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**“National Parliaments and International Human Rights Law:
implementation of the principle of non-discrimination”**

**Speech by Thomas Hammarberg,
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A major part of the human rights problems in Europe today is the result of discrimination.

Individuals are still denied equal treatment because of their ethnicity, social origin, gender, gender identity, sexual orientation, age, disability, nationality, language, religion, political opinion and other similar grounds.

We know this. We know that women continue to be discriminated in the labour market and are under-represented in political assemblies.

We know that Roma people still have to face anti-Gypsyism and social standards much below the rest of the population. We are also aware that some other ethnic and national minorities are deeply disadvantaged.

We know that immigrants in many cases are turned down when seeking jobs and often made victims of xenophobia. We are aware that Muslims – religious or not – are confronted with widespread Islamophobia.

We have noticed that lesbian, gay, bisexual and transgender people are badly treated in a number of countries, that they suffer homophobia, police harassment and are denied freedom of assembly.

We have also seen that persons with disabilities are not granted equal opportunities as of right and often depend on charity. We know that psychiatric hospitals in several countries continue to be under-resourced and apply outdated treatment methods.

We have been reminded that these and other vulnerable groups are badly protected against the consequences of the economic crises. Among them are elderly people and others without any chance to start again.

No doubt we are faced with enormous challenges in the coming years to combat these inequalities and to build a society where there is room for everyone, not only for the wealthy and strong. A society where social justice is protected.

In this endeavor the national parliaments in Europe will of course be absolutely crucial.

I would like to outline some ways in which parliaments can contribute further and help to turn non-discrimination into reality in our societies. I will do this in the context of four major areas of work:

- Law making and ratifications;
- Approving human rights policies and plans;
- Adopting state budgets;
- Controlling the executive.

I. Law making and ratifications

Law making

Parliamentarians have a crucial role to ensure as close a relationship as possible between national legislation and agreed international human rights standards, including the European standards. This goes certainly for the phenomenon of discrimination.

Parliaments should ensure that national legislation is compliant with the provisions contained in the relevant UN conventions¹ as well as the case-law of the European Court of Human Rights (the Strasbourg Court) under Article 14 of the European Convention on Human Rights (ECHR) and its Protocol No.12.²

Many judgments of the Strasbourg Court can only be fully and effectively implemented through you, because they require existing legislation to be amended or abrogated or new legislation to be adopted.

In fact, important changes in legislation have resulted from the Strasbourg Court's judgments on the basis of Article 14. In Cyprus, for example, following the *Aziz* case, legislation was passed to grant eligibility and voting rights in presidential, parliamentary and municipal elections to Turkish-Cypriot citizens residing in the government-controlled part of the island.³

A recent ruling on the basis of Protocol No. 12 will also require the intervention of parliament. The Court found Bosnia and Herzegovina in breach of the Protocol for prohibiting a Roma and a Jew from standing for election to the state presidency.⁴

Apart from enacting, amending or abrogating legislation, parliaments can also question and guide governments on the execution of the Strasbourg Court's judgments which require 'general' measures for their implementation.

The Council of Europe, and in particular the European Commission against Racism and Intolerance, has provided extensive guidance for national lawmaking on anti-discrimination.⁵ The European Union has also adopted three Directives, which have given an invaluable impetus in this area in its member states in recent years.⁶

¹ See, for instance, Article 26 of the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women.

² Article 14 of ECHR provides protection against discrimination in respect of "[t]he enjoyment of the rights and freedoms set forth in this Convention". Protocol No. 12 to ECHR extends this protection by establishing a general prohibition of discrimination in respect of "all rights set forth by law" and "by any public authority".

³ *Aziz vs. Cyprus*, judgment of 22 June 2004. The Court found Cyprus in violation of the right to free elections protected by Article 3 of Protocol No. 1 to the ECHR, alone and in combination with Article 14 of the ECHR.

⁴ *Sejdić and Finci v. Bosnia and Herzegovina*, judgment of 22 December 2009.

⁵ CRI (2003) 8, ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination, 13 December 2002

⁶ Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

These instruments indicate that member states must have a comprehensive body of anti-discrimination legislation which should have a clear scope, accessible and effective mechanisms for implementation, and adequate sanctions.

A few key elements deserve to be stressed in particular:

- The legislation should cover a wide range of grounds. At the same time, we should avoid creating a hierarchy between grounds of discrimination (which, unfortunately, the EU Directives have done⁷).
- Vital areas such as the activities of the police, border control officials and immigration authorities should be brought under its scope.
- Positive measures (i.e. supportive measures that target members of groups disadvantaged as a result of discrimination) should be permitted.
- Public authorities should be duty-bound to promote equality and eliminate discrimination. The purpose is to ensure that non-discrimination is mainstreamed in all activities of public authorities (policy making, service delivery, regulation, enforcement, recruitment etc.).

Ratifications

It is also important that the member states of the Council of Europe accept to be legally bound by the different international instruments which address discrimination. This is because these instruments complement each other and only offer adequate protection against discrimination when they are used together.

Usually, decisions for ratification start with a proposal from governments. However, if they do not take the initiative, parliaments are free to step in.

In this context, I would like to draw your attention in particular to Protocol No. 12 to ECHR, the Framework Convention for the Protection of National Minorities and the European Social Charter.

Protocol No. 12

This Protocol extends the protection against discrimination further than the ECHR. With this Protocol, we are protected not only if we are discriminated against in respect of one of the rights and freedoms contained in the ECHR; we also enjoy protection against discrimination relating to any rights set forth by law and in fact all actions and omissions by public authorities.

See also Directive 2004/113/EC of the Council of the European Union implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

⁷ Anti-discrimination legislation in place today in the EU member states have left imbalances in the levels of protection awarded to individuals according to the grounds of discrimination. For instance, individuals cannot be discriminated in accessing services because of their ethnic origin; however, they are not protected if they are discriminated against because they have a disability or because of their sexual orientation. A proposal for a Directive that would bridge these gaps is currently being discussed.

Unfortunately only 17 of our 47 member states have accepted to be bound by these more protective provisions so far.⁸ We hope that more will join soon.

Framework Convention for the Protection of National Minorities (FCNM)

This Convention is another key instrument we have at our disposal to eradicate discrimination in Europe. It has been ratified by 39 member states of the Council of Europe.⁹ It is therefore one of the most widely accepted international human rights standards in the region.

In countries which are still not parties to the FCNM, members of parliament can support ratification. To this end, I would like to convey the message that this important instrument is also a flexible one. It can be adapted to countries with very different approaches to national minorities. This includes countries where the very notion of national minority is foreign to official policy.

European Social Charter (ESC)

In times of economic crisis, which impact in a disproportionately negative manner on already disadvantaged groups, the need to protect economic and social rights cannot be overemphasised.

Therefore, it is essential that member states of the Council of Europe ratify the European Social Charter (Revised). States enjoy a certain flexibility in choosing to be bound by one or the other provision of the Charter. The provisions which directly concern discrimination enjoy general acceptance.¹⁰ It is desirable however, that as many provisions of the ESC as possible are accepted.

In addition, I would strongly encourage you to support ratification of the Protocol to the ESC which enables certain organisations to file collective complaints before the European Committee of Social Rights (the body responsible for monitoring the implementation of the Charter). The decisions made by the Committee under this procedure have included important findings of discrimination, notably in respect of Roma in areas such as housing, social and medical assistance, and social, legal and economic protection of the family.

II. Approval of human rights strategies and plans

There is a positive trend towards having major government strategies approved by parliaments in various human rights fields, for instance on gender equality, children's rights and migration policies. This provides the parliaments with the opportunity to influence governments on policy-making in a more comprehensive manner.

A particular manifestation of this trend is the increasing interest among member states of the Council of Europe in methods for the systematic planning, implementation and monitoring of human rights protection.

⁸ As of 2 July 2010, the countries that have not yet ratified Protocol No. 12 are: Austria, Azerbaijan, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Sweden, Switzerland, Turkey and United Kingdom.

⁹ All member States of the Council of Europe except for Andorra, Belgium, France, Greece, Iceland, Luxembourg, Monaco and Turkey.

¹⁰ See for instance: European Social Charter (Revised) Art 1(2), interpreted by the European Committee of Social Rights as prohibiting all forms of discrimination in employment; Art 20 : the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex; and (non-optional) Article E : non-discrimination.

I have tried to assist member states in these efforts by preparing a Recommendation, which provides guidance on the subject matter.¹¹

Several national parliaments have already adopted action plans in the field of human rights; some (e.g. Azerbaijan, Croatia, Lithuania, Norway, Moldova and Sweden) have covered all human rights, while others have addressed specific human rights.

In particular, some countries (Ireland and Norway, for example) have adopted national action plans against discrimination, notably as a follow up to the 2001 World Conference against Racism.

I consider programs for the systematic implementation of human rights (including non-discrimination) as an indispensable tool for addressing problems in the human rights field in a comprehensive manner. Such efforts have to start with a baseline study defining the current shortcomings and lead to a concrete action plan.

This would include measures I have mentioned here: ratification of international instruments; implementation of decisions and recommendations of international bodies; enactment of effective anti-discrimination legislation, abrogation of legislation which may be directly or indirectly discriminatory, the setting up of institutions or the launch of nation-wide campaigns or other initiatives.

III. Adopting state budgets

The adoption of a state's budget has far-reaching implications for the rights of the individual. The promotion and protection of all human rights requires financial resources. The right to protection against discrimination is certainly not an exception to this rule.

Governments are bound by international accords to use their available resources to the maximum extent to counter discrimination. It is therefore a collective responsibility to address the conditions of those who are disadvantaged. They should not have to depend on charity; they should be given priority when decisions are made about the allocation of resources.

It is crucial that parliaments ensure that these priorities are adequately reflected in the budgets they adopt. In other words, parliaments should carry out a human rights-based budget analysis.

This analysis should include a particular examination of how budgets impact on groups that are vulnerable to discrimination, for instance women, persons with disabilities, ethnic minorities, lesbians, gays, bisexual and transgender persons, elderly persons or religious minorities. Such an analysis can also be used to screen public revenue, notably taxation, against the possible discriminatory effects of fiscal policy.

More generally, human rights-based budget analysis tends to improve efficiency, accountability and transparency, notably through the use of performance targets and a participatory approach to budget formulation that involves not only ministries, but also national human rights institutions and civil society organisations.

¹¹ Recommendation of the Commissioner for Human Rights on Systematic Work for Implementing Human Rights at the National Level, 18 February 2009, CommDH(2009)3.

Rights-based budget analysis is a fairly new approach. In Europe, the area in which it has been used most extensively is gender equality. However, these experiences can be usefully extended to ensuring equality on grounds other than gender.

In times of economic crisis such as the one we are currently experiencing, a human rights-based budget analysis which takes care of groups vulnerable to discrimination appears even more urgent. There are obvious signs that the economic crisis has a disproportionately negative impact on those already in a disadvantaged position. The protection of their rights, and especially social and economic rights, is therefore even more urgent.

If we fail here, there is a risk that the current economic crisis will be turning into a social crisis – with political repercussions.

IV. Controlling the executive

Parliaments have of course also a significant role to play in monitoring the performance of governments. So also in the field of human rights.

An Ombudsman Office accountable to parliament, with institutional and practical independence and adequate resources, is a key component for delivering effectively on this responsibility.

The establishment of a specialised body for the elimination of discrimination and the promotion of equality has already proven to be an indispensable feature in several countries. Any anti-discrimination legislation adopted domestically should be complemented by such a body.

A number of equality bodies exist in Europe today. The institutional arrangements differ – they may take the form of specialised commissions, Ombudsman-type institutions or national human rights institutions. There is also diversity as concerns their duties: handling complaints; assisting victims of discrimination; and/or raising awareness on equality.

Next month, my Office will organise a workshop on “effective and independent structures for promoting equality” in order to share experiences from the different models existing in Europe. Subsequently, we will prepare an “Opinion” in order to provide further guidance on how this important work can be pursued.

We will look in particular into means to strengthen two fundamental components: the *independence* of these bodies, including their accountability to parliament, and their *effectiveness*, notably in terms of duties and resources.

Another aspect of a parliament’s monitoring role is to request reports on the implementation of the judgments of the Strasbourg Court and the decisions and recommendations of various monitoring mechanisms, notably those of the Council of Europe.

The Parliamentary Assembly of the Council of Europe has on numerous occasions underlined the role of national parliaments in monitoring the implementation by governments of the judgments of the Strasbourg Court. Unfortunately, countries occasionally delay the full and effective execution of these judgments, especially when they require the adoption of ‘general measures’ to prevent future violations similar to those found in the judgment.

Parliaments could also play a role in following-up on the conclusions of the Advisory Committee of the FCNM and the conclusions and decisions of the European Committee of Social Rights.

To sum up, parliaments have an absolutely essential role in preventing discrimination through their basic work as law makers and controllers of the executive powers. The fact that extremist groups try get a foot into the elected assemblies – and have succeeded in a number of cases – does not change this. On the contrary, it makes the challenge for the democratic parliamentarians even more crucial.

Our parliamentarians are human rights defenders.