



**all different, all equal :**  
*from principle to practice*

**European contribution to the world conference against  
RACISM, RACIAL DISCRIMINATION, XENOPHOBIA  
and RELATED INTOLERANCE**

**Strasbourg, 11 - 13 October 2000**

EUROCONF (2000) 10 I

## **REPORT OF WORKING GROUP I**

**Legal protection against racism  
and related discrimination at  
sub-national, national, regional  
and international levels**

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16 October 2000

## ***WORKING GROUP I : Legal protection against racism and related discrimination at sub-national, national, regional and international levels***

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### **I General remarks**

Throughout the discussion, the participants in Working Group I emphasised that, while legal standards are essential, it is their effective implementation and practical measures that can eventually make a difference in combating discrimination. It was stressed that, given the imperative nature of the legal standards in this field, the calls for necessary measures in the field of non-discrimination must be formulated in a strong and unambiguous manner. Such calls need to cover, consistently and comprehensively, all relevant grounds of discrimination, including discrimination on the basis of colour. It was also underlined that legal obligations in this field go beyond negative obligations, and that States have equally essential obligations to take positive measures/affirmative action aimed at guaranteeing full and equal human rights to the persons concerned and at providing remedy to injustices that occurred in the past.

Working Group I also touched upon a number of issues that relate more directly to the themes of other Working Groups. In particular, the legal measures that are necessary to combat racism on the Internet, the role of specialised bodies, the need for economic and social indicators to identify marginalized groups and persons as well as gender perspective were raised by participants as important issues with relevance also for the present Working Group.

### **II International standards**

The discussion started with an examination of the relevant international instruments and their effectiveness. The Working Group considered in particular how monitoring could be made more effective so as to ensure the full implementation of these standards. In this context, the role of civil society, including NGOs, was considered to be of utmost importance, and participants encouraged its increasing involvement in the various phases of monitoring. Also, participants considered that in many cases country visits by monitoring organs constitute a useful element of the monitoring process.

It was repeatedly emphasised that the efficiency of international monitoring will be limited if there is no adequate follow-up to the results of this monitoring. In order to ensure such follow-up, it was felt that, in addition

to civil society, the legislatures of the countries concerned should consistently play a role in this process.

As regards specific instruments, the Working Group highlighted the importance of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). A number of participants regretted the fact that the individual complaint mechanism established under Article 14 of the ICERD has only been accepted by a limited number of States despite the fact that it can be a useful tool in combating racism.

In addition to ICERD, participants underlined the importance of other universal instruments with non-discrimination provisions, including those adopted in the framework of the ILO.

The prominent status of anti-discrimination guarantees in the field of international humanitarian law was also highlighted. In this connection, participants discussed more generally how systematic discrimination on the grounds of racial or ethnic origin may constitute a threat to peace and security in Europe and elsewhere and lead to armed conflict and ethnic cleansing.

The participants exchanged views on the new directive of the Council of the European Union prohibiting discrimination on grounds of racial and ethnic origin. The speedy adoption of the directive was welcomed, but many speakers emphasised that the focus should now be placed on its implementation.

Participants noted with satisfaction the expansion of the scope of the non-discrimination provision of the European Convention on Human Rights through the adoption of Protocol No. 12, and a number of speakers expressed the wish that this Protocol will be rapidly signed and ratified by Council of Europe member States and that its implementation will receive the attention it deserves. By the same token, it was noted that Protocol No. 12 does not do away with the need to ratify and implement ICERD and to accept the complaint procedure under its Article 14, as the latter convention contains more detailed provisions and the monitoring mechanisms of the two respective instruments are quite different.

During the discussions, the importance of other Council of Europe instruments was also pointed out. Participants felt that ratification and full implementation of such instruments as the Framework Convention for the Protection of National Minorities, (Revised) European Social Charter, European Charter for Regional or Minority Languages and the Convention on the Legal Status of Migrant Workers would help to counter discrimination in the countries concerned.

### **III Domestic standards**

The Working Group held a detailed exchange of views on the necessary anti-discrimination laws at the national level, with an emphasis on their effective implementation. It was underlined by many participants that, although effective norms of criminal law are necessary, they need to be coupled with adequate and effective non-discrimination provisions in the field of civil law. It was also noted that constitutional guarantees of non-discrimination and equality constitute an element of a comprehensive legislative framework in this sphere. In this connection, the pedagogical impact of anti-discrimination legislation was also underlined.

Several participants pointed out that specialised bodies, such as offices of an Ombudsman and commissions for equal treatment, can contribute to the implementation of anti-discrimination legislation. It was noted that a solid legal basis is important in securing the effectiveness of such bodies. In this regard, reference was made to the useful guidelines contained in General Policy Recommendation No 2 of the European Commission against Racism and Intolerance (ECRI).

A number of participants pointed out that educational and training initiatives for judges, law-enforcement officials and others involved in the implementation of anti-discrimination legislation are instrumental in ensuring the effectiveness of such legislation.

Several interventions were made in support of additional measures to assist victims of discrimination. Participants of the Working Group felt that mechanisms should be in place to guarantee that victims can defend their interest in court proceedings and that they can effectively exercise their right to reparation, including compensation, rehabilitation and other forms of satisfaction.

### **IV Specific issues**

A theme that was considered particularly important by the Working Group was the status of migrants, refugees, asylum-seekers, third-country nationals in the European Union and non-citizens in general. Participants considered that persons belonging to these groups are often subject to discrimination and that such issues, including restrictive policies concerning them, have not yet received adequate attention.

In this connection, the Refugee Convention of 1951 was raised, and speakers requested that States refrain from strict interpretation of this Convention and apply it on a non-discriminatory basis. Furthermore, the ratification of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was considered

to be of special relevance, in particular for addressing concerns about the deprivation of fundamental social and economic rights of "*sans papiers*".

A number of participants stated that they were concerned that nationality is increasingly invoked as a requirement in various contexts and that this leads to the deprivation of fundamental rights of non-nationals. It was also mentioned that the expulsion of immigrants of second generation from their country of residence had led to particularly regrettable situations. The granting of voting rights to non-citizens was mentioned as a means to address problems of the persons concerned and as a way to contribute to the integration of these persons.

In the course of the discussion on integration, States were also asked to facilitate the naturalisation of resident non-citizens on a non-discriminatory basis, and, in this connection, the principles contained in the 1997 European Convention on Nationality were also raised.

The Working Group also discussed other groups, in particular indigenous peoples and Roma, whose situations raise specific questions from the point of view of discrimination and equality. It was considered that their concerns merit due attention of the Conference.

In the Working Group, grave concern was expressed about the trafficking of persons. The human rights of victims, in particular women and children, have always to be respected and guaranteed.