

Session 3: Countering discrimination in the OSCE participating States and the Mediterranean Partners for Co-operation

Speaking points

Introduction:

- This session brings together three related strands, namely discrimination and the manifestations of racism and xenophobia towards migrants, in line with the OSCE Ministerial Council statement on migration (MC.DOC/6/06); discrimination against women; and other forms of discrimination. I would like to begin by discussing non-discrimination in general, then go on to discussing racism, xenophobia and migration, and finally address the issue of discrimination against women.

Non-discrimination:

- The European Union is based on the principles of democracy, the rule of law, respect for human rights and fundamental freedoms. Tolerance, non-discrimination, equality and the fight against racism are central to these principles.
- Enormous progress has been made at EU level over the last seven years to develop a legal and policy framework for tackling discrimination.
- Two pieces of European legislation combating discrimination on the grounds of racial or ethnic origin, disability, age, sexual orientation, religion or belief were adopted in 2000. They are the **Racial Equality Directive** and the **Employment Framework Directive**. These Directives have significantly raised the level of protection against discrimination across the EU. They have acted as a catalyst for the development of a more coherent, rights-based approach to equality and non-discrimination in EU Member States.

- Under the new rules, all men and women in the Union, citizens and non-citizens alike, are protected from discrimination in the workplace, but also in other areas such as schools, housing and social services.
- The Directives are a cornerstone of the EU's wider policy on fundamental rights. They have introduced protection against discrimination for the first time in many Member States. They have required the introduction of new definitions and legal concepts. They have also led to the establishment of new specialized equality bodies, as well as the reinforcement of the powers of existing bodies.
- Legislative measures alone, however, will not be enough to combat discrimination effectively within society. Experience shows that legislation must be backed up by concrete actions. This is why the EU also launched an **Action Programme** designed to help make European anti-discrimination policy a reality. This five-year programme ended on 31 December 2006.
- For the new 2007-2013 programming period, the Commission decided to pursue further its efforts in this direction, proposing the creation of a new integrated programme to be known as **PROGRESS (Programme for Employment and Social Solidarity)**.
- Anti-discrimination is one of five priority areas of the programme, which invests a total of €700 million in new studies, awareness raising and events between 2007 and 2013.
- The Programme supports a wide range of projects and activities involving many actors in the antidiscrimination field, from national authorities to organisations representing people who are potentially exposed to discrimination, from social partners to equality bodies, from policy and decision-makers to legal practitioners. Activities range from training lawyers and judges on the European equality legislation, to empowering non-governmental organisations to support or represent victims of discrimination, to activities aimed at combating discrimination in the media.
- 2007 saw a major development for anti-discrimination in the EU, as this year was named the **European Year of Equal Opportunities for All**. The Year is giving a new boost to making equal treatment a reality for everyone in the EU. The idea is to promote equal opportunities in all areas of daily life where unfair and unequal treatment might occur – in

jobs, schools, training, healthcare – and also to promote diversity as a source of strength for the EU. Hundreds of different activities are taking place across the European Union at local, regional and national level under the banner of the Year.

Racism and Xenophobia:

- EU institutions have repeatedly **condemned and rejected** racism and xenophobia in all their manifestations. These phenomena are not compatible with the values the EU is founded on. The Commission can combat racism only within the powers conferred on it by the Treaties; however, it is determined to make full use of these powers.
- In this context, it is necessary to mention two new initiatives which complement the domestic EU policy in this area: In early 2007, the Vienna-based European Monitoring Center on Racism and Xenophobia was strengthened to serve as a full-fledged **Fundamental Rights Agency of the European Union**. The Agency will continue publishing and updating data concerning racism and xenophobia in the EU.
- In April 2007, the EU Justice and Home Affairs Council, after many years of negotiation, agreed on the **Framework Decision on Combating Racism and Xenophobia**. The framework Decision creates EU-wide common standards to ensure that racism and xenophobia are punishable in all Member States under criminal law. The Framework Decision criminalizes intentional conduct such as incitement to violence or hatred towards a group of people, or a person belonging to a group, defined on the basis of race, colour, descent, religion or belief, national or ethnic origin. It also criminalizes the public condoning, denial or gross trivialization of crimes against humanity and war crimes.
- The Commission also provides financial support for anti-racist projects and organisations, through the **Fundamental Rights and Citizenship programme** (DG JLS) and the above-mentioned **PROGRESS Programme for Employment and Social Solidarity** (DG EMPL).
- **Roma** have been identified as one of the most vulnerable groups both within and outside the EU. The **European Fund for the Integration of third-country nationals** and the **European Refugee Fund** can also provide funding for integration measures from which Roma that are non-EU citizens can benefit. The financing of Roma related projects will

continue in the structural fund programming period 2007-2013. In the previous programming period, the structural funds made available more than 275 million euro for Roma-related projects in areas such as social inclusion, fight against discrimination, regional development and education.

Migrants:

- In recent years, the EU has been moving towards a **comprehensive policy on migration**, which addresses both the internal and external dimensions of immigration into the EU, including its links with development in third countries.
- Granting third-country nationals who are legally resident in EU countries rights and obligations comparable to those of EU citizens - in other words ensuring the principle of equal treatment – and fostering their integration into the host society, are hallmarks of the EU's common immigration policy.
- Once they have confirmed their status in accordance with the relevant legislation, **non-EU workers enjoy the same rights and the same treatment as national workers as far as working conditions are concerned**. This is a **key aspect** of legislation in this field. The principles of non-discrimination and equal treatment are enshrined in the constitutions, or labour codes, or specific legislation of **all** EU Member States. They are also enshrined in international law that is binding on EU Member States (e.g. ECHR, European Social Charter, and ILO Conventions 97 and 111).
- They are also enshrined in **EU law**. So far as holders of **EC long-term resident status** are concerned (**Council Directive 2003/109/EC concerning the status of third-country nationals who are long term residents of the Member States**), Member States shall recognize equal treatment with nationals on a series of rights, including access to employment, employment and working conditions, education and vocational training, social security, social assistance and social protection, and tax benefits. EC long-term residents also enjoy a reinforced protection against expulsion (which cannot be based on economic reasons) and have the right – subject to certain conditions – to

move to another Member State without losing their status. In addition, the Racial Equality Directive and Employment Framework Directive prohibit discrimination on the basis of racial or ethnic origin and in employment and occupation. However, they do not cover differences in treatment based on nationality and are without prejudice to provision and conditions on entry and residence of third-country nationals.

- It follows from the principles described above, that employers who **discriminate** between national workers and lawfully resident third country workers in the field of employment rights **will contravene national legislation, and be liable for punishment**. The protection of the rights of third country nationals in EU Members State is assured by the courts and ombudsmen of the Member States. The victim of discrimination is entitled to damages and the employer liable to a fine, or imprisonment.
- When such rights are also covered by EU law, infringement cases against EU Member States that have not fully implemented the legislation in question can be brought before the ECJ (there is already quite extensive case law on the rights of third-country workers).

Discrimination against women:

- Gender equality is a fundamental right, a common value of the EU, and a necessary condition for the achievement of the EU objectives of growth, employment and social cohesion. Much progress has been made, in part thanks to EU action, but there is still plenty to do.
- A considerable **legal acquis** has been built up over the years in the EU. Women now have access to jobs from which they were excluded in the past. There are now more women than men in higher education and they have reached an employment rate of 57.2% (2006). The situation of men has also changed in that they are beginning to become involved in family responsibilities.
- These advances conceal less positive realities. In spite of their good performance, women are still disadvantaged on the labour market. For example:

- Women's pay is on average 15% lower than that of men; there is a gender gap in terms of the employment rate of 14.4 percentage points; stereotypes persist as far as the role of women and men in family, in the labour market, in society, is concerned. In 2004, a survey showed that among men who had said they had one child or more or that their wife/partner was expecting a baby, 75% were aware of the right to take parental leave. However, a substantial 84% of respondents replied that they had neither taken parental leave nor were thinking of doing so;
- In the European Union, only about 23% on average of the seats in parliament are occupied by women, 31% in the case of the European Parliament; the situation is similar if we examine economic decision-making - only 11% of women are members of the highest decision-making bodies in the 50 largest publicly listed companies, but this figure falls to 3% for the post of chairwoman;
- As regards human rights, violence against women remains present in all Member States and in all social environments. Trafficking is also a phenomenon which can unfortunately benefit from technological progress and globalisation.
- At worldwide level, progress has been made concerning the condition of women and the EU has played an active role in promoting equality. In spite of this, many challenges remain in terms of human rights and access to work and education.
- In its **March 2006 Communication “Roadmap to Gender Equality¹”,** the Commission defined its priorities and a framework of action for the coming years. The Roadmap outlines six priority areas for EU action on gender equality for the period 2006-2010: equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; promotion of gender equality in external and development policies.

¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Roadmap for equality between women and men 2006-2010 {SEC(2006) 275}

- In particular, the Commission highlighted the need to **combat multiple discrimination, in particular against immigrant and ethnic minority women**, focusing on the following key aspects: the promotion of gender equality in migration and integration policies in order to ensure women's rights and civic participation, to fully use their employment potential and to improve their access to education and lifelong learning. More specifically, the Commission has taken the commitment to monitor and strengthen gender mainstreaming in the Framework for the Integration of Third-Country Nationals in the EU², the follow-up to the Policy Plan on legal Migration³, the European Social Fund (ESF) and the proposed European Fund for the Integration of Third-Country Nationals.
- In its **Report on Equality between women and men 2005**, the Commission focused on "**Integrating the gender perspective into immigration and integration policies**". Indeed, effective and responsible integration of immigrants in the labour market and in society is one of the key factors for success in reaching the Lisbon targets. The Commission also highlighted that a gender perspective is to a large extent lacking in integration policies, which hampers the possibilities to fully utilise the potential of immigrant women in the labour market. The different situations and conditions of immigrant women and men need to be addressed in the further development of integration policies and special attention must be paid to the double discrimination of sexism and racism that immigrant women often face, in particular in the labour market.
- These issues are particularly important in the case of family reunification. The Commission highlighted that when transposing the Directive⁴ on the right to family reunification, Member States should ensure that restrictions in access to the labour market are kept to a minimum and do not hamper the integration of immigrant women.

EU External policies:

² COM(2005)389

³ COM(2005)669

⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

- In the external relations context, the EU is actively engaged in efforts within the **United Nations** to tackle racism and discrimination. During the 61st session of the United Nations General Assembly (UNGA), the European Union made a statement in the 3rd Committee on the elimination of racism and racial discrimination. The EU is also constructively participating in the preparatory process of the Durban Review Conference which will take place in 2009, within the framework of the General Assembly. Implementation of the existing norms should be the focus of that Conference.
- In the **OSCE framework**, through EU coordination, the Commission and the EU Member States work actively and regularly to obtain the implementation of the commitments made by the 56 OSCE' Participating States as regards the fight against racism and xenophobia, non-discrimination and respect for diversity. In this respect, the Human Dimension Implementation Meeting organised by OSCE/ODIHR on an annual basis in Warsaw is a valuable platform for the Commission and the EU Member States.
- The EU raises racism and xenophobia issues in its **political dialogues with third countries, for example with Russia and China**. These issues have also been mainstreamed in **cooperation strategies**; for example, under the European Neighbourhood Policy Action Plans, the partner countries commit themselves to cooperation to combat all forms of discrimination, religious intolerance, racism and xenophobia. In December 2006, the Commission organised a seminar with Israel on Racism, Xenophobia and anti-Semitism. The seminar was held in the framework of the EU-Israel ENP Action Plan.
- The Ministers from the 37 countries of the Euro-Mediterranean partnership adopted in Istanbul, on 15 November 2006, the **5-year Framework of Action on gender equality** that the at the conclusion of a conference on “Strengthening the role of women in society”. The Framework of Action incorporates a wide range of activities in the fields of women’s political and civil rights, women’s social, economic and cultural rights, sustainable development as well as women’s rights communication and mass media.

- The fight against racism, xenophobia, and discrimination against minorities and indigenous people is a priority for funding under the **European Instrument for Democracy and Human Rights (EIDHR)**. The theme has been included in general and specific calls for proposals to select projects for funding. A call for proposals covering this theme was launched in 2006. A total of 19 projects were selected for funding for an overall amount of EUR 8,8 million, providing concrete follow-up to the Durban Declaration and Programme of Action of 2001. In addition 4 targeted projects were selected for funding of around EUR 2,2 million.
- Through EIDHR funds, the EU supports the United Nations High Commissioner for Human Rights in the implementation of existing international standards on equality and non-discrimination, particularly the Durban Declaration and Programme of Action and the International Convention on the Elimination of Racial Discrimination. Project activities include awareness-raising campaigns and seminars, the provision of advice through technical cooperation projects with governments, and research and analysis. The main partners are UNDP, UNESCO, the World Bank, the ILO and other international organisations, as well as human rights institutions and civil society organisations.