

# **ECRI – European Commission Against Racism and Intolerance**

## **Seminar with National Specialised Bodies**

### **to combat Racism and Racial Discrimination**

#### **“Challenges faced in the current institutional and budgetary environment”**

**Strasbourg 30-31<sup>st</sup> May 2013**

#### **Summary & Conclusions – Michael Farrell, ECRI member**

The theme of this year’s seminar was “Challenges faced in the current institutional and budgetary environment”. This arose directly from the seminar last year where there was a lot of discussion and concern about cuts in the budgets of national specialised bodies and national human rights institutions and pressure to merge anti-racism and equality bodies with national human rights commissions. This was generally felt to be motivated by a desire to cut costs rather than to strengthen the equality and human rights infrastructure.

The theme for this year was designed to look in more detail at specific problems arising from the nearly universal budget cuts for these bodies and the merger proposals and how these bodies could preserve their independence and remain effective in these circumstances. And during the seminar it was also pointed out that in a number of countries the threat from racism was actually increasing, linked with the economic crisis and the growth of openly racist political parties and movements.

The importance and urgency of these issues was emphasised by the fact that it brought together nearly 80 people from 42 of the 47 member states of the Council of Europe, as well as representatives of the Council of Europe and international and regional organisations like the UNHCR, the UN High Commissioner for Human Rights, the EU Fundamental Rights Agency, the European Commission, ODIHR and Equinet. And the level of concern was demonstrated by the very lively discussion in the various sessions.

A number of key points that might help to strengthen the position of the equality and human rights bodies were raised during the discussion and these could possibly contribute to setting

the agenda for future work by ECRI, Equinet, the Fundamental Rights Agency, the UN High Commissioner's office, the Council of Europe and the equality and human rights bodies themselves.

The nature of the challenges to be faced was well set out at the beginning of the seminar by **Barbara John**, Vice Chair of ECRI, in the opening session when she gave the example of defending the rights of immigrants in the current climate when they are often blamed for rising unemployment by racist groups and when some more mainstream political parties pander to such prejudices. Defending immigrants is not popular with some sections of society and can make things difficult for organisations that do so, but she said that if equality and human rights bodies do not encounter problems and opposition from time to time they are probably not doing their job properly.

### **Session 1: Independence**

In the first session of the seminar, **Jean Paul Lehnens**, ECRI member and President of the Luxembourg Human Rights Institution, stressed the importance of independence for equality and human rights bodies and outlined the key factors for securing and maintaining independence. But he also noted that there is a difference between *de iure* independence and *de facto* independence and warned that a body with a very impressive mandate and legal basis could be ineffective if it did not have adequate resources.

**Vasco Malta**, from the office of the Portuguese High Commissioner for Immigration and Intercultural Dialogue, said that his organisation had been quite independent in its work but was not formally independent of the government. This was about to be changed due to representations from ECRI among others. He stressed that independence was necessary to win the confidence of marginalised ethnic minorities, many of whom did not report acts of discrimination because they had no confidence that anything would be done about their complaints.

**Ingrid Nikolay-Leitner**, Director of the office of the Austrian Ombud for Equal Treatment, said that there was a need for basic standards or criteria for equality bodies to be set out in EU law. In the context of the discussion about a possible merger with the national human rights body in Austria, she stressed the differences between such bodies in their mandates and

methods of working and the need for parity of esteem between equality and human rights in any merged body.

There was a very thorough discussion following the presentations, with several speakers repeating the call for the establishment of a set of international standards for equality and human rights bodies and stressing in particular the importance of independence and adequate human and financial resources. Some speakers said that it would be valuable if such a set of standards or principles was incorporated into EU law as many of the equality bodies had been set up specifically to implement the EU Equality Directives.

In terms of defending equality and human rights bodies from crippling budget cuts, several speakers suggested that these bodies needed to build up a strong relationship with NGOs who could mobilise to support them if they came under threat from unsympathetic governments. Others stressed the importance of support from the international networks of equality and human rights bodies and the UN and Council of Europe institutions. Mandana Zarrehparvar of the Danish Institute of Human Rights said that support from the international networks had protected the Danish institute when it was under serious threat in 2008.

### **Session 2 (A): Effectiveness**

In the second session, *Jozef De Witte*, Chair of the Equinet Executive Board and director of the Centre for Equal Opportunities and Opposition to Racism in Belgium, addressed the issue of how equality and human rights bodies could be most effective. He also stressed the need for a set of standards or principles for such bodies, saying that the EU Equality Directives were weak on the question of what was required of the bodies that were to be established in EU member states to assist victims of discrimination.

He said as well that the Paris Principles for National Human Rights Institutions did not set out specific criteria for the effectiveness of such bodies. ECRI's General Policy Recommendations 2 and 7 were helpful in this connection but they probably needed to be updated, he said.

Regarding mergers of equality and human rights bodies, Mr De Witte said they should be used to level up the powers and effectiveness of the merged body and should not have the effect of lowering or weakening its capacity or impact.

*Mirosław Wroblewski*, head of the Constitutional and International Law Department at the office of the Human Rights Defender of Poland, outlined how, when the Polish Ombud's office was given responsibility for implementing the EU Equality Directives, it was not given additional resources to do so. However, they had built up good relations with NGOs and an NGO coalition had helped to persuade the Polish Parliament to give them the necessary resources. He also gave a neat and simple characterisation of at least one part of the role of a national equality or human rights body. It was to be “a pain in the neck” for government.

*Csaba Ferenc Asztalos*, President of the National Council for Combating Discrimination in Romania, described how the negotiations for Romania to join the EU had played an important part in getting the Romanian government to set up the Council. However, he said they still had to fight every day to keep their independence.

The discussion at this session raised another important issue, namely the distinction between specialised bodies which advocate for victims of discrimination and those which adjudicate on discrimination complaints, and the situation of some bodies which combine both functions. There was not sufficient time to discuss this issue thoroughly and it may be necessary to arrange to discuss it more fully at another time.

## **Session 2 (B): Effectiveness – maintaining core expertise**

This session continued the discussion on the effectiveness of equality and human rights bodies. *Paul Lappalainen*, of the office of the Swedish Equality Ombudsman, rather dramatically reminded the seminar's participants of the struggles against racism in the United States that helped to awaken consciousness on this issue in Europe when he played video clips of Martin Luther King and the black Civil Rights movement in America. He also warned from the Swedish example, where four Ombudsman institutions had been merged into one Equality Ombudsman in 2009, of the danger of mergers where no serious thought has been given to what is involved, and he stressed the need for everyone in merged organisations to re-learn the basics of both equality and human rights.

*Chris Oswald*, of the Scottish division of the UK Equality and Human Rights Commission, gave some very alarming figures on the effects of the merger of several bodies in the UK, combined with drastic budget cuts. He said the budget of the new Equality and Human Rights Commission when it was set up in 2007 had been £70 million and it had employed

575 people. By 2013, however, their budget had been reduced to £17 million and they employed 205 people. While that might still seem a sizeable establishment to people from poorer countries, it represented a massive downsizing of the human and financial resources of the UK body.

In the discussion that followed, several people raised the question of how to measure the impact of the work of equality and human rights bodies and it became clear that much work remained to be done on developing tools for assessing impact.

### **Session 3: Division of Labour**

This session dealt with the division of labour in countries where more than one specialised body deals with combating racism and racial discrimination. The speakers were *Ignacio Sola Barleycorn*, Secretary General of the Spanish Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin, established in 2009, and *Carmen Comas-Mata Mira*, Director of the Cabinet of the Spanish Defensor del Pueblo or Ombudsman, which had been established in 1981.

The Spanish Ombudsman has a broad mandate and is independent of Government whereas the Council for Non-Discrimination is linked to a government Department and is limited to areas of racial discrimination. On the other hand the Ombudsman's mandate is limited to public bodies whereas the Council can also deal with conduct by private bodies. The Ombudsman's budget had been cut at a time when social tension and racist views were on the rise due to the economic crisis.

The two speakers gave examples of how they were cooperating together and referring cases to each other as appropriate to avoid overlaps and increase their effectiveness in the current difficult situation.

In the discussion which followed, examples were given of useful cooperation between equality bodies where there is more than one equality body in a single country, and between equality bodies and human rights institutions.

#### **Session 4: Accessibility and Relations with NGOs**

The fourth session dealt with the accessibility of national specialised equality bodies and their relations with NGOs and was addressed by speakers from both specialised bodies and the NGO sector.

**Serhiy Ponomaryov** from the office of the Ukrainian Parliamentary Commissioner for Human Rights said their office had recently become the national equality body as well but with very limited resources to cover a very large country. Partly to make up for this, they tried to work very closely with NGOs and do joint projects with them so as to benefit from their access to vulnerable and isolated communities like the Roma and their contacts in distant areas of the country, and also to avail of the expertise of some specialist NGOs.

**Kalliopi Spanou**, the Greek Ombudsman, said that since 2005 her office had also become the national equality body to implement the EU Directives. They had limited resources, especially in the current economic crisis and these were inadequate in a country with a number of different regions and a large number of islands. They tried to visit the different regions of the country and also to use new technology like tele-conferencing and Skype to make themselves accessible to remote communities. They also worked with NGOs representing groups like Roma and LGBT persons in order to win the trust of those communities.

**Vladimir Lukin**, the Russian Federal Ombudsman, described the problems of working in a vast country with limited resources. There are 76 regional ombudsmen as well but there is no direct link between them and his office although he seeks to cooperate with them in practical ways. His office tries to work closely with NGOs to benefit from their experience and contacts but it is likely that this will become more difficult with new laws introduced recently that will seriously restrict the activities of NGOs.

From the NGO community, **Olga Abramenko**, Director of the Russian Anti-Discrimination Center, Memorial, pointed out that there is no anti-discrimination law in Russia and she was very critical of some of the regional or local Ombudsmen. She said that the new laws governing NGOs would prevent them from receiving funds from foreign or international foundations in a situation where there was virtually no financial support available in Russia itself. The new laws would also penalise criticism of the police. Her organisation and an

LGBT NGO are currently facing criminal charges which could result in huge fines that would force them to close down.

*Simon Papuashvili*, from the International Partnership for Human Rights, based in Brussels, explained that the Partnership assisted NGOs in Eastern Europe and Central Asia with advocacy. They had recently conducted a survey among NGOs in five countries about how they viewed national specialised bodies in the racism area. The NGOs had expressed some concern about the method of establishment of such bodies and the appointment of their members, saying that the processes were not always transparent and that sometimes only elite groups were consulted in connection with such matters.

Nevertheless, there was a good deal of cooperation between the NGOs and the specialised bodies. Suggestions for best practice were that NGOs and national specialised bodies could work together in awareness raising, in projects like training the police and prison staff and in joint advocacy and strategic litigation.

In the discussion afterwards, some speakers said that while working with NGOs was essential for equality and human rights bodies, they should be careful to retain their independence of NGOs as well as government, if only to establish their credibility with both sides and to be able to act as intermediaries or channels of communication where necessary.

## **Conclusions**

These are some tentative conclusions from the discussions. They represent only my personal impressions of the seminar.

There was a strong sense coming through a lot of the discussions that in this time of challenges due to the economic crisis, the related rise in racist and xenophobic movements in a number of countries, and a growing hostility to immigrants and asylum seekers, equality and human rights bodies are under threat at the very time when they need to be most effective.

There was a feeling that there is a need to develop new international standards for such bodies in terms of their mandates and the need to entrench their independence, and also the need for adequate human and financial resources to enable them to do their job. It was suggested that this was necessary in relation to implementing the EU Equality Directives,

which require the establishment of bodies to assist victims of discrimination but do not set out minimum requirements for such bodies.

There was also a view that the Paris Principles for national human rights institutions, which also say very little about the minimum requirements for effectiveness, needed to be updated. And ECRI's General Policy Recommendations 2 and 7, which have played an important part in the development of national specialised equality bodies, could also do with some updating.

It was suggested that it would be particularly valuable if minimum standards were included in EU law, which would then be binding on the EU member states and would influence the structure, mandate and resourcing of national bodies in the non-EU states as well.

And it was suggested that there would need to be a monitoring process to try to enforce these standards, especially in states where the governments are less than sympathetic to equality and human rights institutions.

Some speakers mentioned that there are a number of very important and valuable reports on national specialised bodies and national human rights institutions that have been published in recent years by the former Council of Europe Human Rights Commissioner, Thomas Hammarberg, by Equinet, the EU Fundamental Rights Agency and the office of the UN High Commissioner for Human Rights. Between them these reports set out what could be the basis of a new set of international standards for national specialised bodies, NHRIs and merged bodies. It might not require a great deal of work to pull together the key elements of these reports to form a workable set of principles which could be submitted to the EU.

That was the bigger picture, but there was also a lot of concern about the present threat to equality and human rights bodies due to budget cutbacks and enforced mergers, and the presentation by Chris Oswald from the UK Equality and Human Rights Commission showed how serious an effect this can have.

There were suggestions that the equality and human rights bodies needed to build stronger ties with NGOs and civil society and convince civil society of the value and necessity for such bodies so that civil society organisations will mobilise in their defence if required.

It was also suggested that there was a need for solidarity and support from the international and regional organisations in this field, such as the offices of the UN and Council of Europe



Commissioners for Human rights, ECRI and other Council of Europe bodies, the EU Fundamental Rights Agency, the Office for Democratic Institutions and Human Rights (ODIHR), and, of course, Equinet. Closer relations need to be developed between the national bodies themselves in order to defend such bodies against developments that would undermine them and also to share best practice so as to raise standards rather than allow them to be lowered.

There was also a good deal of discussion about how to cope with pressure for mergers or with actual mergers where these become unavoidable. Among the concerns raised were how to avoid the takeover of merged bodies by one stream or the other of equality or human rights, or the development of separate silos for each stream within the merged body. And how to fully integrate these two streams which for historical reasons have developed separately in many countries.

With experience already gained about mergers in several countries, it may be time to begin to draw some lessons which could help to avoid mistakes in other countries, or to develop forms of cooperation between bodies that would demonstrate that actual mergers are not always the best option.

It was suggested as well that the equality and human rights bodies could argue more strongly and effectively that inequality and discrimination lead to social tension and disintegration and are in fact enemies of economic recovery. Therefore, undermining equality and human rights bodies will be more costly for the countries concerned even in the short term.

And finally the seminar has left us with some reminders of the importance and effectiveness of the work that the national specialised bodies and national human rights institutions can do, such as Csaba Asztalos's story of the Romanian bus driver who was asked by a racist passenger why he had let a number of Roma women onto his bus. The driver said he had done so because he was afraid of getting into trouble with the Council for Combating Discrimination. The lesson: anti-discrimination laws can work.