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on non-discrimination and equal opportunities for all - A framework strategy (2005/2191(INI))

Committee on Civil Liberties, Justice and Home Affairs

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(*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION 3

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on non-discrimination and equal opportunities for all - A framework strategy (2005/2191(INI))

The European Parliament,

– having regard to Article 13 of the Treaty establishing the European Community, pursuant to which the Community has the power to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation,

– having regard to European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

– having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[1] and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[2], under which any direct or indirect discrimination based on race or ethnic origin, religion or belief, disability, age or sexual orientation is prohibited,

– having regard to Article 21(1) of the EU Charter of Fundamental Rights, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited,

– having regard to the various legal instruments adopted by the UN and the Council of Europe which contain a ban on any discrimination in respect of the rights which they are designed to protect, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe's Framework Convention for the Protection of National Minorities,

– having regard to the Commission communication entitled 'Non-discrimination and equal opportunities for all – a framework strategy' (COM(2005)0224),

– having regard to the 2004 Annual Report drawn up by the Network of fundamental-rights experts and that network's thematic report on minorities which was published in the same year,

– having regard to Rule 45 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A6-0000/2006),

[1] OJ L 180, 19.7.2000, p. 22
[2] OJ L 303, 2.12.2000, p. 16

A. whereas the fight against discrimination is an essential aspect of any integration policy (which in itself serves to underpin social cohesion) and an essential weapon in the fight against exclusion,

B. whereas discrimination largely stems from ignorance (and hence fear) of other people and whereas the problem should therefore be tackled at source, by means of targeted actions designed to foster tolerance and diversity from early childhood; whereas the Socrates, Leonardo and Jeunesse programmes have a crucial role to play in this connection,

C. whereas the EUMC states that dissemination by national authorities of practical information on non-discrimination at national level remains limited and needs to be extended to target groups and their support organisations; whereas governments need to grant greater recognition to the fact that civil society can be an effective partner in combating racial discrimination and should support any policy objectives to counter discrimination,

D. whereas Article 21 of the Charter of Fundamental Rights (which has been incorporated into Article II-81 of the Constitutional Treaty) has a wider scope than Article 13 of the EC Treaty, insofar as it mentions grounds for discrimination which are omitted from Article 13 - namely colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property and birth; regretting all the more that this broader concept has not been translated into a legally binding practical application,

E. whereas, as recalled recently by the network of experts, in the implementation of the legislative instruments adopted on the basis of Article 13 of the EC Treaty, the Member States should nevertheless comply with the fundamental rights enshrined in the general principles of EC law, including the rights, freedoms and principles mentioned in the Charter of Fundamental Rights of the European Union,

F. aware of the fact that granting preferential legislative treatment to certain types of discrimination has the effect of placing grounds for discrimination in a kind of hierarchy which should not exist,

G. whereas there are different ways of understanding the concept of discrimination (depending on whether it is viewed from an individual or collective point of view) and whereas upholding the rights of citizens as individuals does not require the same action as upholding the interests of groups of individuals,

H. whereas positive action is a tool designed to promote balanced representation of all categories of people in areas and at levels where the population as a whole must be represented in equitable fashion; stressing that this concept must not be confined to the employment sector and must go beyond mere equality between the sexes,

I. aware of the fact that, in order to compensate for earlier injustices or discrimination, there may be a need for temporary recourse to positive measures based on a 'proactive' concept of justice and possibly taking very different forms; whereas the establishment of quotas must be regarded as an extreme measure which may be applied only in accordance with the case-law established by the European Court of Justice and with due regard to the proportionality criterion,

J. whereas in the case of certain particularly disadvantaged groups in society (such as Roma) or ones who are denied their rights (such as non-citizens), the adoption of positive measures – even of specific legislation – is essential if such people are to be able to participate actively in the life of their society (especially in political life) and hence to influence the decisions which affect them,

K. drawing attention to the fact that in certain Member States the practice of confining Romany children to special classes or to establishments set aside for the mentally handicapped smacks of racial segregation, and whereas a desegregation policy is required as a matter of urgency,

L. whereas the Advisory Committee of the Framework Convention encourages the introduction of positive measures in favour of members of minorities who are particularly disadvantaged,

M. whereas the UN Committee on Economic, Social and Cultural Rights considers that there is an obligation for the States party to the International Covenant on Economic, Social and Cultural Rights to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities,

N. whereas the EUMC recalls that the true extent and nature of the problem of racism remains difficult to gauge, given the absence or ineffectiveness of both official and unofficial data collection in many Member States,

O. whereas, as the EUMC stresses, without official statistics on ethnic and national origin and on religion, a true insight into discrimination and the success of policies against it will be difficult to ascertain; the lack of sufficient statistical data to illustrate and evaluate discrimination makes it impossible to establish a non-discrimination strategy based, inter alia, on positive actions in favour of such groups,

P. whereas the processing of personal data is regulated at Community level by means of Directive 95/46/EC and whereas as the network of experts stressed, there is no conflict between personal-data protection and the monitoring of discrimination through statistical means, insofar as the objective of such monitoring is to gain a better understanding of the over- or under-representation of certain groups in particular sectors or at certain levels, and to measure progress, in order to identify the need to act and to select the most effective course of action,

Q. whereas the detection of indirect forms of discrimination (which are explicitly banned under Community law) must be based upon reliable statistics relating in particular to certain groups with special characteristics; whereas any unavailability of statistics will in effect deny potential victims of indirect discrimination access to a tool which is essential if their rights are to be recognised,

R. pointing out that elements which may point to the existence of direct or indirect discrimination are interpreted in accordance with national law or national practices and that as things currently stand the use of statistics as evidence for the purpose of proving indirect discrimination is left to the Member States' discretion, which not only leads to a degree of disparity but also makes it impossible in the Member States in which such a

practice is not recognised for certain forms of indirect discrimination to be reported,

General considerations

1. Considers that, in addition to legislative tools and means of redress, the fight against discrimination must of necessity be based on an awareness of the social (and also the economic) impact of the phenomenon – an awareness that must be relayed by NGOs (which the Member States should closely involve in their anti-discrimination policy);

2. Believes that the sound anti-discrimination practices introduced in the Member States should be brought together and disseminated; believes that in this connection the network of Member-State bodies responsible for combating discrimination (Equinet) could usefully be strengthened and all the Member States be encouraged to become involved in it; believes that the task of gathering and disseminating information and of providing coordination and impetus could eventually be entrusted to the Agency for Fundamental Rights;

3. Welcomes the Commission initiative to launch a European Year of Equal Opportunities in 2007 and hopes that this will help to raise awareness of the various forms of discrimination and of multiple discrimination and enable the means of redress to become better known; would nevertheless hope that preparations for such initiatives will in future begin at an earlier stage;

4. Is insistent that when the Commission performs the stringent, systematic checks which it has undertaken to carry out in order to ensure that its legislative and regulatory acts are compatible with the Charter of Fundamental Rights, it should make a particular effort to detect any form of discrimination (either direct or in particular indirect) which various categories of individual could suffer as a result of such acts; thinks that the Agency for Fundamental Rights should be closely involved in the impact studies carried out in this connection;

5. Considers – as does the Commission – that if blatant inequalities of an 'endemic', 'structural or even 'cultural' nature are to be remedied and a seriously compromised balance is thus to be restored, it may be necessary in certain cases for a temporary exception to be made to the concept of equality based on the individual in favour of group-based 'distributive justice' through the adoption of 'positive' measures;

6. Points out that the concepts of 'positive action', 'affirmative equality' and 'distributive justice' reflect one and the same reality, the basis of which is an acknowledgement of the fact that in certain cases, effective action to combat discrimination requires active intervention by the authorities for the purpose of restoring a seriously compromised balance; stresses that intervention of this kind must not be regarded as a form of discrimination (not even as a 'positive' form) and that the concept of positive action cannot be reduced to the idea of a quota; points out that such actions may in practice take the most varied forms, such as a guarantee of recruitment interviews, priority access to certain types of training leading to jobs in which certain categories of people are under-represented, priority notification of job vacancies to certain communities and the taking into account of work experience rather than qualifications alone;

7. Points out that the principle of equal treatment does not prevent a Member State from retaining or adopting specific measures intended to prevent or to compensate for the disadvantages linked to one of the grounds for discrimination listed in Article 13 of the EC Treaty, and insists that such measures should be extended to all sectors in which serious inequalities are found, whether in education, housing, access to goods and services or any other area;

8. Is aware that the fact that certain groups are very poorly represented in certain categories of job may have the perverse effect of discouraging those groups from endeavouring to acquire the knowledge which they need in order to gain access to the jobs concerned, which leads to a vicious circle; strongly recommends, therefore, that the conditions be created which will enable all categories of individual to gain access to all types and levels of education and training, if necessary through the adoption of positive measures designed to enable disadvantaged groups to follow courses of study at school or university or to undertake training courses which would not otherwise be accessible to them;

9. Stresses the fact that migrants of Roma origin and non-citizens must be granted equality in terms of social and political rights and calls upon the Member States and the applicant countries to draw up a strategy designed to increase the involvement of Roma and non-citizens in elections (as both voters and candidates) at all levels;

Collection of data

10. Considers that far from constituting an obstacle to the collection of data relating in particular to ethnic origin and to religion, Directive 95/46/EC provides necessary and desirable protection against any abuse of sensitive data collected for statistical purposes;

11. Considers that the Article 29 group set up pursuant to Directive 95/46/EC could usefully issue an opinion designed to clarify the provisions of the Directive which may hinder the collection of statistics relating to certain categories of individual and thus to ensure that those provisions are interpreted uniformly throughout the Member States;

12. Draws attention to the fact that once personal data have been rendered anonymous for statistical purposes, the information contained in the statistics is no longer to be regarded as personal data; points out that there are also reliable techniques which enable anonymity to be observed and are traditionally used in the social sciences and which should enable statistics based on criteria deemed sensitive to be established;

13. Notes with satisfaction that the Commission intends to create (in cooperation with the Member States' authorities and other parties involved) statistics tools designed to assess the impact of discrimination; awaits with interest the publication of the data-collection handbook which is scheduled for 2006;

14. Points out that the concept of indirect discrimination is intrinsically linked to quantitative criteria and that it is therefore counter-productive to prevent statistics relating to certain characteristics from being gathered under the cover of legislation on the protection of personal data, since in the absence of such data the existence of indirect discrimination becomes impossible to prove;

15. Considers that if effective action is to be taken against all forms of indirect discrimination and if the Community directives on discrimination under which those forms are specifically prohibited are to be correctly transposed, it is essential that authorisation be granted for the supply of proof based on statistics;

16. Calls upon the Member States to develop their statistics tools with a view to ensuring that data relating to employment, housing, education and income are available for each of the categories of individual which are likely to suffer discrimination based on one of the criteria listed in Article 13 of the EC Treaty;

17. Draws attention to the fact that if an individual is to benefit from preferential treatment by virtue of his membership of a protected group, it must be possible for him to be identified as such, which means that sensitive data relating to him must be available; points out that such data must be processed in accordance with – in particular – the legislation relating to the protection of personal data and with Article 3(1) of the Framework Convention on the protection of national minorities;

Need for supplementary legislation

18. Greatly regrets the fact that the Commission is not planning at this stage to draw up comprehensive legislation to combat discrimination; insists that a new legislative tool incorporating all the grounds for discrimination set out in Article 13 of the EC Treaty and having the same scope as Directive 2000/43/EC be submitted in the near future;

19. Calls upon the Member States to take due account in their legislative practice of the various grounds for discrimination set out in Article 21 of the Charter with a view to bestowing a credibility upon that Charter which has hitherto been weakened by the fact that the Charter is not legally binding;

20. Encourages Member States to undertake obligations without any reservations or restrictive declarations under human rights treaties in the field of non-discrimination and protection of persons belonging to minorities and other vulnerable groups, as well as honour such obligations in a good faith;

21. Calls upon the Commission to fulfil actively its obligations as guardian of the Treaties and to undertake urgent action against Member States violating EC law prohibiting discrimination on the basis of Article 13 of the EC Treaty. New Member States which have not transposed the anti-discrimination directives must be subject to infringement proceedings for violating EC law in the same way as old Member States;

22. Calls upon the Commission to ensure that when anti-discrimination law is next recast, it pays particular attention to the problems of multiple discrimination and those of segregation (which constitutes a form of discrimination) and reviews the concept of indirect discrimination by explicitly authorising proof based on statistics;

23. Calls on the Council to adopt the Commission's proposal for a Council Framework Decision on Combating Racism and Xenophobia, which sets out to establish a framework for punishing racist and xenophobic violence as a criminal offence, as this Decision

would contribute to the enhancement of necessary data collection on racist violence and crime across the EU.

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24. Instructs its President to forward this resolution to the Council and the Commission.