Application of the principle of equal treatment between persons irrespective of racial or ethnic origin

2007/2094(INI) - 27/09/2007 - Text adopted by Parliament, single reading

The European Parliament adopted by 500 votes in favour, 46 against and 24 abstentions a resolution based on the own-initiative report drafted by Kathalijne Maria **BUITENWEG** (Greens/EFA) on the application of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Parliament believed that more needed to be done to implement the directive in full, notably on issues such as legal redress, the burden of proof in racial discrimination cases, awareness-raising, data collection and the independence of equality bodies.

The Directive, known as the Racial Equality Directive, was due to be implemented by all Member States by 19 July 2003. It does not limit protection against discrimination to the area of employment but also covers social security, education and access to housing.

Parliament reiterated the importance of the Directive, recalling that it was a minimum standard and should therefore act as the foundation on which a comprehensive anti-discrimination was built. It welcomed the Commission Communication, but stated that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law.

Whilst most Member States had taken action in order to implement the Directive, Parliament was disappointed that only a few had adequately transposed all of its provisions fully. A number of provisions, such as the definitions of direct and indirect discrimination, harassment and the burden of proof had not been correctly transposed in many countries. Parliament called, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which was particularly effective in the case of employment-related disputes. It expressed concern that Member States had exempted more areas of activity from the scope of the Directive than justifiable.

Parliament went on to make a series of recommendations to the Commission and Member States, and placed some emphasis on **adequate and reliable data collection**. The latter was essential in the fight against discrimination, and ethnically disaggregated statistical data could be essential in demonstrating indirect discrimination, informing policy and developing positive action strategies, but at the same time raises several ethical and legal questions. Parliament asked the Commission to study the various legal questions and parameters regarding the issue of data collection and to come forward with proposals to improve the recording of cases of discrimination, including toensure that such data collection does not infringe personal privacy by revealing individuals' identities or serve as a basis for ethnic or racial profiling. Provision should be made for comparable sets of data to be available from all the Member States. At present, these data are not available for all Member States and comparable data are critical to give a solid platform on which to build policy. Parliament called on Member States implementing national action plans to combat racism and discrimination to include components covering the gathering, checking and monitoring of data in key policy areas such as non-discrimination and equality, social inclusion, Community cohesion, integration, gender, education and employment.

The Commission was asked to submit a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures and to lay down common standards for data. Parliament went on to ask the Commission to do the following:

- to request Member States to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into the reports;
- to step up efforts to raise level of awareness of ant-discrimination legislation. Parliament considered that the Roma community, together with other recognised ethnic communities, need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute in their regard;
- to adopt a set of minimum standards under the open coordination method, so as to guarantee access for children from ethnic minorities – particularly girls – to high-quality education and equal conditions, and to adopt positive legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education for ethnic minority children;
- to monitor the independent functioning of equality bodies, for which purpose it can use as a reference the Principles relating to the Status of National Institutions ('the Paris Principles');
- Parliament urged Member States to do the following:
- to ensure that all persons from ethnic minorities – particularly women – have access to primary, preventive and emergency healthcare services;
- to ensure equal treatment under employment and social inclusion policies, to address the extremely high unemployment rates recorded particularly among women from ethnic minorities and, in particular, to address the serious barriers raised by direct discrimination in recruitment procedures;
- to collect accurate and gender-disaggregated statistics relating to the following: the labour market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities.

Parliament also felt that it was vitally important that officials receive training on the subject of the aims and provisions of the Directive, in order to remove all risks of institutional racism within government bodies themselves. Member States were asked to invest in such training. Parliament asked them and the Commission to set up European programmes for exchanges between the various national administrative bodies.

With regard to **equality bodies**, Member States were asked to resource and empower their equality bodies properly so that they could perform their important function effectively, and so that where equalities bodies do have substantial powers, they exercise these fully. Member States should resource the NGOs active in informing citizens and providing legal aid in matters of discrimination. In informing citizens and providing legal aid, NGOs carry a disproportionate share of the burden without enjoying corresponding status and funding from the Members State authorities. Independent bodies must have adequate financial resources at their disposal in order at least to be able to guarantee that complaints will be dealt with free of charge in the case of those who are not in a position to contribute financially them themselves. The Committee recommended that Member States make use of the best practices of other Member States, such as allowing equality bodies to initiate legal proceedings on behalf of victims or participate as amicus curiae in legal proceedings. Such bodies should also be given the necessary powers to investigate cases.

Parliament asked the Commission to monitor attentively disguised discrimination based on ‘genuine and determining occupational requirements’, on the interaction between discrimination based on the application of this exemption on religious grounds in the framework of the Directive on employment and its consequences for race and ethnicity, and to pay particular attention to discrimination in the field of education.

Lastly, Parliament reiterated the political, social and legal desirability of putting an end to the hierarchy of protection against the different grounds of discrimination, and welcomed the Commission's intention to

put forward a proposal for extending the scope of Directive 2000/43/EC to all other grounds of discrimination, as stated in its Annual Legislative Programme for 2008.