

THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN

Dear colleagues,

In the short time available, it is rather difficult for me to discuss all the issues concerning the efforts the European Union has made in order to combat discrimination. Therefore, I will limit my presentation on the *legal framework* that has been established in order to prevent and to redress acts of discrimination against individuals residing in EC member states. Specifically, I will analyze the provisions of the directive 2000/43 EC, concerning discrimination in the field of employment and occupation, education, social advantages and access to and supply of goods and services, on the grounds of ethnic origin, and for illustration, I will present two cases, which have been investigated by the Greek Ombudsman. Finally, I will provide you with a general assessment of the progress and the results, which have been ensued, in the first year of the application of directive 2000/43 EC (race directive) by the Member States.

LEGAL FRAMEWORK

The right to equality before the law and protection against all forms of discrimination, for all persons, constitutes a universal right, recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, etc. Furthermore, the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right for all persons to equality before the law and protection against discrimination.

The European Union, according to the provisions of **article 6** of the Treaty, is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms. These principles are common to all Member States and the provisions of the European Convention guarantee their exercise.

Specifically, **article 13** of the EC Treaty, which was added by the Amsterdam Treaty, provides the European Union with a legal basis to combat forms of

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discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

This article, provides, among other things, that “...*the Council acting ...on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”.

Following this mandate, the Commission has adopted a strategy, which includes a package of measures for the positive and active promotion of non - discrimination and equal opportunities for all. One part of the package is about the enactment of **Community legislation**, the adoption of which by the Member states would ensure effective legal protection against discrimination across the E. Union. The other part of the package includes a **Community Action Program**. The target of this program is to support the back-up measures, such as dissemination of information, awareness-raising, the sharing of experiences, training, access to justice, etc, aimed at ensuring the application of and effective compliance with anti-discrimination legislation throughout the European Community.

In the last few years, the European Union adopted three directives related to the principle of equal treatment. These are: a) **Directive 2000/43 EC** “*implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*”.. b) **Directive 2000/78 EC** “*establishing a general framework for equal treatment in employment and occupation*” which applies the principle of equal treatment on the grounds of religion, or belief, disability or sexual orientation but only as it regards the field of employment and occupation” and finally, c) **Directive 2004/113 EC** “*implementing the principle of equal treatment between men and women in the access to and supply of goods and services*”. The Member States should incorporate the provisions of this directive into their national legislations by 21/12/2007, at the latest.

THE MAIN PROVISIONS OF THE DIRECTIVE 2000/43

The choice of the fields “*employment and occupation*”, as well as, “*education*”, “*social advantages*” and “*access to and supply of goods and services*” into the scope of the directive 2000/43 EC is based on the following reasons:

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a) It is in conformity to the *Employment Guidelines 2000* agreed by the European Council in Helsinki, on 1999. These guidelines stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination due to racial or ethnic origin.

b) It is recognized that discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the Treaty, in particular, the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, as well as, the economic and social cohesion and solidarity amongst member states.

c) It is recognized that eliminating inequalities in the employment sector is crucial to achieving social inclusion in other spheres of society. Employment, housing and education are closely linked. It's obvious that a good job makes quality housing affordable, which in turn enables access to good schools. Promoting equal treatment in employment could produce more equitable standards of living overall.

That is why par. 1, article 3 of the directive provides that protection against discrimination due to racial or ethnic origin must be extended to **all persons** in the workplace, in regard to both, public and private sectors, including public administration bodies.

Therefore, under the term "*all persons*" are included ethnic minorities, such as Roma, Sinti, Gypsies and Travellers, (nomads who lives in Ireland), as well as, labour migrants of the three decades following World War 2, and their descendants, who generally may gain citizenship rights but remain identifiable as minority ethnic groups. Finally, the term "*all persons*" includes those with a specific religious characteristic such as Muslims or Jews. In Greece, the recognizable racial/ethnic minority groups have been the minority in Thrace, Pomaks and Roma. The minority in Thrace has been identified and recognized by the Greek state as the "Muslim minority" of western Thrace (north-eastern Greece), and is protected by the 1923 Lausanne Peace Treaty. The Roma are found in western Thrace but they are also scattered all over the country. Official records exist only with regard to the "Muslim minority" which is estimated at 100.000. Unofficial records estimates Roma to a number of 250.000.

The nature of discrimination

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According to the provisions of article 2, discrimination may be **direct or indirect**.

Direct discrimination occurs when a person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.

Indirect discrimination occurs when an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons.

The distinction between direct and indirect discrimination, as well as, the accurate description of the preconditions that characterize an act of discrimination as direct or indirect, ensure the intention of the community legislator to assure the application of the principle of equal treatment to the largest possible extent. This becomes more apparent from the fact that the concept of discrimination also covers *harassment*, as well as, *instruction to discriminate* against persons. An additional proof of the commitment of the community legislator is the fact that the directive provides the power to the competent authorities to utilize diverse methods in collecting data and in making comparisons of situations taking into consideration different time periods.

Finally, the legislator gives the power to the competent authorities, to utilize different means of proof, including statistical data. Furthermore, by determining that the **burden of proof** falls on the defendant, who must prove that the principle of equal treatment has not been infringed upon, the Community legislator enables the victim of discrimination with one more weapon for his defense.

Areas of Coverage

According to the provisions of par. 1, article 3 of the directive, the principle of equal treatment applies to all persons in relation to:

- (a) Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions,
- (b) Access to all types and to all levels of vocational guidance, vocational training and retraining, including practical work experience,
- (c) Employment and working conditions, including dismissals and pay,

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- (d) Membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations,
- (e) Social protection and social security,
- (f) Social advantages and finally,
- (g) Access to and the supply of goods and services.

It should be noted that the Directive does not prevent Member States from taking positive measures for the improvement of the social standing of a specific vulnerable group. Similarly, Member States may apply provisions, which are more favorable than those defined in the Directive.

Exemptions

There are two exemptions from the rule of equal treatment.

The first exemption is found in the provisions of article 4 and relates to cases where a provision, a criterion or practice is objectively *justified by a legitimate aim and the means of achieving that aim are appropriate and necessary*. Therefore, a difference of treatment based on a characteristic related to racial or ethnic origin shall not be deemed to constitute discrimination where, by reason of the nature of the particular occupational activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. Thus, engaging a black actor in order to perform the role of Othello shall not be deemed as discrimination falling within the provisions of this directive.

The second exemption is found in the provisions of article 3 par. 2 of the Directive. This refers to the difference of treatment on grounds of **nationality**, which does not fall within the scope of this directive. Therefore, provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of Member-States and to any treatment which arises from the legal status of the third-country nationals are out of the scope of the Directive 2000/43 EC.

Bodies for the promotion of equal treatment

According to par. 1, article 13 of the directive, Member States are responsible to designate an independent body or bodies for the promotion of the principle of equal treatment of all persons without discrimination on the grounds of racial or ethnic

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origin and for disseminating information on this principle. These bodies shall receive complaints from victims of discrimination, start investigations or studies and issue recommendations concerning the type of discrimination that has occurred as defined by the Directive.

The provisions of the directive 2000/43 EC as well as the provisions of the directive 2000/78 EC were incorporated into the Greek legislation by the law 3304/2005.

According to the provisions of the aforementioned law, three different bodies are competent in Greece to act in cases of discrimination on all grounds covered by both equal treatment directives.

These bodies are:

- (a) The Greek Ombudsman with competence to investigate cases of discrimination occurring in the public sector,
- (b) The Labour Inspection Body, an internal body of the Ministry of Labour, with competence to investigate complaint about discrimination made by natural or legal persons, in the private sector and in areas of employment and occupation, and finally
- (c) The new Committee for Equal Treatment, a body within the Ministry of Justice, with competence to examine discrimination cases occurring in the private sector as far as they pertain to the supply of goods and services, which are available to the public, including housing.

Within the framework of the aforementioned mandate, Greek Ombudsman has investigated the following two cases that concerned claims of discrimination based on ethnic origin, in the field of employment.

A) The first case dealt with the issue of requirements a person was obliged to fulfill before he/she was able to become member in the relevant bar association.

In this case the facts are as follows: According to article 2, par. 1 of the Lawyers Code “*A foreigner cannot be appointed as a lawyer until five years after obtaining Greek citizenship through naturalization*”. A naturalized Greek woman (of Ukrainian origin), a trainee lawyer, requested that this provision not be applied in her case. The complainant had not yet completed her 18 month professional preparatory training period, after which she would have had the right to apply to take the bar examinations, the successful completion of which would officially have entitled her to practice law.

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The Greek Ombudsman in this case determined that the provisions in question did indeed place naturalized foreigners in an inferior position compared with other Greek citizens, with regard to national origin, and therefore, that this case presented as an issue of incorrect implementation of the law 3304/2005. Thus, after informing the local Bar Association of the improper provision of the Lawyer's Code, the Greek Ombudsman recommended to the complainant that, after the successful completion of her training period, she should reapply.

The other example dealt again with the required skill a person had to possess in order to apply for a specific public service position.

B) In this particular case a citizen protested that the advertisement of the position, in the Government Gazette, of an expert in the Institute of Immigration Policy included the requirement of "*excellent Knowledge of the Greek language*". The complainant to the Ombudsman noted that this specific requirement would lead to a discriminatory treatment of candidates on the basis of their (non-Greek) origin.

Our Office for the reason that the person who submitted it lacked lawful interest, that is, the complainant was not the *«directly interested»* party filed this complaint. However, informal recommendations were made to the director of the Institute to take measures so as to ensure that this type of danger, of indirect discrimination, be avoided. Our recommendation included the suggestion that the aforementioned requirement be eliminated from the list of required skills since it might indeed lead to the exclusion of candidates on the grounds of their national origin.

CONCLUSIONS

The European Monitoring Center for Racism and Xenophobia has carried out an assessment of the progress and the results the application of Directive 2000/43 EC had during the first year, that is the year 2004, of its implementation by the Member States. This Center was established by the Council Regulation No 1035/97 with a view to providing the Community and its Member States with objective, reliable and comparable data at European level on racism, xenophobia and anti-Semitism, in order to help them when they take measures, or formulate courses of action, within their respective spheres of competence. The main finding of EMCRX are:

- (a) According to the Annual Report 2005 of the Centre, most of the 25 Member States have transposed the directives of equal treatment into their legislation. However, four Member states were referred to the European Court of Justice

for their failure to satisfy the requirements of the Council Directive 2000/43 and later in the year the same four were referred to the Court for their failures regarding the Council Directive 2000/78.

- (b) Although Member states have introduced legislation affording improved protection to racial/ethnic minorities and population of migrant origin under the terms of the Directives, some have also chosen to introduce other legislative measures which serve to restrict various rights and opportunities of minorities, variously covering issues such as 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, giving advantages to some minority groups over others.
- (c) It seems that there is a serious problem due to the absence of adequate data on which to evaluate problems and to base policies. According to this annual report, in most E.U. Member States there is great reluctance to collect statistics and thus to have information on the main relevant variables such as race, ethnic origin and national origin. It's obvious that such statistics are important for the identification of indicators of discrimination, for the judgment as to what are the most effective anti-discrimination policies, and for the measurement of the impact of anti-discrimination legislation. Therefore, 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.

Concluding, I believe that the European Union has made serious steps to combat discrimination. However, it seems that more action is required at both, the level of policy development and at the monitoring stage, if it is to ensure that the economic and social aspects of equality and non-discrimination policies are better integrated.

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