrimination on the basis of ethnic affiliation and sexual orientation in working life and take them to the Labour Court
 - Give advice and other forms of help to those who have suffered discrimination
 - Initiate measures to counteract discrimination.
 - Make recommendations to the Government concerning legislative amendments and other measures to combat discrimination.
 - No powers, duty is to advise individuals. Alerts public opinion to discrimination problems.
- **The Ombudsman against Discrimination on grounds of Sexual Orientation (HomO).**
- **The Disability Ombudsman**
Task to supervise the rights and interests of persons with disabilities. Evaluates measures being taken in order to secure compliance with UN standard rules. 2001

a national centre was established at the Office of the Disability Ombudsman to function as an advisory body on accessibility.

- **The Equal Opportunities Ombudsman (JAMO)** – gender equality
- **The National Integration Office:**
Central administrative authority for integration issues. Studies social developments. Annual report to the government. Conducts a number of measures against racism, xenophobia and ethnic discrimination.
Also has a national knowledge bank of issues relation to combating racism, xenophobia and ethnic discrimination.
- **Expo Foundation** – national focal point for the EU RAXEN scheme.
- The Government also funds anti-Nazi foundation, ‘**Artists against Nazis**’.
- The Protection of the Constitution Section of the Swedish Security Police – body responsible for compiling an index of anti-Semitic incidents. Their annual report is the only comprehensible report.

United Kingdom

Overview

1. There are no relevant constitutional provisions.
2. According to the European Monitoring Commission (EUMC) ““Systems of classification are closely tied to the ‘colour line’ and are insufficiently sensitive to the multiple dimensions of ‘race’ and ‘ethnicity’”.
3. UK law does not account specifically for religions (e.g. ‘Islamic’ and ‘Jewish’ do not appear in the official systems of classification and are not recorded as such).
4. There are criminal provisions against incitement to racial hatred but its threshold is higher than incitement to racial antipathy or dislike.
5. The recording of anti-Semitic incidents is the responsibility of the Metropolitan police in London and the responsibility of an independent Jewish organisation for the rest of the country.

Legislative provisions:

- **Protection against religious discrimination** – Race Relations Act 1976
- **Protection against incitement to religious hatred** – Race Relations Act 1976
- **Race Regulations 2003** – law strengthening protection from racial discrimination and harassment. Amends 1976 Race Relations Act. Incorporates the EU Race Directive into UK law. New statutory definition of harassment. Harassment constitutes direct discrimination. Harassment on grounds of race or ethnic origin is an unlawful act.
Scope: harassment occurs when a person, A, subjects another person, B, to unwanted conduct on grounds of race or ethnic or national origin that has the purpose or effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. The test of whether conduct amounts to harassment is the ‘reasonable person test’. This sets a higher test than the one previously applied by the courts and tribunals⁸.
- **Prohibition of stirring up racial hatred with language, publishing or distributing material to stir up hatred, performing a play to stir up hatred, distributing a play to stir up hatred and possessing inflammatory material** – Public Order Act 1986 Parts I, II and III sections 18, 19, 20, 22 and 23 respectively.
- **Prohibition of the sending of offensive material, including on grounds of race and religion** - Malicious Communications Act 1988.
- **Genocide Act 1969**
- **Prohibition of racist chanting at football matches** – Football (Offences) Act 1991 sec. 3
Scope: (a) "chanting" means the repeated uttering of any words or sounds in concert with one or more others; and (b) "of a racist nature" means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

⁸ Source: www.cre.gov.uk

- **Racial aggravation - Crime and Disorder Act (CDA) 1998**

Scope: Defines the offence of ‘racial aggravation’. Provision for a range of basic offences. Specifies additional sentencing tariffs. Wide range of legislation and measures arising from the CDA to restrict violent or anti-social behaviour.

Crime and Disorder Act 1998 made provision for new racially motivated offences that attract significantly higher maximum penalties than their non-racially motivated counterparts. The Act defined an offence as racially aggravated if “the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial group; or if the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group” (section 28(1)).

The Act created 9 racially aggravated offences:

 1. Grievous bodily harm (malicious wounding)
 2. Actual bodily harm
 3. Common assault
 4. Criminal damage
 5. Fear or provocation of violence (threatening behaviour)
 6. Intentional harassment, alarm or distress
 7. Public Order (disorderly behaviour)
 8. Putting in fear of violence
 9. Harassment

At the time of the Act the provisions were not extended to Northern Ireland (technical difficulties, difficulties of no inclusion of sectarian crime (which was practically the only form of race-related crime etc.)
- **Increased penal sanctions for crimes motivated by hatred because of a person’s sexual orientation or disability** (in addition to race and religion which were previously covered) – Criminal Justice Act 2003 sections 145 and 146

Scope: ‘Increase in sentences for racial or religious aggravation’ states 145(2) “If the offence was racially or religiously aggravated, the court a) must treat that fact as an aggravating factor and b) must state in open court that the offence was so aggravated”. Section 146 ‘Increases in sentences for aggravation related to disability or sexual orientation’, applies to offences committed based on either the sexual orientation/disability or *presumed* orientation/disability.

“The Court (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and (b) must state in open court that the offence was committed in such circumstances”.

Section applied where the offence is motivated wholly or partly by hostility towards a persons orientation / disability or presumed orientation / disability.
- **Extension of the laws against racially aggravated crimes to a new category of religious crime - Anti-terrorism, Crime and Security Act 2001**
- EC legislative directives on equality of treatment.
- **Employment Equality (Sexual Orientation and Religion or Belief) Regulations** – covers harassment bodies.
- **Disability Discrimination Act 1995**

Other Initiatives

- **Commission for Racial Equality (CRE)** – national focal point for the EU RAXEN scheme.
Promotes the elimination of discrimination, promotion of equality of opportunity and good ethnic relations, reviews legislation, provides advice and assistance to individuals and may provide legal representation in certain cases and in cases of persistent discrimination it may bring legal proceedings and conduct formal investigations into organisations.
- **Disability Rights Commission** – est. by the Disability Discrimination Act.

Northern Ireland

Legislative Provisions:

- **Prohibition of hatred towards those of a different racial, ethnic or national group** - Public Order (Northern Ireland) Order 1987 part III. Goes beyond the UK legislation by including the concept of *arousing fear* along with stirring up hatred and by including *religious* as well as racial grounds. It does not, however, include the offences contained in section 5 of the Great Britain Act (which include the display of any writing, sign “or other visible representation” which is threatening, abusive or insulting “within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby”).
- Anti-Terrorism, Crime and Security Act 2001 amended the Public Order Act to **extend the definition of hatred to take in religious groupings, to remove the requirement that such offences be directed against a group of people ‘in Great Britain’ and to increase the maximum penalty** for offences from two to seven years. Removed the requirement that offences be directed against a group of people ‘in Northern Ireland’, and increased the maximum penalty from 2 to 7 years.
- **Race Relations (Northern Ireland) Order 1997.**
- **Protection from harassment including reference to racial harassment** - Protection from Harassment (NI) Order 1997
- **Prohibition of discrimination on grounds of race, sex, religion or disability** – Northern Ireland Act 1998 section 75
- The Criminal Justice (Northern Ireland) Order 2004 – Draft legislation
October 2003 Sec. Of State announced proposals for legislation on hate crime motivated by sectarianism, racism or sexual orientation.
Proposals:
 - Obliges judges to take account of the motivation of crimes by hatred of the victim’s religious faith, racial background or sexual orientation.
 - Heavier sentences may be imposed where the motivated is established.
 - Requirement to treat religious and racial aggravation as an aggravating factor when sentencing. These measures will be extended to apply to offences motivated by hatred of sexual orientation. Puts NI on equal footing with rest of UK.

Scotland⁹

Summary

1. There are ineffective recording practices of race crimes. There is a lack of data and estimation of the numbers can be difficult.
2. There exists a policy-practice gap (executive-police).
3. Although the courts can take into account religious or sectarian motivation as an aggravating factor to a common law crime, which can increase the sentence imposed, details of such cases when this occurs are not routinely collected.
4. Equal Opportunities legislation is reserved for Westminster (Scotland Act 1998)¹⁰.

Legislative Provisions:

- **Incitement of racial hatred** – Public Order Act 1986
Scope: covers words or behaviour, display of images (broadcasting, plays etc.)
- **Offence of racially aggravated harassment** – Crime and Disorder Act 1998 part 2 section 33
Scope: Creates a specific statutory offence of racially aggravated harassment. Provides against harassment on grounds of (presumed) racial group. Furthermore “where there is no evidence of racial hostility but there is evidence of religious motivation or hostility this should be brought to the attention of the court. The court might consider this as an aggravating factor in sentencing”. Conduct in this act includes speech. The High Court of Justiciary has stated that racial / sectarian motivations should be taken into account when sentencing. To obtain a conviction both harassment and racial aggravation must be proved in court. This Act includes a provision for the courts to increase the sentence when *any* criminal offence is aggravated by racial prejudice (sec. 96).
- There is no offence of harassment aggravated by religious prejudice.
- There is a working group on hate crime (deadline for proposals was 30 April 2004). Looking at whether legislative provisions on hate crime should extend beyond race and religion to include age, gender, sexual orientation and disability – problem of which groups to include (should it extend to refugees, homeless, prostitutes, members of certain political groups etc):
- **Religious aggravation must now be taken into account in sentencing** – Criminal Justice (Scotland) Act 2003 sec. 74.
Scope: The court must also state any extra element of the sentence they give for the aggravation. Standard of proof is lower as corroboration is not required to prove the aggravation (evidence of one person suffices).
Sec. 74(2) “For the purposes of this section, an offence is aggravated by religious prejudice if (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or (b) the offence is motivated (wholly or partly) by malice and ill-will

⁹ www.scotland.gov.uk - report of cross-party working group on religious hatred.

¹⁰ EUMC country report

towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group”.

74(3) “Where this section applies, the Court must take the aggravation into account in determining the appropriate sentence”.

74(5) “For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice”.

- This amendment does not include homophobia or disability – the Working Group is tasked to consider hatred towards social groups.