

SUPPLEMENTARY HUMAN DIMENSION MEETING

**THE ROLE OF NATIONAL INSTITUTIONS AGAINST
DISCRIMINATION IN COMBATING RACISM AND
XENOPHOBIA WITH A SPECIAL FOCUS ON PERSONS
BELONGING TO NATIONAL MINORITIES AND MIGRANTS**

**29-30 May 2008
HOFBURG, VIENNA**

ANNOTATED AGENDA

Tolerance and non-discrimination rank high among the priorities of the OSCE and participating States have repeatedly expressed concern about manifestations of racism, xenophobia, anti-Semitism, and other forms of intolerance, including against Muslims, Christians and members of other religions. In recent years, a significant number of OSCE high-level conferences were held which gave increased profile to the fight against intolerance and discrimination and led to further OSCE commitments by participating States to intensify their efforts in this regard.

The 2007 Madrid Ministerial Council Decision on tolerance and non-discrimination encouraged participating States to establish national institutions or specialized bodies to combat intolerance and discrimination as well as to develop and implement national strategies and action plans in this field.¹ Although the majority of OSCE countries have in place national human rights or ombudsman institutions to deal with human rights violations in general, their mandates and capacity to deal more specifically with manifestations of racism and xenophobia vary.

Participating States have also committed to *'protect migrants legally residing in host countries and persons belonging to national minorities, stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance and to elaborate or strengthen national strategies and programmes for the integration of regular migrants'*.²

Increasing ethnic and cultural diversity of societies is the inevitable consequence of migration. Increased migration means that a growing number of States have become or are becoming more multi-ethnic, and are confronted with the challenge of involving persons of different cultures, religions and languages. As Governments

¹ See Permanent Council Decision 621 and Ministerial Council Decision No. 10/7, para. 10.

² See Ministerial Council Decision No. 10/7, para. 7.

grapple with the new realities of their multi-ethnic societies, acts of discrimination and violence directed against migrants, refugees and other non-nationals continue to take place throughout the OSCE region.³

At the OSCE Ministerial Council in Sofia in December 2004, the OSCE participating States committed themselves to ‘take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers’, as well as to ‘consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers into society’.⁴ The issue of combating discrimination and acts of intolerance against migrants was discussed in the 2005 Human Dimension Seminar on “Migration and Integration”⁵ Differences lie in the way authorities and civil societies act in order to prevent and combat discrimination and to ensure the harmonious integration of migrants into host societies.⁶

This SHDM will examine the role of national institutions in responding to and combating racism and xenophobia, in particular where such cases involve persons belonging to national minorities and migrants and ways to overcome substantive challenges at the national and international level.

Session I: The role and mandate of National Institutions against Discrimination in combating racism and xenophobia

National Institutions against Discrimination (NIADs) can play a vital role in combating racism and xenophobia. The importance of establishing such institutions and bodies by participating States has been recognised in OSCE commitments.⁷

While many OSCE participating States have established national institutions and specialised bodies dealing with racism, xenophobia and discrimination, there remains a need to discuss ways to strengthen these existing bodies and the question of establishing such bodies in cases where no such body exists. In strengthening and developing specialised bodies, OSCE participating States could draw upon existing international and regional examples such as the UN Paris Principles⁸, Policy Recommendations of the Council of Europe’s European Commission against Racism and Intolerance (ECRI)⁹ or the European Union Directive on

³ See ODIHR Report “Hate crimes in the OSCE region : incidents and responses - annual report for 2006”, p. 16-18,

http://www.osce.org/publications/odihr/2007/09/26296_931_en.pdf

⁴ See Ministerial Council Decision No. 12/4.

⁵ Human Dimension Seminar on Migration and Integration: Consolidated Summary, http://194.8.63.155/documents/odihr/2005/07/15652_en.pdf

⁶ Id., p. 4-5, http://194.8.63.155/documents/odihr/2005/07/15652_en.pdf

⁷ See Permanent Council Decision 621 (1, para. 12) and Ministerial Council Decision No. 10/7, para. 10.

⁸ The Paris Principles on National Institutions for the Promotion and Protection of Human Rights, http://www.info.gov.hk/info/eoc/annex6_e.pdf#search=%22Paris%20Principles%20%22

⁹ ECRI, General Policy Recommendation No 2 : Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level, 13 June 1997, http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n2/1-Recommendation_n%B02.asp#TopOfPage

Race Equality¹⁰.

UN Paris Principles encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

ECRI Policy Recommendation No. 2 on Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance outlines that specialised institutions should have the mandate to monitor the content and effect of legislation and advise legislative and executive authorities. They should not only provide aid and assistance to the victim but also have recourse to the courts and have the powers to obtain evidence and information on cases brought to their attention.

The European Union Directive on Race Equality establishes a requirement to create a specialised institution on racism within all Member States of the EU in order to offer assistance to victims of discrimination, to conduct independent surveys concerning discrimination and to publish reports on racism and discrimination.

Since NIADs are not the only actors engaged in combating racism and xenophobia, they also need to find ways to maximize their co-operation with civil society, academia and other state bodies and institutions in order to make their efforts in this field more successful. As part of their role in receiving, investigating and working to combat manifestations of intolerance, NIADs can form partnerships with different stakeholders and assist in establishing links between NGOs, representatives of migrant and minority communities and State institutions whilst maintaining their own independence.¹¹

This session will also explore how different models and mandates of national institutions affect their scope of activities, their effectiveness and the application of legal remedies. Given the broad range of structures and frameworks within which NIADs operate, this session will identify those which proved to be effective and could be used as good examples by other States. One of the crucial issues related to the mandate of NIADs is that of independence. Stable financing, transparent appointment of management and clear overview procedures are some of the prerequisites for independent position, which is necessary if NIADs are to carry out their task in an impartial manner.

Issues to be discussed:

- What is the role of NIADs in combating racism and xenophobia?
- How can differences in mandate, function and structure of NIADs influence their outcomes and scope of activities?

¹⁰ European Council directive 2000/43/EC, 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf

¹¹ This point was raised during the SHDM on Protection and Promotion of Human Rights: Responsibilities and Effective Remedies, held in Vienna on 12-13 July 2007, see: http://www.osce.org/documents/odihr/2007/10/27281_en.pdf

- How is the independence and autonomy of NIADs reflected in their mandate?
- What are the differences in models of financing NIADs and what is the impact of different models to their position?
- How do variations in scope (specialised bodies dealing with racism/xenophobia vs. institutions dealing with discrimination and equality) influence the impact and areas of activities?
- Which are the most effective initiatives undertaken by NIADs in combating racisms and xenophobia?
- What are effective examples of co-operation between NIADs and civil society?

Session II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants

There are three basic types of challenges NIADS have to overcome in responding to racism and xenophobia; each of them requires a different approach, which should respect the unique national context. The first group of challenges is connected to the mandate and position of NIADs within the structure of other governmental bodies and institutions. Another set of challenges is related to the general atmosphere within the society and the public perception of issues related to racism, discrimination and integration, which may include trends related to public discourse and the general attitude of the population to migrants and minority groups.

There are also challenges connected to the status and position of potential “clients” of NIADs, including persons belonging to national minorities and migrants who may be faced with structural barriers, which limit or even deny/prohibit their access to legal remedies against racism, xenophobia and discrimination. Such barriers are often related to the legal status of the person, insufficient knowledge of the official language, low awareness of their rights and protection mechanisms, mistrust in authorities and fear of secondary victimisation. However, many of these barriers can be overcome through outreach to victim groups, a pro-active approach and confidence-building measures.

The aim of this session is to discuss how NIADs can overcome all of the abovementioned challenges and to identify positive efforts and good practices in addressing these challenges.

Issues to be discussed:

- What is the role and position of NIADs in the national framework of bodies and organisations fighting racism, xenophobia and discrimination?
- What steps can be taken to overcome barriers (such as legal status, language, lack of knowledge of remedies) for victims to access remedies for acts of discrimination?
- How can NIADS improve social awareness and engage the general public in efforts to combat racism and xenophobia and to promote mutual respect and understanding towards migrants and persons belonging to national minorities?
- How can NIADs effectively respond to racism, xenophobia and discrimination through litigation? What other means exist?

- What role can NIADs play in ensuring an adequate awareness by courts of the aims of anti-discrimination measures?
- How can the legal status of migrants influence the availability of effective legal remedies for such groups when they experience racism or xenophobia?
- How can NIADs effectively respond to racist and xenophobic public discourse?
- How NIADs strike a balance in their efforts to ensure pro-active and reactive approaches in responding to cases of racism and xenophobia?

Session III: Good practices of NIADs and effective policy responses in combating racism and xenophobia

During the 2005 Human Dimension Seminar on “Migration and Integration”, it was recommended that migrant interest groups should play a crucial role in awareness-raising on specific issues, capacity-building and consultation in decision-making on issues related to migrants.¹² NIADs are in a position to facilitate such consultation and involvement of representatives of minority and migrant groups having regard to the difference in legal status between the two categories of persons. In the course of such consultations, different needs of different victim groups can be identified and reflected in action plans and other policy initiatives pursued by NIADs.

NIADs can also play an important role in the implementation of concrete measures to prevent the marginalisation and exclusion of migrants and refugees and to provide protection from racism, xenophobia, discrimination and violent acts of intolerance through the elaboration of a legal framework for the integration of migrants and refugees and the development of national strategies and programmes for their integration. It is therefore important that the unique independent position of NIADs, and their first-hand knowledge of the problems faced by national minorities and migrants, are utilised in the development of policies, national strategies and action plans targeting these communities.

This session will therefore focus on how to enhance the activities of NIADs, in view of good practices, in preparation of policy initiatives, application of concrete activities and effective responses to cases of racism and xenophobia.

Issues to be discussed:

- How can NIADs effectively contribute to the drafting and implementing of national strategies, policies and action plans to combat racism/xenophobia, including those related to integration?
- How can interaction with other State institutions maximise the effectiveness of implementation of national strategies, policies and action plans?
- What are the good practices in recognising different needs of different victim groups and reaching out to marginalised groups?
- How can international legal standards be implemented by NIADs in combating racism and xenophobia?

¹² Human Dimension Seminar on Migration and Integration: Consolidated Summary, p. 7.
See: http://194.8.63.155/documents/odihr/2005/07/15652_en.pdf