



Commissioner Spidla
Directorate General Employment, Social Affairs and Equal Opportunities
European Commission 1049
Brussels
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16 January 2007

Dear Commissioner Spidla,

We are writing in response to the European Commission Communication on the Application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published on 30 October 2006. The European Network against Racism (ENAR) welcomes this first evaluation of the impact of the Directive, as we did in our contribution to the Commission Communication submitted in October 2005. In the context of ENAR's ongoing analysis and monitoring of Directive 2000/43/EC we would like to take this opportunity to provide some comments on the Communication.

These comments are based on a detailed discussion of the Commission Communication during ENAR's 5th General Assembly, held in Brussels on 24-26 November 2006.

ENAR welcomes the specific analysis in the Commission Communication, which draws attention to a number of core issues which have been of concern over the last years. In particular we welcome the recognition the Commission Communication gives to problems of access to the right of redress, in reality many of the victims of discrimination in Europe continue to find it difficult or impossible to pursue legal action. ENAR looks forward to working with the Commission in the coming years on mechanisms to overcome the barriers facing victims of discrimination who seek to pursue their claim in the courts.

ENAR also welcomes the focus on positive action in the Commission Communication, and in particular the reference to our recommendation concerning the need to strengthen provisions on positive action. It is however disappointing to note that this issue has proved controversial in many Member States, and we believe that the European Commission conference on positive action in April 2007 can make an important contribution to the emerging debate.

ENAR also appreciates the conclusion the Commission Communication draws in relation to data collection. It is important that the situation relating to the EU Data Protection Directive, in the context of ethnic data collection is clarified. The collection of such data is compatible with the Directive, and ENAR agrees with the Commission's conclusion that the scarcity of ethnic data in most Member States might hinder the monitoring of the application of Community legislation. It is crucial that efforts to enhance data collection across the EU are continued and ENAR has greatly appreciated the Commission's activities in this regard.

However, there are also a number of issues raised in the Commission Communication, which ENAR believes do not fully reflect the challenges which Directive 2000/43/EC during has faced during its first five years of implementation. In particular ENAR is disappointed by the general nature of some of the analysis and the Communication's limited reflection on the specific difficulties in some Member States in the transposition of the Directive. While understanding the constraints and limitations of this document we believe the Commission Communication would have benefited from greater specificity in its discussion and conclusions.

ENAR strongly urges the European Commission to take comprehensive action against those Member States who have not fully transposed the Directive, and looks forward to detailed analysis of each countries implementation in the context of any forthcoming infringement proceedings.

Right of Redress

In terms of the discussion on redress, ENAR members raised concerns regarding the conclusion that the Directive has been particularly successful in challenging discrimination faced by the Roma, Traveller and Sinti communities. While undoubtedly the Directive has had a very positive impact on the capacity of members of the Roma, Sinti and Traveller communities, as well as other ethnic minorities, to take anti-discrimination cases, much remains to be done. As the Communication itself points out many victims do not take cases to court. ENAR members would suggest an alternative analysis concerning the *relatively* high number of cases taken by Roma, Traveller and Sinti communities. These communities continue to experience widespread and pervasive discrimination, on a scale which lends itself to a higher numbers of cases. In addition the low levels of cases taken by other communities points to the difficulties facing these communities, rather than necessarily to the success of the Roma, Traveller, and Sinti communities.

The Commission Communication also notes difficulties in regard to incorrect transposition of the rules on the burden of proof. An ENAR study published in 2006 supports this conclusion, demonstrating that the application of the burden of proof is being enjoyed differently in different jurisdictions. In effect one of the key provisions of the Directive to enhance access to justice is significantly underutilised.

Equality Bodies

ENAR members have persistently raised concerns regarding the implementation of the equality bodies across the European Union. While some Member States have adopted a positive approach, in many cases the equality bodies remain weak and under effective, and fail to realise the objectives of Directive 2000/43/EC. ENAR members are particularly concerned that many equality bodies do not fulfil the first competence envisaged in the Directive, that of providing independent assistance to the victims of discrimination in pursuing their complaints, or do so in an extremely limited way. ENAR strongly believes that the Commission must put greater emphasis on the responsibility of equality bodies to assist the victims of discrimination, and the subsequent need to invest adequate resources in the operation of equality bodies.

Many ENAR members are particularly concerned about the emergence of conflicts between the quasi-judicial responsibility of some equality bodies, and the mandate under the Race Directive to assist the victims of discrimination. For example the Commission Communication refers to multiple national institutions fulfilling the role of the equality body in some Member States; the Communication points to Cyprus (among others) as an example of a context where assisting individual victims of discrimination is entrusted to a specific legal representative. According to ENAR findings, as published in our 2005 Shadow Report, no body has been appointed in Cyprus to provide assistance to individual victims of discrimination, neither has the government supported NGOs to fulfil this role. Consequently we are very concerned that the Commission's analysis of the impact of equality bodies, does not adequately address the reality that equality bodies are not fulfilling all the functions envisaged in the Directive.

Dissemination of Information

While the Communication does not draw any conclusions from the lack of information provided by Member States on how they have met their obligations under Article 10 of the Directive (dissemination of information), analysis by ENAR members demonstrates that most Member States have undertaken very few activities in this area. Lack of awareness of the rights provided under the Directive is one of the biggest barriers to effective implementation, while European Commission activities in this area are welcome they are no substitute for comprehensive national activity. It is imperative that Member States provided greater resources to effective awareness raising and in particular the 2007 European Year of Equal Opportunities is a valuable opportunity in this regard. ENAR is committed to assisting the Commission in its efforts to promote awareness raising activities in anyway it can.

Role of the Social Partners & NGOs

It is of concern that Member States failed to provide the European Commission with information on their engagement with NGOs. Despite its title section 3.4 of the Commission Communication does not address the role of NGOs, it only provides an analysis of the role of social partners in the implementation of the Directive. ENAR does not accept the ETUC conclusion that governments favour dialogue with NGOs over social partners, and is very concerned that many Member States are failing to adequately engage with NGOs.

Evidence demonstrates that where there is an active NGO sector, equality legislation is implemented more comprehensively and used more effectively. In particular many ENAR members have expressed their concern regarding the implementation of the provision of the Directive relating to the participation of NGOs in complaints procedures. The analysis by ENAR members in our 2005 European Shadow Report demonstrates that the majority of Member States have not implemented this provision or have done so in a limited manner. The situation is even worse when it comes to the analysis of governmental dialogue with NGOs. In certain cases Member States have adopted a 'selective' rather than an inclusive approach to the NGOs with which they engage.

Scope of legal protection against discrimination

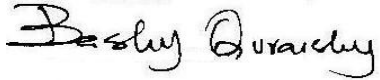
While ENAR welcomes the scope of the Commission Communication, and the breadth of issues which it raises in relation to the implementation of the Directive, it is disappointing that it does not address the limitations of the Directive itself. ENAR members have consistently raised the extremely problematic limitations of Article 3.2 of Council Directive 2000/43/EC, which provides an unacceptable derogation to the principle of non-discrimination, allowing 'any difference of treatment' arising from nationality and the legal status of third country nationals. In its third General Policy Paper ENAR has called for the abrogation of this article.

ENAR has also been concerned by the 'hierarchy' of anti-discrimination protection in the European context, and believes that the discrepancy of scope between Directive 2000/43/EC, and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, undermines the protection against racial discrimination. In particular ENAR is concerned about the recognition of multiple forms of discrimination, and believes that given the intersection between racial and religious discrimination, the current legal framework limits the fight against racism outside of the field of employment.

While the Communication demonstrates the Directive 2000/43/EC has proved a watershed in the protection against discrimination in Europe, much remains to be done both in enhancing the legal framework, and through complimentary action and policies. ENAR does not share the Communication's conclusion that there is no need to come forward with proposals to revise and update the Directive, and believes that these issues warrant further consideration. The Framework Strategy on non-discrimination and equal opportunities for all (June 2005) envisages that the results of the feasibility study on further anti-discrimination law will be made public in Autumn 2006, and ENAR calls on the European Commission to make the results of its deliberations available as soon as possible.

ENAR is committed to doing everything it can to support the European Commission's analysis of the implementation of the Race Directive. As we stated in our European Shadow Report 2005, "the 'Race Directive' has made a very significant impact on the overall picture with regard to anti-discrimination across Europe". However the full potential of Directive 2000/43/EC has not yet been realised and ENAR looks forward to working with the Commission in enhancing protections against discrimination in Europe in the coming years.

Yours sincerely,



Bashy Quraishy
Chair



Pascale Charhon
Director