

Workshop on Anti-discrimination April 17-18, 2008

Notes from the Opening session and the legislative background of the anti-discrimination session

Rapporteur: Iulian Stoian, Roma Civic Alliance of Romania

The focus of the workshop organised by the Hungarian Presidency of the Decade of Roma Inclusion is the enforcement and implementation of anti-discrimination measures at both EU and national levels and to share best practices.

Opening session's considerations

Edith Rauh, Ministry of Social Affairs and Labour

Anti-discrimination against Roma is present in all areas media, information, employment, school segregation, children etc. Segregation in housing increased dramatically.

The segregation Roma and non-Roma have increase dramatically, and the number of lacking comfort housing as well, it has become a priority for HU to have not only anti segregation but anti-discrimination measures.

Regarding the housing segregation, HU launched in 2005 a program on housing and social integration; Croatian colleagues launched a similar program in 3 settlements.

Despite the fact the legal regulations are a few years old; in Hungary, an equal treatment program has been launched.

In the region HU is the only one country that applies subsidy policy in the area of education and city development. The aim is to provide with the support in elaborating anti-desegregation plans. In HU a situation analysis has been produced under an EU program where the technical assistance provided the government with 160 anti-desegregation plans for city rehabilitation. The government's plans in the near future are to focus on the integration of the anti-segregation plans that have to be prepared under the EU Phare program.

Isabela Mihalache, OSI Budapest

Even though the EU has achieved much in the field of non-discrimination, not all the discrimination grounds are legally protected in the same way at European and national level and a significant gap still remains. The unequal treatment still continues in employment, housing and education for the EU citizens, especially those belonging to minorities.

Over the last 12 years OSI's primarily interventions were to raise awareness on the discrimination that Roma minority was and is still facing in Europe, to develop programs aimed at improving the social, political and economic situation of the Roma minority and to foster the development of Roma leaders. Amongst the OSI's successful ways to promoting the integration of Roma and fighting discrimination there were: to strengthening Roma civil society through capacity building programs, to stimulate the Roma civic participation, facilitating the engagement of Roma in the policy making process while struggling to mobilizing the political will. The political will of the Member States to adopting programs for Roma integration remains critical, as the Decade of Roma Inclusion should represent the

framework where governments can demonstrate their commitment to Roma issues and share best practices.

Isabela showed us that the EU's role is vital to address the gap between the EU legal provisions and its state of implementation in some EU member states and acceding countries.

Michael Guet, Council of Europe

In his speech, Michael Guet presented us the debate stirred by the terminology used in various international organizations' official documents, consecrating the terms "anti-gypsism", "Romaphobia" and "anti-tsiganism", that correspond to the same reality.

Quoting from ECRI's country-specific reports, it has been shown that:

- in our societies, Roma do not enjoy the equal dignity which is the right of all human beings;
- along with discrimination, they are also the target of racist violence;
- the intolerance they face is not decreasing.

Michael reminded us the specificity of racism: persistence of prejudice that is leading to a permanent racism; the systemization, indicating the acceptance of the repetitive racism in our society; the violent nature of manifestations of racism towards Roma as a common practice; the state of impunity that resides in the mind of perpetrators, coupled with the generalization and the hypocrisy to blaming the victims of discrimination.

Some practical solutions that ECRI was proposing to combat the racism phenomenon there were presented:

1. to recognize that anti-gypsyism exists as a specific form of racism;
2. to name the problem;
3. to widely address this problem;
4. to having the support of the Roma community.

2nd session – Anti-discrimination – legislative background

Valentina Petrus – OSF Slovakia

Starting with a particular case, an EU member state, Slovakia, Valentina presented the national legal framework regulating the fundamental rights. Alongside the CoE and UN treaties, which Slovakia has ratified them long ago, the constitutional provisions were completed by the secondary law, the so called Anti-discrimination Act, that in fact is the Race Directive transposed into the national law in 2004, the year of Slovakia's accession to the EU.

The Anti-discrimination Act came into force on July 2004 and it was significantly amended on 2008 – and is in effect from April 1, 2008. The latest amendment of the AD Act was a reaction to the European Commission's communication to the government demanding it to bring its provisions into compliance with EU Directives. Moreover, an initiative of NGOs filed collective comments to the amendment of the Act that was almost completely incorporated to the legislative proposal. In addition, the amendment introduced sexual harassment and *affirmative actions* into the Slovak legal system.

The debate on the positive actions has started since the adoption of the AD Act. The Christian Democratic Government initiated a procedure before the Constitutional Court on the consistence of the provision of affirmative action in the Anti-discrimination Act with the Slovak Constitution. In 2005, the Constitutional Court ruled by a close vote that the concerned article is inconsistent with the Constitution.

The governmental proposal suggested affirmative measures in order to eliminate disadvantages linked to racial or ethnic origin, age or disability.

During the adoption process in the Parliament the wording “racial or ethnic origin” has been changed and replaced by “forms of social and economic disadvantages”.

During the discussions there were raised numerous comments related to the problems of law enforcement, reflection on the issue of school segregation and the problem of forced sterilisation of the Roma women which by now the state didn't presented public excuses for the victims but informed the victims of the compensation facilities, and there was a call upon more concrete actions and a clear methodology for the benefit of Roma minority, instead of thousand of legal papers.

The Slovakian case is of a particular importance – for both legalists and civic activists -, as it is easy to demonstrated that a weak civil society – be it Roma or mainstream, and please note that none of the Slovak NGOs were present to this workshop – coupled with incompetent or irresponsible politicians may lead to governmental discriminatory policy towards minorities.

And when referring to the incompetent or irrespsible politicians, we're referring to the fact that, even though Slovak Republic is an EU member state, apparently both the government and the parliament are simply neglecting the community law, and they seem not to know a simple principle: that the community law takes precedence in front of national law and they cannot justify their actions trough the fact that the constitutional provisions are colliding with the EU law...

Isabela Mihalache, OSI Budapest

During the Isabela's extensive presentation on the impact of the Race Directive and Employment Equality Directive, we all took notice of the EU legal framework in the field of combating discrimination of all grounds, which was transposed into the national law of the Member States. Even though the burden of proof was introduces - one of the most effective tool, aimed at facilitating the instrumentation of the discrimination cases – the member states are still expected to make more independent the newly created Equality Bodies, so that they can effectively analyse the discrimination cases and to provide independent assistance for the victims of racial (or based on any other grounds of) discrimination.

After reviewing the existing legislation in 2007, the European Commission came to the conclusion that the level of protection against discrimination based on religion and belief, age, disability and sexual orientation is lower than that afforded in the case of racial discrimination and confirmed that there is a patchwork of legislation across Member States and a lack of harmony in the implementation of the existing anti-discrimination directives. For this purpose, the Commission (that is not with us today, unfortunately), call upon an initiative of a new legislative provisions in 2008.

It is obvious that the EU legal framework in the field of anti-discrimination is beneficial primarily for the EU's citizens and, occasionally for citizens from the acceding countries. During the discussions there were expressed some frustrations from participants at the workshop, coming from non-EU countries, who are perceiving the Council of Europe and the United Nations' legal provisions and legal order more close to their daily reality, due to the time horizon for their country accession to the EU. And this is making more challenging the situation for Roma minority, especially in the Balkans...

Mabera Kamberi - Macedonia

And speaking of non-EU member states, Mabera' presentation on the legal framework on anti-discrimination in Macedonia, showed that her country ratified most of the international treaties in the field of human rights. The national legal framework was elaborated with the support of reputed non-governmental organizations specialized in strategic litigation, such as Helsinki Committee.

The joint working group took into account: The scope of the law prohibits discrimination in specific areas of public, as opposed to private life, and that law is focusing on specific and limited protected categories;

The prohibition on speech will be narrowed in order to avoid breaching other fundamental freedoms especially that of freedom of expression;

The definitions of direct and indirect discrimination, and similar terms will be made consistent with the Equal Opportunities Law and are more precisely formulated;

Litigation will be supplemented by other mechanisms in order to put into practice the legislation.

It has been described the "technique" adopted for the legal framework:

- the government took into consideration the existing procedural provision in its civil law;
- it considered the provisions related to the burden of proof;
- allowed statistical evidence to be taken into consideration;
- regulated the conditions in which the remedies were allowed and the level of compensations or damages allowed;
- adopted measures for preventing the discriminatory behavior.

During the discussions, some NGO representatives claimed that the Roma minority didn't participate in the elaboration of the legislation and raised the issue of "virused public administration" that is hiding unlawful practices (such as police abuses against Roma, in the street, having a result a death, which was justified as "heart attacks"). These situations seem to continue nowadays and they represent source of conflict; the **Roma representatives called upon of an active role of the civil society in monitoring of the law enforcement.**

Lilla Farkas, Migration Policy Group

Mrs. Farkas, in her session - *Substantive equality in community law* - offered a comprehensive presentation on comparative law provision in the human rights international treaties and the Race Equality Directive.

According to the Race Directive, the right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal

Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

However, the principle of equal treatment shall not prevent the Member States from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

In the ICERD, it has been shown that the States Parties shall take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

A general recommendation (No. 19) of ICERD, is regulating the positive action to fight discrimination in private sphere. It has been shown that in many cities, for instance, the residential patterns are influenced by the differences in income of the groups, which are sometimes combined with differences of race so that the individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.

Also, the European Court of Justice „takes account in applying the general principles of Community law” the provisions and the special significance in the anti-discrimination framework of the European Court of Human Rights, along with those of the ICCPR and the Convention of the Rights of the Child.

Positive action in education: in education all Member States employ positive action measures and more patchy picture in other fields.

With respect of **Segregation**, the Article 3 of ICERD states that the States Parties particularly condemn racial segregation and apartheid and undertake to **prevent**, prohibit and **eradicate** all practices of this nature in territories under their jurisdiction; in the same time, the Race Directive does not define the term of segregation.

During the discussions, some NGO representatives from non-EU countries stated that the strategies, the legal framework of the EU is not at help, especially due to the lack of perspective for accessing the EU soon and feel more protected by the UN and CoE anti-discrimination framework. Thus, there is a lack of ownership over process of preparation of the new European Strategy for the Roma, especially because there are sharply differences between the situation of Roma in different countries; some Roma NGOs are claiming that the level of protection against discrimination is the measure of the political will in each country and a solution to this problem might be support for strengthening the Roma political representation in their countries.

Also it has been discussed the situation of the Roma living in Italy, that are not treated as equal citizens, especially due to the political instability that doesn't allow the Anti-discrimination Body to act independently and to effectively enforce the law.

