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Commission européenne contre le racisme et l'intolérance

Seminar with national specialised bodies to combat racism and racial discrimination on positive action

**22 – 23 February 2007
Strasbourg, Human Rights Building
Salle de la Direction**

EXPLANATORY NOTE

Introduction

In the framework of its country monitoring work and its work on general themes, ECRI regularly encourages the adoption of positive action or positive measures as an effective tool for achieving a fair and even playing field in society for members of disadvantaged groups.

Although there is general recognition of the fact - both at the national and the international level - that the adoption of special measures to promote full equality is compatible with the principle of non-discrimination, there is no consensus as to what kind of measures the concept of positive action actually entails.

In particular, for national specialised bodies, which according to ECRI's General Policy Recommendation no.7 can play an important role in the development and supervision of positive measures, it is important to know what kind of instruments they have at their disposal for promoting equal opportunities without infringing the right to non-discrimination.

The aim of this seminar is therefore to clarify the concept of positive action and to exchange good practices in this field. For this purpose the seminar will have a closer look at the national and international standards in this field and explore the different types of positive action that have been implemented in various member States of the Council of Europe, as well as their different areas of application. Special emphasis will be put on the role of national specialised bodies in this field, which will be illustrated through a variety of practical examples presented during the seminar.

Participants

This seminar will bring together representatives of specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner, etc.) whose mandate already covers or will be extended to cover racism and racial discrimination. In addition, a selected number of specialised NGOs and experts in the field of positive action have been invited to this seminar.

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All attendees are invited to actively participate in discussions by commenting on presentations and providing examples of the situation in their own country.

Programme and structure of the Seminar

The seminar will take place over one and a half days. The first part of the seminar will be dedicated to the clarification of the concept of positive action and the existing legal and political framework in this field. The second part of the seminar will concentrate on concrete practical examples of positive action, as they could be promoted and/or implemented by national specialised bodies to combat racism and racial discrimination. The seminar will be split into the following six sessions:

Session 1: Setting the frame
Session 2: Positive action - legal and political framework
Session 3: Positive action – the role of national specialised bodies
Session 4 and 5: Positive action – practical examples
Closing Session

Session 1: Setting the frame

A necessary precondition for a clear and constructive discussion on the issue of positive action is to clarify what the concept of positive action actually entails. In fact, it is a very wide concept and depending on the legal, political or historical context, it is often understood to include positive or special measures, affirmative action or positive discrimination.

In its General Policy Recommendation No.7, ECRI recommends the adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered due to grounds such as “race”, colour, language, religion, nationality or national or ethnic origin, or to facilitate their full participation in all fields of life.¹ A very similar definition of positive action can be found in Article 5 of the EU Racial Equality Directive.²

Much of the controversy that has arisen in some countries surrounding the issue of positive action is linked to the fact that many people, when hearing the terms positive or affirmative action, immediately think of quota systems providing designated groups with preferential access to certain social goods services, such as university education, jobs, or social benefits. There are arguably good reasons for being cautious about putting into place such quota systems and it is therefore important to underline that the adoption of quota is only one possible measure among a very broad range of measures for promoting equal opportunities for disadvantaged groups. In fact, many different forms and degrees of positive action exist, most of which - from a legal point of view - are

¹ ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, § 14, Explanatory Memorandum

² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19/07/2000.

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unproblematic in the majority of Council of Europe member States. Examples of such measures that have been given by ECRI include facilitating access to the education system or the labour market, for example through the organisation of special training courses for disadvantaged groups or promoting the representation of such groups in key professions (teaching and training, law enforcement, civil service, media etc.), for example, through targeted recruitment campaigns.

Questions:

Do the temporary special measures recommended by ECRI in its General Policy Recommendation No.7 correspond with your understanding of positive action?
Is there a recognised formal or informal definition of positive action in your country?
If yes, what kinds of measures come under this definition?
Do you consider certain types of positive action problematic? If yes, why?

Session 2: Positive action - legal and political framework

National practice concerning the issue of positive action varies widely across Council of Europe Member States. Depending on the type of measure and the group targeted national and international legal instruments take a more or less favourable approach to positive action or special measures, as they are generally referred to in international law. However, it is interesting to note that none of these legal standards stipulates a general prohibition of positive action. In fact, they sometimes expressly permit positive action, in other cases encourage it. Some national legislations even make it obligatory.

At the international and European level, the case law of the relevant UN treaty bodies³, the European Court of Human Rights⁴ and the European Court of Justice⁵ provide valuable guidance as to which kind of special measures are compatible with the principle of non-discrimination and which ones are not. Here, the minimum condition for this compatibility is always the existence of a legitimate goal (that of ensuring full equality) and the relationship of proportionality between the means employed and the aim sought.

When taking a closer look at the national legal and political framework concerning positive action in different Council of Europe member States, the diversity of approaches is rather striking. There are countries that openly embrace positive action, making it a central part of governmental policies for promoting equality, whereas other countries reject the very idea of preferential treatment of specific groups in society. However, even in countries with strong reservations against the concept of positive action, there seems to exist an increasing willingness to address the problems of disadvantaged groups through

³ in interpretation, for example, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights

⁴ in interpretation of the European Convention of Human Rights and its Protocols

⁵ in interpretation of the EC treaties and the relevant EU Equality Directives

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the adoption of special measures. Officially these measures are not called positive action, but in practice many of them can be considered to be so, such as, providing supplementary language courses at school and university for students whose native language is different from the official State language, or targeting job recruitment campaigns at under-represented groups.

Questions:

What is the general climate of opinion with regard to the issue of positive action in your country (position of different key players, e.g. government, justice system, human rights institutions, national specialised bodies, NGOs, vulnerable groups, the public at large, etc.)?

Are positive action programmes considered to be a legitimate tool for achieving equality in your country and have such programmes been implemented in practice? If yes, which areas and which groups do they target?

Is there a statutory duty to promote equality in the public and/or in the private sector of your country?

Is there an established jurisprudence concerning positive action in your country? If yes, what forms or types of positive action are lawful according to this case law?

What are, in your opinion, the main challenges for adopting and implementing positive action schemes in your country?

Session 3: Positive action – the role of national specialised bodies

National specialised bodies can play an important role in the development, implementation and supervision of positive measures. Depending on their powers and their available human and financial resources, national specialised bodies can intervene at several levels in relation to positive action.

The first level of action, which all national specialised bodies should be able to follow, is the development of a comprehensive strategy for promoting equal opportunities, which includes the adoption of positive action measures. This strategy has to be well communicated to all the responsible political decision makers, as well as the general public, in order to gain public support for the measures.

The next step is then to develop concrete positive action measures or plans, which can either be implemented by the national specialised body itself or in co-operation with partners in the public and private sector. Important initiatives taken by national specialised bodies in this field include, for example, compiling best practices and codes of conduct for public bodies and/or private enterprises, providing diversity training to staff in the private and the public sector and launching campaigns targeted at the different stakeholders in this field.

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Finally, national specialised bodies should also be involved in the evaluation and assessment of positive action programmes. This is not always an easy task, as in many countries reliable quantitative and qualitative data concerning the situation of the targeted groups is missing. It is therefore important that effective data collection systems are put into place. Here national specialised bodies have an important role to play, not least in clearing up doubts and misunderstandings concerning the issue of ethnic data collection.

Questions:

Does your institution promote positive action? If yes, in relation to which stakeholders?

Has your institution been involved in the development of positive action measures?

Which sort of positive measures have been successfully initiated by your institution?

What sort of positive measures are directly implemented by your organisation?

When implementing positive action measures, are you confronted with any specific problems?

Are existing positive action programmes assessed and evaluated on a regular basis in your country? If yes, what has been the outcome of this evaluation?

What are the challenges involved in the collection of data for the implementation of positive action programmes?

Does your institution have a special supervisory function as regards the implementation of such programmes? If yes, what exactly does it consist of?

Session 4 and 5: Positive action – practical examples

For the purpose of this seminar, three main fields of activity have been selected for the presentation of concrete examples of positive action. Special measures in the fields of education, employment and participation in social and political life are certainly among the most important and most widespread in Council of Europe member States, as a thorough analysis of ECRI's country monitoring reports shows.

Employment

Racism and racial discrimination on the labour market is a daily reality for many members of vulnerable groups. This is not only a painful experience for the persons concerned, but it also often impedes employers in the public and the private sectors to attract and recruit the most suitable and talented person for a particular job.

For example, in most key professions (teaching and training, law enforcement, civil service, media etc.) members of minority groups are seriously under-represented. This has serious repercussions on how these groups are perceived

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in society and also on how these groups see their own place in society. As a result, a vicious circle of exclusion and self-exclusion exacerbates divisions in society.

Therefore, initiatives such as, for example, the diversity management programmes for the public civil service in Belgium or the “Charter for Diversity” for private companies in France should be given full attention. Especially noteworthy in this context are also programmes, which link school and education with the working world against the backdrop of the fight against racism and racial discrimination, such as for example, the XENOS Programme “Living and Working in Diversity” in Germany, which will be presented at the seminar.

Questions:

Are there any positive action programmes in the field of employment in your country? If yes, in which sectors?

Who is involved in the development and implementation of these programmes?

Is it difficult to convince all the relevant stakeholders of the importance and necessity of special measures in this field?

What are, in your opinion, the key elements of a successful positive action programme?

Should special measures in the employment sector be of an obligatory or a voluntary nature?

Is your institution directly involved in the implementation and supervision of these measures? If yes, to what extent?

Have these measures, in your opinion, a real impact in your country? Can you support your position with qualitative or quantitative data?

Education

School is often the first place where children with minority backgrounds are confronted with racism and racial discrimination. In Europe, Roma children in particular have difficulties in getting equal access to school education and good teaching. This is well documented in ECRI’s country monitoring reports and also in the case law of the European Court of Human Rights. Roma children run a high risk of being sent to “special” schools or being placed in separate classes in mainstream schools. Most Council of Europe member States have now acknowledged this problem and started to adopt special measures for this particularly vulnerable group, as also request by ECRI in its General Policy Recommendation no.10 on combating racism and racial discrimination in and through school education. For example, in Romania special Roma school mediators help schools to integrate Roma pupils more fully and a quota system for the preferential admission of Roma to university has been set up.

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Other disadvantaged groups in the field of education include many ethnic and cultural minorities, among which children of immigrant background are in a particularly difficult position. Here again, segregation and very poor educational attainment rates pose a serious problem.

These problems are particularly virulent in countries, where an increasing number of persons of different ethnic and cultural backgrounds live closely together in big urban agglomerations. In such countries, like for example in the Netherlands, special efforts have therefore been put in devising (positive action) strategies for improving the access to education for the most vulnerable in society. One such possible strategy will be the subject of a presentation at the seminar.

Questions:

Are there specific positive action programmes in the education sector? If yes, which areas and which groups do they target?

Is your institution directly involved in the implementation and supervision of these measures? If yes, to what extent?

What are the main challenges as regards the adoption and implementation of positive measures in this field?

Are all relevant stakeholders involved in the design and/or implementation of such measures?

Participation in social and political life

The participation of cultural and ethnic minorities in social and political life is a powerful tool for achieving equal opportunities for all. However, in most Council of Europe member States these groups are far away from taking fully part in the social life of the community in which they are living and are often even less involved in political decision-making processes that directly concern them.

This is slowly changing and countries like Denmark or Ireland have adopted special action programmes to enhance the participation of minority groups in these areas. In this context integration councils can play an important role in addressing the concerns of established and newly arrived minorities, for example, by mainstreaming integration and non-discrimination into all public services, by initiating and promoting special programmes in the employment and the education sector and by providing *fora* for dialogue and discussion on cultural diversity.

Documentation

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[ECRI General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level](#)

[General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination](#)

[ECRI's Examples of good practices on specialised bodies to combat racism, xenophobia, antisemitism and intolerance](#)

[Protocol no.12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms](#)

[Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#)

[Report submitted by Mr Marc Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5 on the concept and practice of affirmative action, E/CN.4/Sub.2/2002/21.](#)