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The potential of equality bodies in times of economic crisis

Equinet High-Level Meeting with Heads of National Equality Bodies “Realising the potential of equality bodies”

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Economic crisis and equality bodies

Radical austerity measures have been introduced in several European countries. Although governments have stated they will try to minimise the negative social impacts, it is already clear that many vulnerable groups are badly hit by the economic downturn and uncertainty.

The potential negative consequences are multiple. Gender equality can be affected. Older persons may have diminished available resources and options for care. Reasonable adjustments and accessibility for people with disabilities are at risk. Migrants meet a xenophobic response. Roma and many other ethnic minorities are viewed with hostility. More people live under poverty.

At stake are essential values of basic justice and social cohesion. Those already disadvantaged have no belts to tighten and must not be asked to make sacrifices for a crisis which was not of their doing. Austerity measures which exacerbate inequalities will only postpone problems and in some fields make it even more costly to resolve them at a later stage.

The role of equality bodies in combating discrimination and promoting equality is particularly important in times of economic crisis. Yet at the same time, equality bodies and other national human rights structures also feel the chill of diminished public spending. I have noticed during my country visits that often their budgets have been cut and previously separate structures are being merged together.

The case for the central role equality bodies play in society has to be made clear and standards set for their effective functioning. Limiting the capacity of equality bodies, ombudsmen, and human rights commissions when they are most needed should be

avoided. They can assist authorities in assessing the consequences of proposed policies and budget decisions. There is a need for a counter weight to a purely economic analysis to ensure that the social aspects, and the human rights of vulnerable individuals, are not ignored.

There is much at stake. A new generation of equal treatment legislation is emerging in Europe. It seeks to be comprehensive as regards the range of grounds and material scope covered. It defines discrimination in a broad way, including socio-economic status and multiple forms of discrimination. Sanctions are also becoming more effective and dissuasive although more progress is needed in this respect.

Expanding positive duties for promoting and implementing equality are also essential. A wide range of authorities at national and local levels as well as private bodies have been made duty bearers for implementing equality in a proactive way. This development has been described as a new era of transformative equality.

A determined response is needed to strengthen the situation of equality bodies. Firstly, their current role has to be clearly delineated and standards set to ensure their independence and effectiveness. Secondly, the full potential of equality bodies must be developed to meet the implementation challenges of expanding equality duties. More than ever, equality bodies will have to work through and often lead an extensive network of authorities, employers, service providers and civil society organisations who share the task of promoting equality.

Independence and effectiveness

Equality bodies have the potential to play a number of valuable roles. They examine and make findings on complaints of discrimination and so enable people to exercise their rights under equal treatment legislation. They also support employers, service providers and policy makers to develop effective equality policies within their organisations and mobilise a wide range of stakeholders to combat discrimination. In addition, equality bodies are essential for developing a knowledge base about inequalities and discrimination. Ultimately, they contribute to a culture of rights within society which recognises the value of strong equal treatment legislation.

Independence and effectiveness are the core qualities of equality bodies. The need for the independence and effectiveness of equality bodies is highlighted in a broad range of international instruments. These include the Paris Principles, EU Equality Directives, the UN Convention on the Rights of Persons with Disabilities and ECRI General Policy Recommendations.

The guidance they offer and the standards they set need, in some instances, to be tailored to suit the particular circumstances of equality bodies. There is a broad diversity among the national structures established in member states. It is necessary to further develop these standards to ensure they fit in the current realities and enable the full realisation of the potential of equality bodies. This is the aim of my recent Opinion on national structures for promoting equality. It does not seek to replace or alter the valuable provisions of the international instruments; rather it builds on and clarifies their provisions.

Independence of the bodies means that they are able to allocate their resources as they see fit, make decisions in relation to their own staff, determine their own priorities and exercise their powers as and when they deem necessary. The legal structure of the bodies, the manner in which appointments of board members and senior staff are made, and the processes of accountability are further key factors in securing their independence.

There are a variety of accountability mechanisms across the member states. These tend to involve either formal reporting to government ministries or formal reporting to the parliament. Both mechanisms can serve to undermine the independence of the body where the institution being reported to has the power to intervene in the plans or operations of the body or in the appointments to the body. Care is required in structuring this accountability to ensure that independence is preserved.

Effectiveness requires that equality bodies are able to deploy all of their functions and powers to a scale and a standard that impacts discrimination and inequality. The level of resources made available to them and the nature and range of functions accorded are essential factors for effectiveness.

Inadequate resources are an issue for equality bodies in most member states. The lack of sufficient resources means that many of these bodies are unable to implement their functions and powers to the critical mass required for impact. A sufficient level of resources will naturally vary from member state to member state but we need to develop objective tools for assessing the required resource needs in each context.

Positive duties and networking

One major development in the new generation of equality legislation is the inclusion of positive duties on authorities, employers and service providers. For example, in the United Kingdom due regard to equality is required from many public sector organisations in carrying out their functions. More specific duties have been imposed on employers in the public and private sectors to be proactive in promoting equality through developing equality plans, implementing diversity policies or conducting wage surveys. Positive duties have also been imposed on local authorities to plan for equality.

This means that equality bodies will have to work through a broad network of stakeholders in promoting and implementing equality. In particular, non-governmental organisations, trade unions, employer bodies and public authorities can and do play important roles. Equality bodies need to plan their own activities in the context of this wider endeavour. They should avoid duplication and enhance their impact through coordination with other organisations.

Equality bodies are well placed to act as a hub for different stakeholder organisations and able to bring coherence to shared ambitions. They can mobilise and give practical support to stakeholder organisations. This engagement can result in an important multiplier effect to the work of these bodies.

Non-governmental organisations and trade unions can play particular roles by providing advice and assistance to individuals who experience discrimination and in taking a case under equal treatment legislation. Equality bodies can stimulate and support the work of these stakeholders.

Effectiveness also requires networking between those statutory bodies that hold mandates related to human rights and equality within a member state. These bodies include equality bodies, national human rights institutions and a variety of ombudsperson offices. This networking should ensure there is no duplication of activity. It should allow the bodies to refer complainants to the most appropriate body. While based on the reciprocal respect for the independence of each body, networking should enable joint planning to maximise the impact of all these bodies.

Accessibility and outreach

European studies have clearly demonstrated the problem of under-reporting among the victims of discrimination. This underscores the importance of accessibility and outreach of equality bodies. Effective communication is an important element in achieving accessibility. Accessibility and outreach are also served by straightforward procedures that do not involve a cost to the complainants.

Most importantly, accessibility requires a local presence for equality bodies. Local offices and outreach initiatives increase the visibility of the bodies and enable immediate access to their services for those who have experienced discrimination. They are a valuable tool to address under-reporting. However, so far they have only been put in place in a small number of member states.

There are several vulnerable groups which will require sustained efforts from equality bodies. Outreach to Roma is especially important to ensure that they are aware of equality legislation and able to complain about the discrimination they experience. Equality bodies should also play a role in combating anti-Gypsyism and making public figures accountable for their anti-Roma rhetoric. It is very difficult to make progress when hate speech against Roma goes on. My Office will publish a report on the human rights situation of Roma in Europe early next year.

In June this year, we published a report on discrimination on grounds of sexual orientation and gender identity which includes a set of recommendations for addressing the issue. Many LGBT NGOs interviewed for the study expressed the view that national equality bodies were not yet sufficiently active in promoting equality in this field. Sexual orientation and gender identity should be explicitly covered by the mandates of equality bodies. Particular efforts are needed for promoting the equality of transpersons. I am aware of Equinet's activities in this field and some good practices, especially for collecting data, have already emerged from the work of equality bodies in Belgium, Germany and Sweden, for example.

The UN Convention on the Rights of Persons with Disabilities is currently being ratified and implemented in member states. Some equality bodies have already been given new duties for promoting and monitoring the implementation of the Convention. Inspired by the provisions of the Convention, my Office will publish papers on legal capacity and community living early next year. Equality bodies' outreach to people with disabilities who still live in institutions and their role in improving opportunities for reasonable adjustments are among priority concerns. Legal capacity and the possibility to bring cases to court for or on behalf of persons with disabilities are burning issues. I have

recently intervened at the European Court of Human Rights in a case which demonstrates the extreme vulnerability of individuals who are placed in institutions without any regard for their well-being.

Discrimination based on age is gaining more attention along with the demographic trend of ageing populations in Europe. The judgments on age discrimination in employment by the Court of Justice of the European Union have clarified the status of age as a prohibited ground of discrimination. Age discrimination will require further attention from equality bodies including outreach to older persons and children alike. Both groups would benefit from more individualised means of communicating with equality bodies.

All this demonstrates the key roles equality bodies can play when their independence and effectiveness are secured. The question is not whether the member states can afford equality bodies but rather that they can ill-afford not to have one. Without equality bodies the road towards a shared culture of rights and equality would be endless.