

Racism and Xenophobia in the EU Member States

trends, developments and good practice

Annual Report 2005 – Summary



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EUMC – Annual Report 2005
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Foreword

Foreword by Anastasia Crickley, Chairperson of the Management Board, and Beate Winkler, Director of the EUMC

This Annual Report 2005 of the EUMC is the first Annual Report to appear since the enlargement of the EU in 2004. It therefore constitutes the first comprehensive overview of racist, xenophobic, antisemitic and anti-Muslim discrimination, and responses to it, to cover all 25 EU Member States. The report covers events during 2004, which was also the first full year that Council Directive 2000/43/EC (the Racial Equality Directive) had been in force. One of the tasks of this year's report has therefore been to describe the practical consequences of this, in terms of the legal and institutional mechanisms introduced by Member States in response to it.

A recurring theme of this Annual Report is that of 'mixed messages' in a number of areas, including with regard to responses to the Directive. By the end of 2004, whilst most Member States had transposed the Racial Equality Directive, four Member States had been referred to the European Court of Justice over their failure to satisfy the requirements of the Directive, and several Member States had still not established a specialised body to provide assistance to victims of discrimination and promote equal treatment.

Other mixed messages emerge from developments during 2004. Whilst most Member States have strengthened their anti-discrimination legislation in response to the Directive, and some have introduced stronger measures against extremist and racist crime, some have also introduced legislation which restricts certain rights and opportunities of migrants and minorities, covering issues such as access to citizenship or rights to wear clothing signifying religious faith. In addition, some Member States have been giving out messages in new legislation that new immigrants are not welcome, for political rather than economic reasons. This sits uneasily with the increasing need for labour in many sectors that cannot be met internally. Furthermore the accompanying anti-immigrant political discourse makes things harder for those fighting for diversity and against discrimination in Europe.

The incorporation of the 10 new Member States has helped to draw attention to the inclusion of issues of national minorities on the agenda of anti-racism and anti-discrimination. Substantially large Roma populations live in several of the new Member States of Central and Eastern Europe. Whereas current EU treaties make no mention of national minority protection or positive minority rights, minorities such as Roma, Sinti, Gypsies and Travellers are covered by anti-discrimination measures. This Annual Report records evidence of the discrimination suffered by these populations in all of the substantive areas covered by the report – in the spheres of employment, housing and education – as well showing them to be regular victims of racist violence. The EU's anti-discrimination Directives are

therefore of potentially great importance for these minorities in order to help to break the vicious circle of deprivation, prejudice and discrimination that they experience.

Two incidents that had repercussions on the manifestations of racist sentiments during 2004 were the Madrid train bombings in March and the murder of Theo van Gogh in Amsterdam in November. Evidence is quoted in this report of incidents of racist violence against people or property that followed directly on from these events, including in countries outside Spain and the Netherlands. The chapter on racist violence and crimes sets out what data is available on the problem of racist violence in the EU. Again, with regard to statistics in this area, the overall message is mixed. Whilst there are adequate statistics to enable an overview to be given of trends in racist violence and crime in seven Member States, in many other countries there is shown to be a complete absence of usable data in this area. Only when more Member States start to take the recording of racist incidents more seriously will it be possible to gauge the true extent of the problem, and target adequate measures against it.

It is clear that the European Union must prioritise the fight against racism and xenophobia in order to give strength to a positive public discourse on diversity and equality. The EUMC will continue to do its utmost to support the European Union and its Member States in their efforts to eradicate racism, xenophobia, Islamophobia and antisemitism from European society.

Finally, we would like to take the opportunity to thank the Management Board and the EUMC staff for their strong commitment and important work over the last 12 months. We are looking forward to further positive developments and achievements during the coming year.

Anastasia Crickley
Chairperson of the Management Board

Beate Winkler
Director of the EUMC

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Introduction

The EUMC's Annual Report 2005 covers information and developments for the year 2004 concerning the occurrence of, and responses to, racism, xenophobia, antisemitism and anti-Muslim manifestations in the 25 EU Member States. As with last year's report, the five thematic areas of legislation, employment, housing, education, and racist violence and crimes are covered. However, unlike previous reports, this year's report does not select one of these areas for a particular focus. Instead, each area is covered equally. Nevertheless, there are some themes which inevitably stand out more than others for this year, namely the implications of the enlargement of the EU by ten new Member States in 2004, and a continuing focus on consequences of the anti-discrimination Directives.

The findings in this Annual Report are the product of an on-going data collection exercise involving the EUMC's European racism and xenophobia network (RAXEN). In this network each of the 25 Member States has one National Focal Point (NFP), which is responsible for collecting data under common headings in each of the five thematic areas. NFPs consist of consortia which are typically constituted by bodies such as anti-racist NGOs, university research centres, institutes for human rights, or government-affiliated organisations. The process of creating the Annual Report begins with the approval by the EUMC's Management Board of the content, structure and timetable. The NFPs are then requested to collect information from a range of sources, and in cooperation with various national organisations and actors, in accordance with specific and common guidelines. Each NFP produces a 'National Report',¹ and from the information in these National Reports the thematic chapters are produced, some in-house and some by external contractors. At the same time the accuracy of the information is checked by government liaison officers from each Member State. The first full draft is produced by the EUMC for comment by the members of the Management Board around June each year, and the final draft is produced for approval by the Management Board in October of the year of publication.

A major change in data collection for this year's report has resulted from the addition of the ten new Member States to the EU on 1 May 2004 – with ten new sets of information to be collected in each of the above areas. While not all ten of the new Member States were in a position to provide comprehensive data on each of the five main topic areas, a great deal of new data from the new Member States has been included.

Whilst examples of 'good' or promising practices can be found in each of the main subject areas in both the EU15² and the new Member States, it is apparent that some Member States are relatively active in initiatives against racism and

¹ The 25 National Reports are to be published in full on the EUMC website by the end of 2005.

² 'EU15' is used as the shorthand term for the 'old' 15 EU Member States, before the 2004 enlargement to the 'EU25'. Correspondingly, 'EU10' refers to the 10 new Member States.

discrimination, while others lag behind. The enlargement of the EU poses new challenges in the area of data collection, including with respect to groups such as the Roma that are particularly vulnerable to racism. Whilst there are gaps in data in certain areas, this year's Annual Report provides the first comprehensive overview of racist, xenophobic, antisemitic and anti-Muslim discrimination, and responses to this, to cover the whole 25 EU Member States.

1. Legislative and institutional initiatives against racism and discrimination

In last year's EUMC Annual Report the legislation chapter focused primarily on the transposition of the two new Equality Directives – Council Directive 2000/43/EC (the 'Race' Directive) and Council Directive 2000/78/EC (the Employment Directive). This year's chapter examines the state of play of the transposition of the Directives after the first full year of operation, and also observes the forms of practical implementation.

TRANSPPOSITION OF EU DIRECTIVES

The RAXEN National Focal Point (NFP) reports indicate that most of the 25 Member States have transposed the Directives in their entirety. Four Member States – Germany, Luxembourg, Austria and Finland – were referred to the European Court of Justice (ECJ) for their failure to satisfy the requirements of the Racial Equality Directive, and later in the year the same four were referred to the ECJ for their failures regarding the Employment Equality Directive. Several Member States failed to establish a specialised body with responsibility for promoting equal treatment and providing assistance to victims of discrimination. In nearly half of the Member States an existing body has undertaken the relevant responsibilities. Others have established a completely new body, most of these having a multi-stranded remit to deal with all the grounds of discrimination set out in the Directives. This issue has engendered arguments as to the relative advantages and disadvantages of combined-issue equality bodies as opposed to those specialised on one issue.

Another issue is the scope of the legislation that has been introduced, with arguments in several countries that particular areas of coverage have been omitted, as well as questions as to whether the changes regarding the shift in the burden of proof are adequate, and whether the available sanctions are truly 'dissuasive'. While there are differences between Member States in terms of how they have transposed the Directives, these differences do not relate to the division between the EU15 or the 'new' Member States.

NEW MINORITY LEGISLATION

Although Member States have introduced legislation affording improved protection to racial/ethnic minorities and populations of migrant origin under the terms of the EU Directives, some have also chosen to introduce other legislative measures which serve to restrict various rights and opportunities of migrants and minorities, variously covering issues such rights to entry and citizenship, or rights to wear clothing signifying religious faith. In some Member States there have been moves

to re-define national minorities, advantaging some minority groups over others. If adopted, such measures would in more than one case undermine the rights of the Roma population.

At the same time, there is encouraging evidence that some Member States are introducing legislation that focuses on racist offenders. Some Member States have introduced legislation and other activities to combat and punish illegal Internet use by extreme right-wing groups. There have also been various moves among Member States to make it easier to prosecute racist crimes, and to increase sanctions against them.

2. Racism and discrimination in the employment sector and initiatives on how to prevent it

There are mixed messages emerging from, on the one hand, policies to combat discrimination in the labour market, and, on the other hand, policies in certain Member States that restrict the rights of third country nationals, and, for example, limit family unification and marriage for non-nationals. There appears to be a conflict between the need for immigrant labour, working without discrimination, and the desire by Member States to be seen to be doing something to limit and control immigration. Whilst awareness of the illegality of racial discrimination appears to be slowly increasing, large numbers of workers hold a legal status, such as restricted work permit, which renders them more vulnerable to exploitation and discrimination, and, particularly in the case of undocumented workers, creates exclusion. In turn, exclusion can foster racist attitudes in the majority population.

SEGMENTED LABOUR MARKETS

The national reports from most Member States broadly concur on the emergence of labour markets that are segmented according to ethnic or national origin. Migrant or minority ethnic workers are disproportionately grouped in the lowest occupational categories within the least prestigious employment sectors. While each Member State has its own patterns, certain groups are over-represented as victims of discriminatory treatment in employment. Typically, migrant workers from Africa, the Middle East, Asia, and Central or Southern America experience high levels of discrimination. There is also evidence pointing to discrimination against recent migrants from eastern European countries such as Russia and the Ukraine. In some of the new Member States, the Roma are particularly vulnerable to discrimination in employment, and experience extremely high levels of unemployment.

There is also evidence that the greater labour market difficulties experienced by non-EU citizens are similar to those of national citizens who were born overseas or whose parents were born overseas and who are visibly distinct. For example, while Iraqi citizens in Finland had an unemployment rate of 72 per cent, the unemployment rate of Iraqi-born Finnish citizens was still 64 per cent, compared to nine per cent for Finns.

DISCRIMINATION TESTING

Evidence of inequality in employment is often explained solely with reference to people's 'human capital' – for example, their level of education. This one-sided explanation has come under increasing critical scrutiny through research, including 'discrimination testing' experiments, and in 2004 there were a number of these reported in various Member States, taking a variety of forms. In comparison with

previous years, in 2004 NFPs presented many more examples of different forms of discrimination testing. For example, researchers from the University of Paris submitted *curricula vitae* in response to 258 job advertisements, and found that job applicants with a disability, followed by those of African and North African backgrounds, were the main victims of discriminatory treatment. Other tests were carried out in Denmark, Germany, Hungary, Netherlands, Sweden, and the UK. Notably, most of these were carried out not by researchers but by TV or newspaper journalists, highlighting employers' discriminatory responses to applicants from minority ethnic backgrounds. In Denmark, journalists also found that both public and private sector employment agencies were willing to accept employers' instructions not to send immigrant applicants for jobs.

There were also specific cases of discrimination at work, concerning unjustifiable treatment, racist bullying, and dismissal, which came to light during 2004 through court and tribunal cases. Although direct discrimination in recruitment is usually disguised and invisible in its operation to the victim, it was noticeable that several blatant examples concerned incidents of refusal specifically to recruit Roma.

GOOD PRACTICES

On the other side, the NFPs have reported encouraging evidence of a variety of initiatives to prevent discrimination in employment. Many of these are linked to European funding and/or are related to national programmes which set out to implement European Directives. In a number of Member States, governments, employers' associations and individual companies have developed charters, codes, or incentives for good practice against racism and discrimination. Also reported were several specific projects that target employment access for the Roma, including initiatives funded under the European PHARE and EQUAL programmes.

3. Racism and discrimination in the housing sector and initiatives on how to prevent it

For the EU25, available information indicates that in the housing sector, minority groups, migrants, refugees and asylum seekers are regularly affected by discrimination and racism. There is also ample evidence to indicate that the Roma are the most vulnerable group to be confronted with discrimination and racism in the housing sector.

RESTRICTED ACCESS TO HOUSING

According to both official and unofficial information sources, direct examples of discrimination manifest themselves in a number of ways. Explicitly restricting access to housing on the basis of ethnicity or nationality was reported by a number of NFPs. Examples include discriminatory housing advertisements, discrimination in the administration of accommodation waiting lists, and outright refusal by landlords, real estate agents and housing associations.

In common with the employment sector, one regular method of identifying this kind of direct discrimination in the housing sector has been by experiments of discrimination testing. In Denmark the testing of housing associations by a newspaper showed that in all cases an applicant with a Danish name was informed of a shorter waiting period, and in Spain a similar exercise showed that migrants were less likely to be offered flats than native Spanish by real estate agencies.

INAPPROPRIATE HOUSING CONDITIONS

Partly as a result of these processes of exclusion, migrants and minorities often suffer inappropriate housing conditions. A number of NFPs present statistics showing that it is more usual for foreigners than the majority population to live in small and overcrowded flats and under unhygienic and poor infrastructural conditions. Some Member States' NFPs – such as Greece, Ireland and Cyprus – specifically report about overcrowded or sub-standard accommodation for asylum seekers and refugees in reception centres and elsewhere.

There is also evidence from a number of Member States that foreign nationals are asked to pay higher rents than nationals. The NFPs provide information about unacceptable terms of contract or even the absence of any contract for foreign nationals in a number of Member States. They may also be subject excessive demands for advance payment, refusal to accept guarantors, and requests for excessive and unnecessary documentation. This situation is exacerbated by the fact that foreigners are not eligible for social housing in some Member States and, therefore, are forced to find accommodation in the private rental sector where rents can be pushed up. At the other end of the housing sector, information from

Member States such as Germany and the UK indicates that home ownership is less widespread among minority ethnic and foreign populations.

SEGREGATION

Segregation in the housing sector is prevalent throughout the EU. Examples of segregation are offered for Spain, Cyprus, Portugal, and Sweden. It seems that territorial segregation is particularly acute for the Roma population in the Czech Republic, Spain and Hungary.

In comparison with the above, examples of *indirect* discrimination in housing appear far less frequently, but it can be noted with respect to access to housing which is made dependent on nationality, duration of residence, and the financial status and economic situation of the applicant.

INITIATIVES AGAINST DISCRIMINATION

Reported initiatives of 'good practice' in housing were provided by national and local governments and NGOs. Some programmes construct housing or buy and restore empty flats and have specific initiatives to make them available to previously excluded minorities. Some municipalities in Austria have special policies to over-ride the more 'normal' exclusion of third country nationals from council housing, and make sections of them available to foreigners. In housing projects in several countries there are agreements and contracts for the tenants on working for diversity and against racism, and there are codes of practice for municipalities to combat discrimination in access to housing.

4. Racism and discrimination in the education sector and initiatives on how to prevent it

Where data is available, it is evident that the educational achievements of a number of migrant and minority groups lag behind those of majority populations in Member States. Some evidence also points to the fact that minorities are subject to discriminatory treatment.

EDUCATIONAL UNDER-ACHIEVEMENT

In particular, it is the migrants from non-EU countries, as well as some national minority groups, who suffer from high rates of educational under-achievement. The disadvantaged position in education of pupils with a migrant background can also be seen in the results of the OECD PISA study which was published in December 2004. In general, this even holds true for those students whose parents are foreign born but who themselves have grown up in the reception country and have spent their entire school career there.

The most vulnerable groups experiencing racism and discrimination in education are the Roma and Travellers. However, other non-migrant minority groups can also be identified in individual Member States as being vulnerable to disadvantage and underachievement in education, such as the Muslim minority in Greece.

OVER-REPRESENTATION IN SPECIAL EDUCATION

In reports on educational inequality, two of the main concerns are those of segregation, and the over-representation of certain groups in 'special education'. Whilst several member states report these as issues for various migrant/minority groups, by far the largest number of references to these problems specifically concern the Roma. Disproportionately high concentrations of Roma pupils in certain classes, and an over-readiness to label Roma children as educationally disabled and with learning difficulties, were reported in several Member States.

RELIGIOUS SYMBOLS IN SCHOOLS

The issue of religious symbols in schools, in particular the wearing of headscarves, became rather controversial in some Member States (although not in others) during 2004. The French law banning the wearing of conspicuous religious symbols in schools came into effect in 2004. There were individual cases of disputes on this issue reported in a school in Belgium, in a French school in Madrid, and in a Catalan school. In the Netherlands and Sweden, it was reported that schools have been told that they are in theory allowed to prohibit certain items of clothing, but only if it can be shown that they pose specific problems. In Austria an attempt by one school principal to prohibit a girl from attending the school wearing a

headscarf failed after school authorities made it clear that such a ban was a violation of the principle of religious freedom. In the UK there is a general tradition of tolerance towards the wearing of religious symbols, although there was one on-going dispute going through the courts during 2004 over a pupil's desire to wear an ankle-length garment in keeping with her religious beliefs.

INITIATIVES IN EDUCATION

The national reports describe a range of initiatives in education. Some Member States are introducing a new inter-cultural education syllabus, and new parts of the curriculum designed to address racism and antisemitism. There are many reported initiatives to address discrimination against Roma children, such as the project to integrate Roma children into mainstream education in Slovenia, which is already producing positive results, and a new law in the Czech Republic which is addressing the problem of the extreme segregation of Roma children in education. In Slovakia, two principal ways of eliminating the segregation of Roma children are being attempted. One uses motivational means, awarding grants to projects aimed at instructing teachers in the education of Roma children, and the other using coercive means, such as taking legal actions against school directors who are formally responsible for transferring children into special schools.

The NFP reports suggest that EU-sponsored projects in the area of minority education are likely to have a positive impact in the 'new' Member States by stimulating debates and opening doors for more open dialogue on minorities. Prior to the accession of these Member States to the EU, several of these projects had already been conducted, many through the EU PHARE Programme.

5. Racist violence and crime

A number of incidents took place in 2004 that had repercussions on inter-community relations and the manifestation of racist sentiments and crimes at the level of individual Member States and beyond, most notably, the Madrid train bombings (March 2004) and the murder of Theo van Gogh in the Netherlands (November 2004).

RECORDING OF INCIDENTS

Among the EU15 there is no publicly available official data on incidents of racist violence and crime for Greece, Spain, Italy and Portugal. In comparison, the UK³ has the most comprehensive publicly available official data on racist violence and crime among the EU15, which is able to record a wide range of racist incidents. Germany and Austria focus their data collection more narrowly on the outlawed activities of extremist (right-wing) groups, while Belgium, Luxembourg and the Netherlands collect official data on a range of discriminatory racist incidents that can include racist violence and crime. Among the new Member States, according to information supplied by the RAXEN NFPs, the Czech Republic, Hungary, Poland and Slovakia collect official data on racist violence and crime (and associated activities) that exceed the limited references to court cases provided in other countries.

Member States with effective data collection mechanisms and broad-based legal definitions of ‘racist incidents’, such as the UK, encourage reporting and recording of incidents. As a result, the UK, with 52,694 racist incidents reported to the police in the period 2003-2004, has the highest number of reported racist incidents among the EU25. Germany has the next highest number of officially registered crimes among the EU25, with 6,474 crimes registered as “politically motivated criminality – right wing” in the first ten months of 2004. In comparison, France, which has a large ethnic minority population, officially recorded only 1,565 racist, xenophobic and antisemitic threats and acts in 2004. Among the ten new Member States, official records of various racist, xenophobic and religious crimes range from 25 in Hungary (2004) through to 209 in the Czech Republic (Jan-Nov 2004). In general, the enormous difference across the 25 EU Member States in numbers of recorded incidents of racist violence and crime tells us as much about the inadequacy and inconsistency of data collection as it does about the actual extent of racist violence and crimes in the EU.

VICTIM GROUPS AND PERPETRATORS

According to both official and unofficial reports on racist violence and crime, the most vulnerable victim groups in the EU are ethnic minorities within the national population, undocumented immigrants, Jews, Muslims, North Africans, people

³ Where reference is made to official ‘UK’ data this refers to criminal justice data for England and Wales.

from the former USSR and the former Yugoslavia, refugees/asylum seekers, and Roma/Sinti/Gypsies/Travellers. The particular histories and population characteristics of the new Member States mean that the Roma and people from the former USSR are often the targets of racist sentiments and acts. Available evidence from the EU15 indicates that it is both members of extremist politically-motivated organisations, and young males and others not affiliated to such groups, who are the perpetrators of racist violence and associated crimes.

THE ROLE OF THE POLICE

An additional issue is that one third of the 25 Member States include some reference to violent and aggressive acts against ethnic minority and foreign groups by public officials – namely the police and immigration officers. Against these disturbing reports, the NFPs refer to a range of positive police initiatives that set out to combat racism within the police, build community relations, and/or assist victims of racist violence and crime. Amongst the ten new Member States a number of ‘good’ practice initiatives specifically set out to tackle the problem of police relations with the Roma community.

6. Conclusions

This year's EUMC Annual Report has for the first time covered the EU of 25 Member States. Whereas last year the report included a preliminary overview of the 10 Accession Countries only in the field of education, the 10 new Member States are included in all aspects of the report for the year 2004.

6.1. Enlargement

One consequence of the process of enlargement is that the focus of this year's EUMC report has enlarged its scope compared to previous years. Within the EU15 countries there are a number of groups which have figured most as targets of racism, xenophobia and discrimination. These are on the one hand the labour migrants of the three decades following World War 2, and their descendants (who generally gain citizenship rights but remain identifiable as minority ethnic groups), and within this broad category, those of Muslim background. On the other hand there are the minority populations including the Jewish population, national minorities, and Roma, Sinti, Gypsies and Travellers. There are also the newest migrant groups, including refugees. Sometimes issues of racism and discrimination cover all these groups, and sometimes there are issues more specific to one group, such as Muslims or Jews.

MINORITIES IN THE EU10

However, with the growth into 25 Member States the picture has become wider. Whilst Roma population groups live in 24 EU Member States, substantially large Roma communities are found in the new Member States of Central and Eastern Europe (notably the Czech Republic, Hungary and Slovakia). Conversely, the other groups do not share a significant level of dispersal across countries of the EU10. In most of the ten new Member States there has been nothing like the labour migration experienced in many of the EU15 in the post-World War 2 era, and no equivalent corresponding growth of new minority ethnic communities, with all the 'second generation' issues related to this. There is, however, a large Russian minority in the Baltic States due to the flow of migration from the territories of the USSR. The historical Jewish communities which existed in some of the new Member States were largely destroyed during the Holocaust. The current Jewish population is relatively small, and incidents of antisemitism were not reported at all in the NFP reports in half of the new Member States. (Nevertheless, antisemitic attacks on people or property were recorded in the Czech Republic, Hungary, Lithuania and Slovakia.) There is a relatively small Muslim population in the EU10, and the NFPs do not report major incidents of anti-Muslim racism. As reported in last year's Annual Report, issues around the schooling of Muslims have not developed into a public issue in the new Member States, unlike in several of the EU15.

ROMA ISSUES

It is for this reason that so many of the NFP reports on the 10 new Member States focus primarily or solely on issues of Roma – not because this year's Annual Report has prioritised the Roma as a theme more than other groups, but because when concerns of racism and discrimination are raised in the new Member States, this is often the only group for which there are available and significant facts to relate.

The incorporation of the 10 new Member States has helped to draw attention to the inclusion of issues of national minorities on the agenda of anti-racism and anti-discrimination. Whereas current EU treaties make no mention of minority protection or positive minority rights, national minorities such as Roma are covered by anti-discrimination measures. The EU's anti-discrimination Directives will therefore be of potentially great importance for the Roma in order to help to break the vicious circle of deprivation, prejudice and discrimination that they experience.

6.2. Negative and positive developments

The year 2004 was marked by incidents which had repercussions wider than their country of occurrence. In March 2004 the Madrid train bombings, carried out probably by a group of radical Moroccan Islamists, killed nearly 200 people, and reportedly were the cause of a rise in both anti-Muslim and antisemitic attacks in France in the following period. The murder of Dutch film maker Theo van Gogh by a Dutch-Moroccan radical Islamist was followed by a wave of violent incidents, mainly against Muslims and mosques, in the Netherlands, as well as death threats to politicians in Belgium, and was also reported to have had a strong impact on public and political debate on immigration and religion in Denmark and Germany.

ANTI-DISCRIMINATION DIRECTIVES

However, the year was also marked by positive developments in anti-discrimination measures and activities. The majority of the EU25 transposed the anti-discrimination Directives into their national contexts, thus laying the basis for a strengthened awareness and practice in this field. The minority of four Member States – Germany, Luxembourg, Austria and Finland – were referred in July 2004 to the European Court of Justice (ECJ) for their failure to satisfy the requirements of the Racial Equality Directive, and in December 2004 the same four were referred to the ECJ for their failures regarding the Employment Equality Directive.

The fact that most EU Member States have now transposed the Directives means that anti-discrimination is now on the national agendas of Member States more than ever before. Other legislation not related to the Directives also offered positive developments in 2004. Some Member States introduced legislation targeted at racist offenders, such as that covering illegal Internet use by extreme right-wing groups, and some increased the sanctions against racist crimes. Similarly during 2004 non-discrimination and equality issues became even more prominent on the

agenda at EU level. The new President of the European Commission stated in 2004 that he would adopt a package to consolidate respect for human rights and non-discrimination in Europe, and the new Commission committed itself to a greater integration of anti-discrimination policy in other policy areas and implements. In May 2004 the Commission launched a Europe-wide consultation exercise which indicated a high level of support for further action to combat discrimination following enlargement. There were moves started in 2004 to examine whether the scope of the anti-discrimination Employment Directive should be extended to areas outside employment, such as regarding discrimination in access to goods and public services.

MIXED MESSAGES

However, there are certain mixed messages coming out of legislative activities at national level. Alongside the legislative improvements in the area of anti-discrimination, which in practice strengthen the rights of migrants and minorities, there are other developments which appear to work in the opposite direction and restrict their rights and opportunities. For example, in some countries there has been new legislation which restricts marriage rights regarding foreigners. There has also been legislation and case law banning clothing signifying religious faith, such as headscarves, from schools or at the workplace, to the effect that individuals insisting on this clothing are excluded. And there have been moves in some countries to redefine national minorities, advantaging some minority groups over others, and in some cases undermining the rights of Roma.

In some Member States and some sectors there is a clear economic need for an increased workforce, which immigrants could at least partly satisfy. Yet some Member States are curtailing access to the labour market of refugees and asylum seekers, or giving out messages through new legislation that immigrants are not welcome, for political rather than economic reasons. A further 'mixed message' can be generated by immigration policies alongside policies against discrimination (or for diversity). The problem is not the existence of a restrictive immigration policy in itself, but the fact that in some cases the particular components of immigration policies give out messages to the public about the undesirability of immigrants and could therefore stimulate anti-immigrant sentiments. The 'mixed message' is made worse by the political discourse around such policies – an anti-immigrant discourse which undermines the quality of life of those of immigrant descent who are citizens of, or permanently resident in, a Member State.

LEGAL RESTRICTIONS

As well as the active introduction of new legislation, there is also the problem of the passive non-removal of certain existing legal restrictions. Whilst the anti-discrimination Directives confer the right to labour without discrimination, including for third country nationals, there are other legal restrictions in some countries which restrict the access of non-nationals to certain (often public sector) occupations, or the use of permits which restrict their ability to change jobs. Such legal restrictions give large numbers of workers a status which renders them

vulnerable to exploitation and discrimination. The anti-discrimination Directives do not encompass differential treatment based on nationality, and therefore laws and administrative restrictions governing the access of third country nationals to employment are in principle legitimate, unless it can be proven that discrimination took place on the grounds of ethnic/racial origin. Nevertheless they are instruments which do contribute to inequalities along the lines of social group membership, and are considered by some to be a form of 'legal discrimination'. Such 'legal discrimination' also occurs outside the employment sector, as with the area of housing, where in some countries non-nationals are ineligible for social housing and find themselves more vulnerable to exploitation in the private rental sector. It is interesting that some of the 'good practice' examples identified in the housing section of this report concern municipalities which over-ride this with schemes for the specific allocation of apartments to foreign nationals. In the employment sector the passive tolerance by governments of the exploitation of undocumented workers in low paid and dangerous conditions creates exclusion which has contributed to the fostering of prejudice and racism in the majority population. However, in 2004 a number of countries offered extraordinary regularisations of undocumented migrants.

6.3. Integration and anti-discrimination

Apart from anti-discrimination activities, the other relevant area of developments at EU level is that of integration. Following the adoption of the Hague Programme the Council adopted on 19 November 2004 a set of common basic principles for immigrant integration. One of these was to develop indicators and evaluation mechanisms on integration of immigrants as these were seen to be necessary to evaluate progress, adjust policies and make more effective the exchange of information.

Integration and anti-discrimination are important and related areas of concern. The main focus of integration policies is on the more recently arrived immigrants and refugees. Integration policies are less relevant for longer established migrant-descended and minority ethnic populations, for whom many of the components of integration policies, such as language training, are less relevant. The barriers they face are more likely to be the focus of anti-discrimination policies. Anti-discrimination issues, rather than integration issues, are also more relevant to long-term national minorities such as Roma. Of course, in practice the boundaries between these categories of policies are not distinct – for example, anti-discrimination components should also be an important part of integration policies otherwise the latter will be less effective.

6.4. Data collection

Also relevant to the twin emphases of integration and anti-discrimination is the issue of inadequate data collection. One theme running through this EUMC report is the problem of the absence of adequate data on which to evaluate problems and base policies. But inadequate data is less of a problem with regard to the field of integration than it is with regard to the area of anti-discrimination. Governments are less sensitive about the collection of data along the dimension most relevant to integration, which is nationality. However, the main variable for anti-discrimination work is not nationality but ethnic/national origin, as citizens of a country are vulnerable to racial discrimination as much as non-citizens are. However, in most EU Member States there is great reluctance to collect statistics along these lines.

NEED FOR ETHNIC MONITORING

The problem is that in order to have reliable data on discrimination it is necessary to have information on the main relevant variables, namely on 'race', ethnic origin, national origin or religion. Bodies working against racism and discrimination have been arguing for many years that data collection according to these criteria is essential for the development of anti-discrimination policies. The Council of Europe's ECRI⁴ has a General Policy Recommendation which states that governments should collect such data, so as to assist in assessing the circumstances and experiences of groups that are vulnerable to racism, and in developing policies to combat racism and discrimination. In its individual country reports⁵ ECRI recommends to governments to collect relevant information broken down according to categories such as nationality, national or ethnic origin, language and religion. Such statistics are important for the identification of indicators of discrimination, for the judgement as to what are the most effective anti-discrimination policies, and for the measurement of the impact of anti-discrimination legislation.

The Council anti-discrimination Directives make this issue more relevant today than a few years ago. For example, the Directives cover the issue of indirect discrimination, and the impact of indirect discrimination will not be visible unless data exists which allows the differential impact of seemingly neutral provisions to be seen. Furthermore, the changes in the balance of the burden of proof mean that there is likely to be more pressure on employers to record this type of data, perhaps for 'self defence' purposes. In addition, the Directives allow 'positive action' as a type of anti-discrimination activity, and positive action generally requires ethnic monitoring.

⁴ European Commission against Racism and Intolerance.

⁵ http://www.coe.int/T/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach.

LACK OF STATISTICAL EVIDENCE

As things stand, discrimination in the fields of employment, education and housing is difficult to quantify within a country, and compare between countries, because of the absence of statistical evidence on national and ethnic origin. As this Annual Report shows, within Member States there is a range of direct evidence of discrimination in the form of reported incidents, formal complaints and court cases. NGOs play an important role in data collection in this area. All Member States have surveys and research studies on discrimination, which variously address the subject of discrimination in these areas. Nevertheless, without official and organisational statistics on ethnic and national origin, a true insight into discrimination and the success of policies against it will be difficult to ascertain. This applies equally to the Roma issue – it will be difficult to monitor adequately the full extent of discrimination and the progress and benefits of anti-discrimination measures without the collection of statistics which record Roma origin.

Similarly the true extent and nature of the problem of racist violence and crime remains difficult to gauge given the continued absence or ineffectiveness of both official and unofficial data collection in many Member States.⁶ The chapter on racist violence shows that where data collection exists it is difficult to compare findings between Member States, as the parameters of what is collected vary widely. One step in the direction of improving this would be the adoption of the Commission's Proposal for a Council Framework Decision on Combating Racism and Xenophobia,⁷ which sets out to establish a framework for punishing racist and xenophobic violence as a criminal offence. The Framework Decision would bring Member States closer together with respect to their laws on racist and xenophobic offences, and, if adopted, would contribute to the enhancement of data collection on racist violence and crime across the EU.

⁶ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in the EU15', Chapter 2.

⁷ Proposal for a Council Framework Decision on Combating Racism and Xenophobia – COM(2001) 664 final.

7. Opinions

7.1. General Comment

The EUMC continues to identify shortcomings in the Member States in data collection, incident recording and monitoring of progress to overcome obstacles to racial equality in the fields of employment, housing, education and tackling racist violence. The EUMC believes that the interdependence between the fields it has analysed draws attention to the need for the development of policy across government departments and a more integrated approach from the design of policy to its implementation. Integration is viewed as one of the main challenges facing Member States in the European Union, policy developed should therefore take into account the interdependency between employment, education and housing to ensure that integration goes hand in hand with equality and social inclusion. The EUMC is of the opinion that there is a need for greater emphasis on the impact on the rights of the individuals belonging to ethnic minority groups as a consequence of national, regional and local policy in the fields analysed in this report. Regular review and assessment of the impact of national policies therefore needs to be built in and actively pursued with the support of civil society organisations and social partners. In assessing impact there is a need for greater involvement of those who are identified as the victims.

SUPPORT TO IMPLEMENTATION MEASURES

Although too early to assess fully the impact of the Racial Equality and Employment Equality Directives, the EUMC's opinion is that implementing measures need to be supported by training and by greater awareness within public institutions and key sectors of the economy of the public policy and economic benefits of combating racism. The role of Equality bodies and civil society organisations working in the equality field in supporting implementation measures is therefore of paramount importance. Transposition of the directives should be the first step to developing a more comprehensive approach to tackling racial discrimination and establishing visible indicators of progress.

The EUMC has highlighted the practice of those Member States who it is of the opinion are moving forward to address the core issues underlining racial equality – in many instances these inform the conclusions and opinions of the EUMC. In addition, the EUMC has drawn on broader developments within Europe which result primarily from its cooperation with the Council of Europe. The EUMC's opinion is that by drawing on these developments the framework for action to combat racism will be practical, consistent and coherent.

7.2. Legislation and institutional initiatives against racism and xenophobia

The EUMC notes that the European Commission has instigated compliance action against several Member States for failure to transpose the equality directives and urges those Member States who have not yet fully done so to transpose Council Directive 2000/43/EC, and, specifically with regard to religion, Council Directive 2000/78/EC and to consider going beyond the minimum legal requirements. The EUMC calls on Member States:

- to ensure that the equality body required by Council Directive 2000/43/EC is fully independent (guaranteed by statute), its composition fully reflects the society in which it operates and it is adequately resourced to carry out its functions;
- to ensure that the competencies of such a body include the power to carry out investigations and to promote policies and practices to foster equal treatment;
- to ensure that both potential victims and perpetrators of discrimination are fully aware of their rights and obligations under the legislation, and to ensure the full and meaningful implementation of Articles 11 and 12 of Council Directive 2000/43/EC on the involvement of stakeholders, NGOs, social partners and other civil society representatives in a structured, ongoing and inclusive dialogue; and
- to take action to include a positive duty to promote equality on public sector institutions providing goods and services to the public.

The EUMC is of the opinion that more action is required at the policy development and monitoring stage to ensure that economic and social aspects of equality and non-discrimination policies are better integrated. Member States should set up within government departments inter-departmental working groups who are tasked to integrate the economic and social aspects of policy to combat discrimination and promote equality. This inter-departmental working group should make public a regular progress report which should include inter alia the review and assessment of national and local policy to meet objectives of combating discrimination and promoting equality.

7.3. Tackling racial discrimination in the employment sector

The EUMC welcomes the progress made in incorporating the situation of migrants/minorities in the European Employment Strategy. Within National Action Plans on Employment, Member States should

- set clear, quantitative targets and indicators within the employment guidelines that enable them to measure progress in improving the situation of migrants/minorities;
- include specific operational measures against discrimination and exclusion;
- report regularly on the impact of their measures to promote equality and combat racial discrimination.

7.4. Tackling racial discrimination in the housing sector⁸

The EUMC has identified a variety of practices which undermine the right to housing and impact on the access to housing of members of ethnic minority groups. The EUMC is of the opinion that Member States, through their relevant authorities, should undertake systematic and regular review of their legislation, policies and practices and remove all provisions or administrative practices that result in direct or indirect discrimination against members of ethnic minority groups, regardless of whether this results from action or inaction of state or non-state actors.

In addition, Member States should establish adequate and independent mechanisms or task existing equality and anti-discrimination bodies to report on compliance with anti-discrimination measures in the housing sector. These mechanisms or bodies should report annually to national parliaments on the status of implementation and make their reports public. In carrying out their duties these bodies should consult ethnic minority communities and relevant organisations working in this field.

7.5. Tackling racial discrimination in the education sector

The EUMC is of the opinion that policy initiatives and measures need to be implemented to ensure that access to education is equal for all and that all members of society benefit fully from education and through education have the opportunity to realise their potential.

⁸ The term housing includes different modes of accommodation.

The EUMC is therefore of the opinion that Member States need to ensure that policies and practices do not inadvertently result in segregation or the over-representation of ethnic minorities in schools with lower academic demands or special education. Member States should examine the procedures which lead to the assignment of a disproportionate amount of ethnic minority pupils such as the Roma to special education programmes or needs schools.

Member States should provide a regular audit and monitoring of the situation of ethnic minority pupils in the education sector with a breakdown on the educational attainment of ethnic minority groups and the proportion moving on to further education.

7.6. Tackling racist violence and crime

Racist violence remains a reality for members of ethnic minorities and certain religious communities. The EUMC is of the opinion that legislative measures combined with improved data collection and criminal justice initiatives can contribute to monitoring, assessing and providing protection to victims. It therefore calls on Member States

- to adopt a workable and sufficiently broad legal definition of crime as ‘racist’, and to recognise ‘racist motive’ as an aggravating factor that increases sentencing;
- to collect and make publicly available detailed statistics on racist crime, at every stage of the criminal justice system, which can be anonymously disaggregated to reveal information about victims’ ethnicity, ‘race’ and religion;
- to develop crime/victim surveys that allow quantitative and comparable data collection on victims of racist crime, and which provide an alternative to official data;
- to promote comprehensive and regular police training on effective responses to racist crime, based on ‘good practice’, which acknowledges the needs of both the criminal justice system and victims of racist crime.