



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 6 March 2009

CommDH(2009)11
English only

**CONTRIBUTION BY THE
COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS
TO THE DURBAN REVIEW CONFERENCE
(20-24 APRIL 2009)**

Preface

The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the organisation's 47 member states. His action aims to prevent violations of human rights as well as to propose remedies and concrete solutions to any specific problems identified. The Commissioner monitors the respect of human rights through his country visits and reports. He regularly assesses measures states have taken to address racism, racial discrimination, xenophobia and related intolerance. In this field, the Commissioner cooperates closely with other Council of Europe human rights mechanisms, including the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities.

The Commissioner's activities to combat racism and intolerance in 2001-2008 have already been summarised in the document *Contribution of the Council of Europe to the Implementation of the Durban Declaration and Plan of Action – Council of Europe Action to Combat Racism and Intolerance – Contribution submitted by the Secretary General of the Council of Europe to the Durban Review Conference (20-24 April 2009), SG/Inf (2008) 20 rev, 17 December 2008*. In that document, references are also made to the Commissioner's reports and other publications on issues related to the theme. The present document is focused on identifying current concerns in the combat against racism and intolerance as well as suggesting steps for advancing the Durban agenda further in the future.

Identification of current concerns

It is clear to the Commissioner that racism, discrimination, xenophobia and other forms of intolerance persist in European societies. The Durban Review Conference is a timely opportunity to renew commitments and reaffirm political will to the Durban agenda, to match it with concrete actions at all levels and to reflect on new challenges and manifestations of racism, discrimination and xenophobia.

Through his country monitoring, the Commissioner has identified the following groups of people as being particularly vulnerable to racism, racial discrimination, xenophobia and related intolerance in Europe: Roma, Travellers, Africans and people of African descent, members of Jewish communities, members of Muslim communities, other national, ethnic or religious minorities, indigenous peoples, migrants, refugees, asylum-seekers and victims of trafficking in human beings. He is greatly concerned by hate crimes and incitement to hatred, including all manifestations of Islamophobia, anti-Gypsyism, anti-Semitism and Homophobia. The Commissioner also observes that many persons among vulnerable and disadvantaged groups in Europe are victims of multiple or compound forms of discrimination on account of their race, descent, national or ethnic origin, sex, gender, religion or belief, age, disability, sexual orientation, gender identity or other such ground.

Respect for equality in diversity is a central premise for building pluralistic, democratic, and inclusive societies. Therefore the right not to be discriminated against, along with other human rights, should be the guiding principles for resolutely implementing the Durban agenda.

The Commissioner observes that many positive steps have been taken in the promotion of non-discrimination legislation and equal treatment bodies in Europe. Such progress has been inspired by UN Human Rights Instruments, Protocol No. 12 on the general prohibition of discrimination to the European Convention on Human Rights, and Equal Treatment Directives of the European Union. However, the current legislative frameworks do not yet adequately address multiple and compound forms of discrimination, while shortcomings remain concerning the effectiveness of sanctions and remedies.

The Commissioner also notes that most European countries have taken measures to criminalise incitement to hatred on racist grounds and welcomes the recent Framework Decision of the EU Council on combating certain forms and expressions of racism and xenophobia by means of criminal law. Furthermore, many countries are in the process of implementing a national action plan against racism, discrimination and xenophobia.

At the same time, the Commissioner calls for vigilance so that the progress made is not undermined. The aftermath of the events of 11 September 2001 has presented further human rights challenges to the prevention of racism, discrimination, xenophobia and other forms of intolerance. The temptation to resort to racial, ethnic or religious profiling in counterterrorism measures and increasingly restrictive policies in the field of migration and access to citizenship are among such negative trends.

Among the vulnerable groups in Europe, Roma and Travellers continue to stand in an especially disadvantageous position, despite the numerous national and international initiatives launched to remedy their situation. The long-term discrimination and intolerance they have experienced has also been aggravated by multiple forms of discrimination.

Moreover, there is room to improve data collection on racist incidents and discrimination as well as to carry out baseline studies. This would facilitate the preparation of effective action plans against racism and discrimination and their monitoring. Preferably, data should be disaggregated based on race, ethnicity, gender, sexual orientation, disability and age, to reveal discriminatory practices. Collection of sensitive data should be voluntary and coupled with proper safeguards to prevent the identification of individuals belonging to a particular group.

In recent years, the Commissioner has detected a disconcerting tendency to view the freedoms of expression and religion in opposing and contradictory terms. Instead, the principle that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, as declared at the UN World Conference on Human Rights in Vienna in 1993, should be upheld. The Commissioner is of the opinion that the current provisions in international and European human rights instruments are sufficiently clear in spelling out the freedoms of religion and expression. He underlines that both freedoms may be subject to justified restrictions which are prescribed by law and are deemed necessary in a democratic society.

Expressions which constitute incitement to hatred, including religious hatred, should be dealt with in a prompt and proportionate manner. While respecting the freedom of the press, journalists and editors should be encouraged to abstain from negative stereotyping and do more to promote rights-based values. The Commissioner advocates that the media should in the main be subject to self-regulatory or co-regulatory frameworks which would include monitoring and determination of complaints.

The Commissioner is in favour of decriminalising defamation as he considers the application of adequate civil law remedies with proportionate compensatory measures more appropriate in this context. Moreover, he deems that the offence of blasphemy should be abolished.

Steps for advancing the Durban agenda

The Commissioner considers that the major steps for renewing the Durban commitments against racism, racial discrimination, xenophobia and related intolerance would comprise national action plans, comprehensive non-discrimination legislation, human rights education and professional training as well as coordination and early warning mechanisms.

First, national and local action plans should be prepared and implemented as a comprehensive and coherent strategy against racism, xenophobia and discrimination. The action plans should identify the groups who are particularly vulnerable or disadvantaged and apply positive measures in their regard. The process of preparing, implementing, monitoring and evaluating action plans should be inclusive and involve all stakeholders, including representatives of civil society. Such action plans should be based on solid facts and data, preferably in the form of a baseline study. In many countries, there is a deficit of data regarding patterns of discrimination and hate crimes. Improved data collection systems will be required, including methods to analyse the frequency and type of abuse.

Second, states should enact robust and comprehensive anti-discrimination legislation which covers all relevant grounds of discrimination as well as multiple and compound forms of discrimination. Non-discrimination legislation should be applicable in all major areas of activity. Any hierarchy among the individual victims based on the ground of discrimination should be avoided. At the same time, the proportionate application of positive measures should be authorised in favour of those groups of people who do not yet enjoy fully their human rights due to past discrimination. The available sanctions and compensation provided for by non-discrimination legislation should be effective and dissuasive towards potential perpetrators. Independent and effective equality bodies should be set up to receive complaints and monitor the implementation of the legislation. Non-discrimination legislation should be accompanied by penal provisions against incitement to hatred and other hate crimes.

Third, human rights education should be made widely available to promote the values of tolerance and respect for others. Schools must be equipped to deal with racist, discriminatory or xenophobic tendencies among pupils and to provide effective knowledge to promote tolerance and respect for those who are different. Such education should form a part of compulsory school education, while schools should also promote a rights-based approach more generally in their activities. Moreover, human rights education should be used to improve awareness of individual rights and knowledge of access to different remedies. Campaigns to raise awareness of racism, xenophobia and discrimination and ways to tackle them can be particularly useful, especially when they are made concrete through the use of exemplary and popular role models such as sports persons. A vibrant civil society and the media can also actively help counter racism and xenophobia. Finally, human rights training should be a mandatory and regular activity for professionals who have duties in the implementation of human rights.

Fourth, racism, discrimination, xenophobia and other forms of intolerance necessitate a coordinated response and early warning mechanisms. In the UN, treaty bodies such as the Committee on the Elimination of all Forms of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities as well as the special procedures and working groups of the Human Rights Council should regularly coordinate their responses in this field and assess emerging trends. In Europe, the regional human rights mechanisms should do likewise. Particular emphasis should be put in developing early warning mechanisms, such as those already devised by CERD, and the provision of advice and assistance to member states.