

**Speech by Federal Minister of Justice Brigitte Zypries,
Member of the German Bundestag**

***Harmonising the criminal provisions of the EU Member States
combating racism and xenophobia***
**at the Conference of the Chairs of the Committees on Internal Affairs
of the National Parliaments and the European Parliament**

in Berlin on 7 May 2007

Dear Sebastian Edathy, Ladies and Gentlemen, dear Colleagues.

Thank you very much for inviting me to address you today. You have had a chance already, I am sure, to see something of Berlin and have no doubt toured the Reichstag building. Rich with symbolism, it is a place which at this particular time reaffirms the fact that Germany is reunited and is a democratic state. The Wall ran directly behind the building, its course still marked by a line set in the ground.

But the fate of this building is also a reminder of another time in German history – the events of 1933. Just a few weeks after Adolf Hitler became Chancellor, the Reichstag went up in flames and was left in ruins. You can see the photos upstairs on the visitors' level. The destruction of this parliament building prefigured the subsequent destruction of freedom and democracy by the National Socialists.

As we all know, it was not just the regime's political opponents who suffered under Nazi terror, but above all our fellow Jewish citizens. The genocide perpetrated against the Jews was not something that happened from one day to the next. It was the culmination of a campaign which was planned over a very long period and which started at first with words. The persecution began with people being told they should not mix with Jews in Germany, German children should not play with Jewish children, Ger-

should not marry Jews, and with other ways and means of stirring up hatred and violence against Jews.

The responsibility which Germany bears for fascism and the Second World War manifests itself, among other things, in the permanent obligation we feel to fight all forms of racism, anti-Semitism and xenophobia with rigour and determination. The fact that we go further with our penal laws in Germany than other European countries is a direct consequence of this terrible history. The prohibitions we have in place reflect the fact that we do not want to wait until something happens again to pursue and, where appropriate, convict the perpetrators. Instead, we want to take steps in advance to ensure that such crimes cannot happen in the first place. That is one of the reasons I was concerned to have the European Commission's Framework Decision on Combating Racism and Xenophobia placed back on the agenda during my Presidency.

This Framework Decision was first drawn up in 2001 on the initiative of the European Commission. The text was revised several times but failed to be ratified by all Member States either during the Greek Presidency in 2002 or the Luxembourg Presidency in 2005. Luc Frieden made great efforts during negotiations at that time and achieved a very good outcome, but Italy under Berlusconi refused to sign up and this veto, in the face of the need for a unanimous vote meant that no more could be done.

Once this fundamental opposition was abandoned, we believed that there was a chance of placing the issue back on the agenda. We wanted to make clear, and I think we have succeeded in doing this in the communications on the Framework Decision, that racism and xenophobia are blatant breaches of European values, that is to say common values which we want to espouse in Europe, and that they represent an attack on the fundamental freedoms laid down in the EU Treaty and on all that is vital to peaceful coexistence in Europe.

At a time when all the countries of Europe have in recent years become societies of immigration, it is more important than ever that different population groups should

able to live together in peace. Europe has gained in terms of cultural, ethnic and religious diversity and hence, as a matter of course, faces conflicts of a different nature than in the past.

In many European countries we are discussing the fact that immigrants must be prepared to become integrated in our societies and recognise our values. This is perfectly right. But we, in return, must ensure that every person, regardless of his or her origin, colour or religion, can live safely in our countries. The Framework Decision on Combating Racism and Xenophobia is intended to help to ensure just this, and its adoption three weeks ago in Luxembourg sent out an important political signal in the right direction.

In essence, this Framework Decision will in future make the act of inciting hatred or violence on racist and xenophobic grounds a criminal offence throughout Europe.

Within two years, each Member State will be required to adapt its national law to ensure that wilful public incitement to violence, if it is directed at a group or member of a group defined according to the criteria of race, colour, religion, descent or national or ethnic origin, constitutes a criminal offence.

What does this mean in concrete terms? If in a public assembly there is incitement to assault persons of a particular colour or to provoke fights in the meeting place of particular religious groups, this will in future be a criminal offence in all Member States. The same applies if, for example, members of a particular ethnic group are called "parasites" who are to be "eliminated". We will not tolerate such behaviour. Conduct of this kind will carry a maximum sentence of at least one to three years in prison. Member States are free to decide the exact length of sentence within this framework, but with a minimum of one to three years.

In future it will also be a criminal offence to publicly condone, deny or grossly trivialise genocide, crimes against humanity and war crimes if such conduct is directed against a group of people defined by the criteria I outlined above and if there is incitement

violence or hatred against this group. It will in future be a criminal offence to claim genocide, the existence of which has been established as a fact by a court, happened and was invented by the ethnic group concerned for the sole purpose of claiming compensation. You will know that such claims have been made about Jews. There are those who deny that six million Jews were killed in the Second World War and claim this was thought up by the Jews and international Zionism to get money from the international community. There are still people who make such claims. In future such assertions are to be punishable not only in Germany but in the whole of Europe.

We have not identified any specific cases in the Framework Decision; instead we determined what constitutes a genocide or war crime, based on the definitions contained in the Statute of the International Criminal Court and the Charter of the International Military Tribunal of 1945 (the Nuremberg Tribunal). Under the terms of the proposed legislation, a specific incident must have been recognised by a court as a genocide or war crime. Such a ruling, as we all know, was made by the Nuremberg Tribunal in the case of the Holocaust.

The Framework Decision also provides for racist or xenophobic motives to be considered an aggravating factor in setting sentences for other offences. In concrete terms this means that if someone kills a black person because he assumes that person to be a foreigner, this is a xenophobic motive which will in future be taken into account as an aggravating factor and lead to a stiffer penalty.

Finally, we have agreed that the police and judiciary must investigate racist or xenophobic offences *ex officio*. The authorities will be required to initiate an investigation rather than waiting for an injured party to file a complaint.

These therefore are the areas covered by the Framework Decision. In light of the controversy in this respect, however, I should also like to clarify what will not in future be included. The Framework Decision does not cover the use of symbols such as

swastika. You will be aware that Hindus have objected to this because the swastika is a religious symbol for them.

In Germany it is against the law to display a swastika. This is a result of our history. But we know that in Europe as a whole it will be impossible to reach a consensus that merely displaying a swastika is a criminal offence and that is what was proposed at the very outset of the negotiations that the relevant provision should be removed from the Framework Decision.

The negotiations on the Framework Decision have been further complicated by the issue of freedom of expression. We all know that it is always difficult to decide where to draw the dividing line between freedom of expression and what constitutes a criminal offence. Some countries also have completely different traditions, even within Europe. America, as everyone knows, has the First Amendment covering free speech. Here the definition of freedom of speech is clearly very broad. In Europe things have evolved differently in different countries.

The British journalist and historian Timothy Garton Ash, writing in *The Guardian*, "The approach advocated by the German justice minister also reeks of the nanny state. It speaks in the name of freedom but does not trust people to exercise freedom responsibly."

This reflects the tried and tested Anglo-Saxon tradition. But unfortunately not all countries have access to such positive experiences. We in Germany want to learn the consequences for ourselves from our negative experiences and have therefore made Holocaust denial a criminal offence. I am aware, nevertheless, that only in the extreme cases will it be appropriate to prosecute someone for expressing an opinion which is not therefore the straightforward expression of an opinion which we intend to hold liable to prosecution but rather the incitement to commit offences on racial or xenophobic grounds. In other words, it is not simply about saying that certain groups should not be tolerated. Rather it is a matter of achieving a successful outcome in terms of the way in which people refer to others. I believe, therefore, that with this proposal

Framework Decision we have found a reasonable dividing line. Within the Framework Decision each Member State naturally retains the right and also the obligation to protect the fundamental right of citizens to freedom of expression and, moreover, the Member States can make criminalisation subject to a threshold of significance. This criminal liability can be limited to cases in which the conduct in question simultaneously amounts to an insult or threat, so that there will always therefore be a successful outcome linked with it. We believe this gives every country the necessary leeway in accordance with their traditions.

There are, nevertheless, seven countries which have said they are not yet able to give their final approval to the Framework Decision and whose parliaments have expressed parliamentary reservations. These are very material rather than purely formal reservations which will have to be discussed in depth and will generate vigorous debate. I am, however, optimistic that the Framework Decision will not be withdrawn before the next meeting in June and that by that time the parliaments will have given their approval. I am very well aware, nevertheless, that some colleagues have had great difficulties in their national parliaments in general over the issue of freedom of expression, particularly in the case of Denmark and the Netherlands. The Baltic States, too, said they have not liked the scope of the proposed legislation to have covered Stalinism and Stalinist crimes, together with a prohibition on incitement in this respect. We responded to this with a resolution which I hope will satisfy the parliaments.

In conclusion I would just like to say that we have sought here to use criminal law to tackle these issues. I believe this is necessary and what is required and I believe the balance is right. I am well aware that recourse to criminal law is not in general the best way to establish tolerance and that in order to create a Europe in which people understand and respect each other it is much more important that young people learn to get on with each other, that we practise tolerance, that we talk to schoolchildren, interest groups and initiatives, and, of course, that the politicians do their job of empowering people to live together in peace and to accept each other regardless of colour or descent, enabling us all to build a unified and peaceful Europe. This is what we must strive for. I had a meeting before this event with a large group of school students and from my own experience

would just like to say that there can be few things better suited to encourage Europe to grow closer together than the Erasmus Programme. The scheme, which we in Germany are very enthusiastic about, gives young people the opportunity to spend a year in another European country and gain many positive experiences.

Thank you for your attention.