

Texts adopted by Parliament

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Provisional edition

Non-discrimination and equal opportunities for all

P6_TA-PROV(2006)0261

A6-0189/2006

► **European Parliament resolution on non-discrimination and equal opportunities for all - a framework strategy (2005/2191(INI))**

The European Parliament,

- having regard to Article 13 of the Treaty establishing the European Community, pursuant to which the Community has the power to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation,
 - having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾,
 - having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin⁽²⁾ and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁽³⁾, under which any direct or indirect discrimination based on race or ethnic origin, religion or belief, disability, age or sexual orientation is prohibited,
 - having regard to Article 21(1) of the Charter of Fundamental Rights of the European Union, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited,
 - having regard to the various legal instruments adopted by the UN and the Council of Europe which contain a ban on any discrimination in respect of the rights which they are designed to protect, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe's Framework Convention for the Protection of National Minorities and the case-law of the European Court of Human Rights,
 - having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions entitled "Non-discrimination and equal opportunities for all – a framework strategy" (COM(2005)0224),
 - having regard to its resolution of 8 June 2005 on the protection of minorities and anti-discrimination policies in an enlarged Europe⁽⁴⁾,
 - having regard to its resolution of 28 April 2005 on the situation of the Roma in the European Union⁽⁵⁾,
 - having regard to its resolution of 18 January 2006 on homophobia in Europe⁽⁶⁾,
 - having regard to the 2004 Annual Report drawn up by the Network of fundamental-rights experts and that network's thematic report on minorities, which was published in the same year,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A6-0189/2006),
- A. whereas the fight against discrimination is an essential aspect of any integration policy (which in itself serves to underpin social cohesion) and an essential weapon in the fight against exclusion,
- B. whereas discrimination largely stems from ignorance (and hence fear) of other people and whereas the problem should therefore be tackled at source, by means of targeted actions designed to foster tolerance and diversity from early childhood; whereas the Socrates, Leonardo and Jeunesse

programmes have a crucial role to play in this connection,

C. whereas the European Monitoring Centre on Racism and Xenophobia (EUMC) states that dissemination by national authorities of practical information on non-discrimination at national level remains limited and needs to be extended to target groups and the NGOs which support them; whereas governments need to grant greater recognition to the fact that local and regional authorities and civil society should be effective partners in combating racial discrimination and should support any policy objectives to counter discrimination,

D. whereas Article 21 of the Charter of Fundamental Rights (which has been incorporated into Article II-81 of the Constitutional Treaty) has a wider scope than Article 13 of the EC Treaty, insofar as it mentions grounds for discrimination which are omitted from Article 13 - namely colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property and birth; regretting all the more that this broader concept has not been translated into a legally binding practical application,

E. whereas, as recalled recently by the network of experts, in the implementation of the legislative instruments adopted on the basis of Article 13 of the EC Treaty, the Member States must undertake to comply with the fundamental rights enshrined in the general principles of EC law, including the rights, freedoms and principles mentioned in the Charter of Fundamental Rights of the European Union,

F. aware of the fact that granting preferential legislative treatment to certain types of discrimination has the effect of placing grounds for discrimination in a kind of hierarchy which should not exist,

G. whereas there are different ways of understanding the concept of discrimination (depending on whether it is viewed from an individual or collective point of view) and whereas upholding the rights of citizens as individuals does not require the same action as upholding the interests of groups of individuals,

H. whereas it is important to define what is meant by positive action before deciding whether the law should change and if so how; whereas positive action comprises the measures to be taken to tackle inequality and unlawful discrimination and is a tool designed to promote balanced representation of people in areas and at levels where the population as a whole must be represented in equitable fashion; stressing that this concept must not be confined to the employment sector and must go beyond mere equality between the sexes,

I. whereas a culture of non-discrimination should be promoted through education that fosters peace, non-violence and intercultural dialogue,

J. aware of the fact that, in order to compensate for earlier injustices or discrimination, there may be a need for temporary recourse to positive measures based on a "proactive" concept of justice and possibly taking very different forms; whereas the establishment of quotas must be regarded as an extreme measure which may be applied only in accordance with the case-law established by the European Court of Justice and with due regard to the proportionality criterion,

K. whereas in the case of certain particularly disadvantaged groups in society or ones that are denied their rights, the adoption of positive measures – even of specific legislation – is essential if such people are to be able to integrate and thus participate actively in the life of their society and hence to influence the decisions which affect them,

L. drawing attention to the fact that in certain Member States the practice of confining Romany children to special classes or to establishments set aside for the mentally handicapped smacks of racial segregation, and whereas a desegregation policy is required as a matter of urgency,

M. whereas the Advisory Committee of the Framework Convention encourages the introduction of positive measures in favour of members of minorities who are particularly disadvantaged,

N. whereas the UN Committee on Economic, Social and Cultural Rights considers that there is an obligation for the States party to the International Covenant on Economic, Social and Cultural Rights to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities,

O. whereas the EUMC recalls that the true extent and nature of the problem of racism remains difficult to gauge, given the absence or ineffectiveness of both official and unofficial data collection in many Member States,

P. whereas, as the EUMC stresses, without official statistics on ethnic and national origin and on religion, a true insight into discrimination and the success of policies against it will be difficult to ascertain; whereas the lack of sufficient statistical data to illustrate and evaluate discrimination makes it impossible to establish a non-discrimination strategy based, inter alia, on positive action in favour of such groups,

Q. whereas the processing of personal data is regulated at Community level by means of Directive 95/46/EC and whereas, as the network of experts stressed, there is no conflict between personal-data protection and the monitoring of discrimination through statistical means, insofar as the objective of such monitoring is to gain a better understanding of the over- or under-representation of certain groups in particular sectors or at certain levels, and to measure progress, in order to identify the need to act and to select the most effective course of action,

R. whereas the detection of indirect forms of discrimination (which are explicitly banned under Community law) must be based upon reliable statistics relating in particular to certain groups with special characteristics; whereas any unavailability of statistics will in effect deny potential victims of indirect discrimination access to a tool which is essential if their rights are to be recognised,

S. pointing out that elements which may point to the existence of direct or indirect discrimination are interpreted in accordance with national law or national practices and that as things currently stand the use of statistics as evidence for the purpose of proving indirect discrimination is left to the Member States' discretion, which not only leads to a degree of disparity but also makes it impossible in the Member States in which such a practice is not recognised for certain forms of indirect discrimination to be reported,

T. pointing out that equality and the right to live free from discrimination and racism are central elements for a society in which all its members are well integrated; whereas the EU's policies for integration and discrimination should be consistent with each other; whereas, whilst Member States' traditions and cultural norms must be respected, "integration" should be based on a comprehensive approach such as that agreed by the Member States in the Common Basic Principles on Integration of 2004,

General considerations

1. Considers that, in addition to legislative tools and means of redress, the fight against discrimination must of necessity be based on education, the promotion of best practices and campaigns targeting the general public and those areas and sectors where discrimination takes place; stresses that the fight against discrimination should also be based on an awareness of the social (and also the economic) impact of the phenomenon – an awareness that must be relayed by all levels of government, including local and regional levels, and NGOs (which the Member States should closely involve in their anti-discrimination policy);

2. Considers that it is essential to give a clear definition of positive action and to stress that positive action is not positive discrimination; notes that concrete examples of positive action might include, for example: overhauling recruitment policies and practices to identify and remove those that lead to discrimination; taking steps to bring opportunities to the attention of disadvantaged groups; setting targets to improve the representation of disadvantaged groups within the workforce; or providing assistance to help disadvantaged groups to participate in society as a whole;

3. Believes that the sound anti-discrimination practices introduced in the Member States, some of which are broader, stronger and more entrenched than others, should be brought together and disseminated by a process of benchmarking; believes that in this connection the network of Member State bodies responsible for combating discrimination (Equinet) could usefully be strengthened and that all the Member States should be encouraged to become involved in it; believes that the task of gathering and disseminating information and of providing coordination and impetus could eventually be entrusted to the Agency for Fundamental Rights;

4. Welcomes the Commission initiative to launch a European Year of Equal Opportunities in 2007 and hopes that this will help to raise awareness of the various forms of discrimination and of multiple

discrimination and enable the means of redress to become better known; would nevertheless hope that preparations for such initiatives will in future begin at an earlier stage; reiterates its position that the Commission and Member States must ensure that all forms of discrimination are addressed and dealt with equally and reminds the Commission of its promise and commitment to monitor this matter closely and to report to Parliament; continues to regret the fact that inadequate funds were allocated to the Year in view of the importance of the fight against discrimination; since one of the aims of intercultural dialogue is to combat discrimination, calls for the European Year of Intercultural Dialogue (2008) to continue the measures initiated in connection with 2007;

5. Calls on the Commission to promote education that fosters peace and non-violence and intercultural dialogue pedagogy;

6. Considers that, after collecting data, the Member States are not prevented from taking measures in the interest of particular groups not covered by Article 13 of the EC Treaty who belong to categories at high risk of social marginalisation, such as individuals in the process of recovery from substance addiction, recovered addicts and former prisoners, i.e. individuals who are in the process of social reintegration;

7. Deplores the fact that the Charter of Fundamental Rights has not yet been made legally binding, and requests that this situation be remedied; is insistent that when the Commission performs the stringent, systematic checks which it has undertaken to carry out in order to ensure that its legislative and regulatory acts are compatible with the Charter of Fundamental Rights, it should make a particular effort to detect any form of discrimination (either direct or in particular indirect) which various categories of individual could suffer as a result of such acts; considers that the Commission should carry out a discrimination impact assessment on every legislative proposal to ensure policy consistency across the Commission DGs; thinks that the Agency for Fundamental Rights should be closely involved in the impact studies carried out in this connection;

8. Considers – as does the Commission – that if blatant inequalities of an "endemic", "structural or even "cultural" nature are to be remedied and a seriously compromised balance is thus to be restored, it may be necessary in certain cases for a temporary exception to be made to the concept of equality based on the individual in favour of group-based "distributive justice" through the adoption of "positive" measures;

9. Points out that the concepts of "positive action", "affirmative equality" and "distributive justice" reflect one and the same reality, the basis of which is an acknowledgement of the fact that in certain cases, effective action to combat discrimination requires active intervention by the authorities for the purpose of restoring a seriously compromised balance; stresses that intervention of this kind must not be regarded as a form of discrimination (not even as a "positive" form) and that the concept of positive action cannot be reduced to the idea of a quota; points out that such actions may in practice take the most varied forms, such as a guarantee of recruitment interviews, priority access to certain types of training leading to jobs in which certain categories of people are under-represented, priority notification of job vacancies to certain communities and the taking into account of work experience rather than qualifications alone;

10. Points out that the principle of equal treatment does not prevent a Member State from retaining or adopting specific measures intended to prevent or to compensate for the disadvantages linked to one of the grounds for discrimination listed in Article 13 of the EC Treaty, and insists that such measures should be extended to all sectors in which serious inequalities are found, whether in education, health care, housing, access to goods and services or any other area;

11. Is aware that the fact that certain groups are very poorly represented in certain categories of job may have the perverse effect of discouraging those groups from endeavouring to acquire the knowledge which they need in order to gain access to the jobs concerned, which leads to a vicious circle; strongly recommends, therefore, that the high level working group on ethnic minorities in the labour market, which is due to report at the end of 2006, pay close attention to this issue and that conditions be created which will enable all categories of individual to gain access to all types and levels of education and training, at all ages, starting from childhood, if necessary through the adoption of positive measures designed to enable disadvantaged groups to follow courses of study at school or university or to undertake training courses which would not otherwise be accessible to them;

12. Calls on those Member States which do not already have such bodies to set up, at national level, a specialised administrative body for equality and the fight against discrimination; stresses that such bodies should be independent and should receive the necessary resources to enable them to help victims of discrimination in their dealings with courts and tribunals; considers that they should also have

powers to investigate the cases referred to them; considers that any downgrading of such bodies should be considered as an incorrect implementation of the anti-discrimination directives; asks the Commission carefully to evaluate the situation in Member States in this regard, and notably the Polish government's decision to abolish the Office of Plenipotentiary for Equal Status, the institution charged with combating discrimination and promoting equality for all, as pointed out in the 2005 report of the EU Network of independent experts on fundamental rights;

Collection of data

13. Considers that far from constituting an obstacle to the collection of data relating in particular to ethnic origin and to religion, Directive 95/46/EC provides necessary and desirable protection against any abuse of sensitive data collected for statistical purposes;

14. Considers that, notwithstanding cultural, historical or constitutional considerations, data collection on the situation of minorities and disadvantaged groups is critical and that policy and legislation to combat discrimination must be based on accurate data;

15. Considers that the Article 29 Working Party set up pursuant to Directive 95/46/EC could usefully issue an opinion designed to clarify the provisions of the Directive which may hinder the collection of statistics relating to certain categories of individual and thus to ensure that those provisions are interpreted uniformly throughout the Member States;

16. Draws attention to the fact that once personal data have been rendered anonymous for statistical purposes, the information contained in the statistics is no longer to be regarded as personal data; points out that there are also reliable techniques which enable anonymity to be observed and are traditionally used in the social sciences and which should enable statistics based on criteria deemed sensitive to be established;

17. Notes with satisfaction that the Commission intends to create (in cooperation with the Member States' authorities and other parties involved) statistics tools designed to assess the impact of discrimination; awaits with interest the publication of the data-collection handbook which is scheduled for 2006;

18. Points out that the concept of indirect discrimination is intrinsically linked to quantitative criteria and that it is therefore counter-productive to prevent statistics relating to certain characteristics from being gathered under the cover of legislation on the protection of personal data, since in the absence of such data the existence of indirect discrimination becomes impossible to prove;

19. Considers that if effective action is to be taken against all forms of indirect discrimination and if the Community directives on discrimination under which those forms are specifically prohibited are to be correctly transposed, it is essential that authorisation be granted for the supply of proof based on statistics;

20. Calls upon the Member States and, where appropriate, regional and local authorities to develop their statistics tools with a view to ensuring that data relating to employment, housing, education and income are available for each of the categories of individual which are likely to suffer discrimination based on one of the criteria listed in Article 13 of the EC Treaty;

21. Draws attention to the fact that if an individual is to benefit from preferential treatment by virtue of his membership of a protected group, it must be possible for him to be identified as such, which means that sensitive data relating to him must be available; points out that such data must be processed in accordance with – in particular – the legislation relating to the protection of personal data and with Article 3(1) of the Framework Convention for the protection of national minorities;

Need for supplementary legislation

22. Greatly regrets the fact that, notwithstanding repeated requests by the European Parliament, the Commission is not planning at this stage to draw up comprehensive legislation to combat discrimination; recalls that better legislation does not only mean eliminating unnecessary legislation, but also developing legislation in response to strong political signals from the European Parliament; insists that a new legislative tool incorporating all the grounds for discrimination set out in Article 13 of the EC Treaty and having the same scope as Directive 2000/43/EC be submitted before mid-2007;

23. Calls upon the Member States to take due account in their legislative practice of the various grounds for discrimination set out in Article 21 of the Charter of Fundamental Rights with a view to bestowing a credibility upon the Charter which has hitherto been weakened by the fact that it is not legally binding;

24. Encourages Member States to undertake obligations without any reservations or restrictive declarations under human rights treaties in the field of non-discrimination and protection of persons belonging to minorities and other vulnerable groups, and to honour such obligations in good faith;

25. Considers that traditional national minorities urgently need a framework policy standard for their effective participation in decision-making processes concerning their identity, and need to be protected by various forms of self-government or autonomy to overcome the double standards established by the Copenhagen criteria on the one hand and the lack of any rules in the Member States on the other;

26. Calls upon the Commission to fulfil actively its obligations as guardian of the Treaties and to undertake urgent action against Member States that have failed to transpose EC law prohibiting discrimination on the basis of Article 13 of the EC Treaty, such as Directives 2000/43/EC and 2000/78/EC; recalls that the Court of Justice has already found against some Member States for failing to implement the anti-discrimination directives, and urges them to take action to fulfil their duties; considers that the new Member States which have not transposed the anti-discrimination directives must be subject to infringement proceedings for violating EC law in the same way as the old Member States; requests the Commission to examine as a matter of urgency the quality and content of the laws implementing the anti-discrimination directives, including on the basis of the reports prepared by the network of independent experts on anti-discrimination, and to bring, as a matter of urgency, an action before the Court of Justice against those Member States that have not correctly transposed them;

27. Calls upon the Commission to ensure that when anti-discrimination law is next recast, it pays particular attention to the problems of multiple discrimination and those of segregation (which constitutes a form of discrimination) and reviews the concept of indirect discrimination by explicitly authorising proof based on statistics relating to discrimination;

28. Urges that the new Agency for Fundamental Rights, which is due to be operational in 2007, be closely involved in the new framework for anti-discrimination and that it provide EU policy makers with timely, sound, reliable, comprehensive and relevant information from which further policy and legislation can be developed; considers that, in light of the concerns about its role and function, it is essential for the Agency to feed into and play an integral role in supporting EU anti-discrimination policy;

29. Calls on the Council to adopt the Commission's proposal for a Council framework decision on combating racism and xenophobia⁽⁷⁾, which sets out to establish a framework for punishing racist and xenophobic violence as a criminal offence, as that decision would contribute to the enhancement of necessary data collection on racist violence and crime across the EU; believes that the framework decision should explicitly deal with homophobia, anti-semitism, islamophobia, and other types of phobia or hatred based on ethnicity, race, sexual orientation, religion or other irrational grounds;

30. Urges the Commission to bring forward proposals to prohibit the discrimination that same-sex couples - either married or in a registered partnership - suffer in their daily lives, notably when they exercise the right to free movement enshrined in EU law; requests that the principle of mutual recognition be applied also in this field;

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31. Instructs its President to forward this resolution to the Council and the Commission.

(1) OJ L 281, 23.11.1995, p. 31.

(2) OJ L 180, 19.7.2000, p. 22.

(3) OJ L 303, 2.12.2000, p. 16.

(4) OJ C 124 E, 25.5.2006, p. 405.

(5) OJ C 45 E, 23.2.2006, p. 129.

(6) *Texts Adopted*, P6_TA(2006)0018.

(7) OJ C 75 E, 26.3.2002, p. 269.