

**European Parliament resolution of 27 September 2007 on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2007/2094(INI))**

*The European Parliament,*

- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Women's Rights and Gender Equality and of the Committee on Employment and Social Affairs (**A6-0278/2007**),

***The fight against discrimination***

- A. whereas the EU is a political project based on common values such as the protection of human rights and fundamental freedoms, as stated in Article 6 TEU and in the Charter of Fundamental Rights, and promotes equality and non-discrimination through its policies and laws, also on the basis of Article 13 TEC,
- B. whereas it is important that political declarations on the fight against discrimination are matched by the progressive development and full and correct implementation of policies and laws, and notably of the anti-discrimination directives and of the projects promoting equality, such as the European Year of Equal Opportunities for All,

***C. Implementation of the Racial Equality Directive***

***C. whereas the 2006 annual report of the European Monitoring Centre for Racism and Xenophobia confirms that discrimination remains a serious problem in the Member States,***

- D. whereas a recent Eurobarometer survey shows that 64% of citizens in 25 Member States surveyed think discrimination based on ethnic origin is still widespread,
- E. whereas the adoption of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>(1)</sup> may be seen as a major step in raising the level of protection for victims of discrimination based on racial or ethnic origin and in giving them better possibilities of redress,

***Burden of proof***

- F. whereas the burden of proof provision is a key aspect of the Directive because it contributes to the effective enforcement of the protection which it offers,
- G. whereas the case-law on the burden of proof shows that there are still considerable divergences between Member States as to what is accepted as prima facie evidence by the courts; whereas Member States should therefore be encouraged to exchange views on the subject, with a view to seeing whether it is possible to bring judicial procedures into line with one another,
- H. whereas the effective implementation of the principle of equality would be helped if the rules on the burden of proof in civil and administrative cases were extended to judicial provisions against victimisation,

***Equality bodies***

- I. whereas almost all Member States now have equality bodies or have allocated the functions to be carried out by such bodies to existing bodies,
- J. whereas all Member States should be encouraged to take the extremely positive step of broadening the remit of their equality bodies to cover discrimination on grounds other than race or ethnic origin,

K. whereas equality bodies should have adequate resources in terms of both personnel and financing,

L. whereas equality bodies should be able to function independently of government and should be perceived as functioning independently, i. e. not forming part of government,

M. whereas, despite the existence of specialised anti-discrimination and equality bodies, the number of registered complaints remains low in a number of Member States,

N. whereas in practice equality bodies unfortunately bring only a small number of cases before the courts, owing to a lack of financial and human resources; whereas it is often NGOs that provide victims of discrimination with assistance until the conclusion of the proceedings,

O. whereas the training of public officials on the aims of the Directive is vital because of their responsibility for implementing it,

### ***Scope***

P. whereas it is not always possible to distinguish between discrimination on the ground of racial or ethnic origin and discrimination on the ground of religion, opinion or nationality,

Q. whereas it is not always easy to determine whether discrimination is based on gender, ethnicity, race, social conditions, sexual orientation or other factors,

### ***Dissemination of information and awareness-raising***

R. whereas the recent Eurobarometer survey confirms that awareness of the existence of anti-discrimination legislation in the EU is quite low and that on average only one third of EU citizens claim to know their rights should they be victims of discrimination or harassment,

S. whereas, however, some Member States have taken a wide range of information and awareness-raising initiatives (websites, campaigns, television spots, newspaper advertisements);

T. whereas some Member States have taken the important initiative of incorporating in their national law an obligation on employers to inform their employees of anti-discrimination laws,

U. whereas some specialised bodies in the Member States have established hotlines providing information and support to victims of discrimination,

V. whereas there are also a number of Member States that implemented rather limited information and awareness-raising activities and in some countries no awareness-raising campaigns were reported,

W. whereas especially in the context of the European Year for Equal Opportunities for All, both the EU institutions and the Member States should make substantial efforts to inform citizens of their rights, and whereas the Member States should ensure that the measures initiated in 2007 continue into 2008, the European Year of Intercultural Dialogue,

### ***Data collection***

X. whereas data collection is essential in the fight against discrimination, and ethnically disaggregated statistical data can be essential in demonstrating indirect discrimination, informing policy and developing positive action strategies, but at the same time raises several ethical and legal questions,

Y. whereas such data collection must not infringe personal privacy by revealing individuals' identities or serve as a basis for ethnic or racial profiling,

### ***Legal redress***

Z. whereas alternative dispute resolution procedures should not pre-empt access to the courts,

AA. whereas a large number of victims of discrimination do not lodge a complaint with the courts for various reasons, including costs and fear of reprisals,

AB. whereas the goals of the fight against discrimination can be achieved only if legal measures are combined with positive actions at the level of the EU and the Member States;

AC. whereas the European Union Agency for Fundamental Rights has the task of collecting and analysing relevant, reliable and comparable information and data relating to fundamental rights,

1. Reiterates the importance of Directive 2000/43/EC;
2. Recalls that Directive 2000/43/EC is a minimum standard and should therefore be the foundation on which a comprehensive anti-discrimination policy is built;
3. Welcomes the 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 ([COM\(2006\)0643](#)), which seeks to establish a framework to combat discrimination based on racial or ethnic origin in order to ensure that the principle of equality before the law, equal opportunities and equal treatment is consolidated in the Member States, whilst fully complying with the principle of subsidiarity and respecting the various national traditions and procedures; while appreciating the overview of the implementation of the Directive contained in the Commission Communication, notes that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law, as specified in the Directive itself; further notes that the Commission undertook not only to collect detailed information, but also to report on it to Parliament and the Council and that Parliament, in its resolution of 14 June 2006 on non-discrimination and equal opportunities for all – a framework strategy<sup>(2)</sup>, asked the Commission to 'examine as a matter of urgency the quality and content of the laws implementing the anti-discrimination directives';
4. Urges the Member States to transpose all Community anti-discrimination legislation at the earliest opportunity and to make use of all the instruments available, including positive action, to ensure equality in practice;
5. Stresses that the Directive goes beyond access to employment, self-employment and occupation, and also applies to areas such as education, social protection including social security and healthcare, social benefits and access to and the supply of goods and services in order to safeguard the development of democratic and tolerant societies that allow the participation of all irrespective of racial or ethnic origin;
6. Notes with satisfaction that most Member States have taken action in order to implement the Directive, but is disappointed that only a few have adequately transposed all of its provisions fully;
7. Points out that, in particular, a number of provisions of the Directive such as the definitions of direct and indirect discrimination, harassment and the burden of proof have not been correctly transposed in many Member States;
8. Calls, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which is particularly effective in the case of employment-related disputes;
9. Expresses its concern that Member States have exempted more areas of activity from the scope of the Directive than is desirable or justifiable;
10. Recalls that the Directive was adopted in June 2000 and that Member States were bound to implement it before June 2003, which gave them enough time to adopt the necessary implementing measures; calls on the Commission to adopt a more proactive approach, for instance by issuing interpretative communications and guidelines for implementation to ensure full and correct implementation by Member States; asks the Commission to continue to monitor the correct implementation of the Directive with vigilance, to publish its evaluation study as soon as possible and to start infringement proceedings where necessary and without delay and in any event before the end of 2007;
11. Reiterates that sanctions applicable to infringements of national provisions adopted pursuant to

Directive 2000/43/EC must be effective, proportionate and dissuasive;

12. Calls for the establishment of national integrated action plans in order to effectively tackle all forms of discrimination;

13. Calls on Member States implementing or introducing national action plans to combat racism and discrimination to include components covering the gathering, checking and monitoring of data in key policy areas such as non-discrimination and equality, social inclusion, Community cohesion, integration, gender, education and employment;

14. Calls on the Commission to submit to Parliament and the Council a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures; stresses the importance of developing ways of gathering data on discrimination, particularly as regards labour relations, focusing on clandestine, undeclared, poorly-paid and uninsured labour, in line with data protection legislation, as a useful tool for identifying, monitoring and reviewing policies and procedures to combat discrimination, while respecting national integration models; calls on the Commission to lay down common standards for data, so that the information transmitted can be effectively compared; calls for the importance of examining not only the content of the implementing legislation, but also its effectiveness, to be taken on board;

15. Calls on the Commission to request the Member States, in their annual reports on the implementation of Directive 2000/43/EC, to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into the reports as a way of alleviating the multiple discrimination faced by many;

16. Reminds the Commission of the fact that Parliament would like to receive a document listing the exemptions created in Member States' legislation, so that a public debate may be held on such exemptions;

17. Recalls that Member States should undertake independent reviews of the impact of national time limits and the effectiveness of the protection against victimisation;

18. Is concerned about the low level of awareness of anti-discrimination legislation among citizens in the Member States and calls on the Commission and Member States to step up their efforts to raise this level of awareness;

19. Considers that the Roma community, together with other recognised ethnic communities, need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute in their regard;

20. Emphasises that laws are effective only when citizens are aware of their rights and have easy access to the courts, since the protection system provided for by the Directive depends on citizens taking the initiative;

21. Recalls that Article 10 of the Directive imposes an obligation on Member States to disseminate information to the public on the relevant provisions of the Directive by all appropriate means;

22. Urges Member States to adopt a set of minimum standards under the open coordination method, so as to guarantee access for children from ethnic minorities – particularly girls – to high-quality education and equal conditions, and to adopt positive legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education to boys and girls from ethnic minorities;

23. Reminds Member States of their obligation to disseminate relevant information to citizens and to encourage and support awareness-raising campaigns about existing national legislation and bodies involved in the fight against discrimination;

24. Urges Member States to ensure that all persons from ethnic minorities – particularly women – have access to primary, preventive and emergency healthcare services, to formulate and implement policies that ensure that even the most excluded communities are given full access to the healthcare system,

and to organise training and awareness courses for healthcare workers, with a view to putting an end to prejudice;

25. Urges the governments of the Member States to ensure equal treatment and opportunities under employment and social inclusion policies, to address the extremely high unemployment rates recorded particularly among women from ethnic minorities and, in particular, to address the serious barriers raised by direct discrimination in recruitment procedures;

26. Firmly believes that it is vitally important that officials receive training on the subject of the aims and provisions of the Directive, in view of their responsibility for implementation of the Directive within society as a whole and in order to remove all risks of institutional racism within government bodies themselves; calls on the Member States to invest in such training and encourages them and the Commission to set up European programmes for exchanges between the various national administrative bodies;

27. Calls on the Member States to collect, compile and publish annually comprehensive, accurate, reliable and gender-disaggregated statistics relating to the following: the labour market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities;

28. Recommends that Member States resource and empower their equality bodies properly so that they can perform their important function effectively, and so that where equality bodies do have substantial powers they exercise these fully;

29. Recommends that Member States resource and empower those NGOs which are active in informing citizens and providing legal aid in matters of discrimination;

30. Points out that in informing citizens and providing legal aid, NGOs carry a disproportionate share of the burden without enjoying corresponding status and funding from the authorities of the Member States;

31. Recommends that the Commission carefully monitor the independent functioning of equality bodies, for which purpose it can use as a reference the Principles relating to the Status of National Institutions ('the Paris Principles') as adopted by the UN General Assembly in its resolution 48/134 of 20 December 1993, which include principles on the adequate financing of such bodies;

32. Reminds the Commission of Parliament's position that Member States must ensure that independent bodies have adequate financial resources at their disposal in order at least to be able to guarantee that complaints will be dealt with free of charge in the case of those who are not in a position to contribute financially themselves, and calls on the Commission to discuss with the Member States how to achieve this objective;

33. Recommends that Member States make use of the best practices of other Member States, such as allowing equality bodies to initiate legal proceedings on behalf of victims or participate as *amicus curiae* in legal proceedings;

34. Recommends that data on complaints and on the outcome of the related proceedings in courts, specialised bodies, other bodies or tribunals should be disaggregated according to the ground of discrimination, which would improve the assessment of the effectiveness of the implementation of the legislation, especially in countries where specialised bodies and/or tribunals deal with all grounds of discrimination;

35. Recommends that the Member States provide their equality bodies with sufficient human and financial resources to enable them to perform their important role effectively, including the provision of appropriate assistance to victims of discrimination; considers that such bodies should also be given the necessary powers to investigate cases;

36. Encourages Member States to step up dialogue with NGOs combating all forms of discrimination and to involve them closely in policies seeking to promote the principle of equal treatment;

37. Stresses that victims of discrimination should be assisted in legal proceedings and recalls in this

respect that statutory and non-statutory organisations can be of real help to victims;

38. Calls on the Member States to collect and provide relevant and reliable and comparable information and data to the European Union Agency for Fundamental Rights (the Fundamental Rights Agency);

39. Recommends that Member States ensure that such statutory and non-statutory organisations are adequately resourced;

40. Asks the Commission to carefully study the various legal questions and parameters regarding the issue of data collection and to come forward with proposals to improve the recording of cases of discrimination, including to ensure that such data collection does not infringe personal privacy by revealing individuals' identities or serve as a basis for ethnic or racial profiling; provision should be made for comparable sets of data to be available from all the Member States; at present, these data are not available for all Member States and comparable data are critical to give a solid platform on which to build policy;

41. Underlines the sensitivity of processing data on race and ethnicity, and recalls the applicability of the data protection directives to data processed in the application of the Directive; stresses that additional guarantees should be provided for data on race and ethnicity, as these data could be diverted and used for other purposes in the justice and home affairs field, for instance for ethnic profiling; reiterates its request for the adoption of a Framework Decision on Data Protection, also to guarantee that any interaction of data between the first and third pillars falls under strict data protection rules;

42. Recommends that Member States consider the collecting of statistical data, using the appropriate safeguards on protection of personal data to exclude the use of ethnic profiling, on representation of ethnic and racial groups in different areas of society, including both the public and private sectors, and to develop policies, on the basis of these data, aiming to ensure equal access to employment, self-employment, occupation, education, social protection and social security, social benefits and access to and the supply of goods;

43. Calls on the Commission to conduct a study examining which Member States have positive action provisions, what the tests are that must be satisfied, how these provisions have been applied in practice by governmental or non-governmental bodies, and how effective they have been;

44. Calls on the Member States to make publicly available detailed statistics on racist crime and to develop surveys of crime and/or victims of crime that allow for the collection of quantitative and comparable data on victims of racist crime;

45. Calls on the Commission to look into and supply data on multiple discrimination;

46. Asks the Commission to monitor attentively disguised discrimination based on "genuine and determining occupational requirements", the interaction between discrimination based on the application of this exemption on religious grounds within the framework of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)<sup>(9)</sup> and its consequences for race and ethnicity, and to pay particular attention to discrimination in the field of education;

47. Reiterates the political, social and legal desirability of putting an end to the hierarchy of protection against the different grounds of discrimination, and welcomes in this respect the Commission's intention to put forward a proposal for extending the scope of Directive 2000/43/EC to all other grounds of discrimination, as stated in its Annual Legislative Programme for 2008; consequently expects the Commission to start preparatory works already this year in order to issue its proposal as soon as possible, and in any case before the end of 2008;

48. Welcomes the Commission's interest in the issue of multiple discrimination, including the launching of a study on this subject; calls on the Commission to adopt a broad concept of multiple discrimination capable of taking into account the possibility of individuals being at risk of discrimination on several grounds at once;

49. Calls on Member States to accord greater importance to evidence of discrimination; recommends that they follow the guidelines relating to evidence of discrimination drawn up by the International Labour

Organization, as proposed by the Fundamental Rights Agency, and that they train people to produce evidence in the key areas of employment and work, education, housing and accommodation, health, access to goods and services, and racist violence;

50. Calls on the Commission to involve the Fundamental Rights Agency in the Community anti-discrimination legislative framework in a manner that is in keeping with that body's remit, so as to enable it to play an important role by supplying a regular stream of accurate and up-to-date information of relevance to the drafting of further legislation;

51. Urges the EU institutions to continue to use the situation of ethnic minorities, particularly women and minors, in applicant countries as a criterion for the purpose of assessing preparedness for accession to the European Union;

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52. Instructs its President to forward this resolution to the Council and the Commission, as well as to the governments and parliaments of the Member States.

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(1) OJ L 180, 19.7.2000, p. 22.

(2) OJ C 300 E, 9.12.2006, p. 259.

(3) OJ L 204, 26.7.2006, p. 23.