

Combating racial discrimination

Article 21, falling under the 'Equality' Chapter of the Charter of Fundamental Rights of the European Union, prohibits discrimination on the grounds of racial or ethnic origin.

Background

The Racial Equality Directive (2000/43/EC), adopted in 2000, has made important changes to the way that racial discrimination is combated in the European Union. Only a handful of EU Member States already had detailed laws and mechanisms to prohibit racial discrimination before the directive was adopted; the vast majority have had to make significant improvements to comply with the directive.

Key issues

Why is it important to combat racial discrimination?

Prejudices of employers or those providing services may prevent others from taking part in society, like getting a job or renting accommodation. If a prejudice is based on someone's race, it means that entire ethnic minorities can be excluded. The knock-on effects are considerable. Members of ethnic minorities tend to have higher rates of unemployment, work in a limited range of trades like construction or agriculture, have lower levels of education and poorer housing conditions than the majority population.

Racial or ethnic discrimination occurs when:

- an individual is treated unfavourably (e.g. refused a job);
- by comparison to how others, who are in a similar situation, have been or would be treated;
- and the reason for this is their racial or ethnic origin.

What does the directive do?

The Racial Equality Directive's provisions include:

- providing protection from racial discrimination in the area of employment, while using the welfare system, or buying goods or using services;
- allowing victims of discrimination to make a complaint;
- allowing organisations such as non-governmental organisations (NGOs) and trade unions to help victims of discrimination to go to court;
- ensuring that those who break the law and discriminate are punished appropriately;
- requiring governments to create a specialised 'equality body' to promote equality;
- allowing governments to create opportunities for minorities who are worse-off to improve their situation;
- making sure that people are aware of their rights;
- encouraging employers and trade unions to cooperate in fighting discrimination.

What effect has the directive had on national laws?

All EU Member States were supposed to change their laws to comply with the requirements of the directive. However, the European Commission has had to engage in talks with some governments as it did not think that they had made all the necessary legislative changes.

Almost all EU Member States have created equality bodies as required. Many Member States have gone further than required and given equality bodies other powers to:

- hear victims' complaints and issue decisions, e.g. in Austria, Denmark, Hungary and the Netherlands;
- conduct investigations where discrimination is alleged to be occurring, e.g. in France and Sweden.
- bring cases to court themselves, e.g. Belgium, Hungary and Ireland.

As well as punishing discrimination, many EU Member States have been pro-active in promoting equality. In Belgium, Finland, Hungary, Sweden and the UK, there is a legal obligation to check and change existing policies that may cause discrimination and promote equality when new policies are being developed. Some Member States have introduced projects that simultaneously improve access to education, housing conditions and vocational training.

Has the directive affected the situation on the ground?

It is impossible to paint an overall picture of the progress made in combating racial discrimination. Although governments collect information about their populations in general, they do not tend to look at how minorities specifically are doing through these surveys – that is, they do not collect **ethnically disaggregated statistics**. Therefore, it is impossible to describe whether their situation in areas like employment, housing or education has improved over time.

In some EU Member States, like France, Germany and Portugal, it is illegal to collect statistics about racial or ethnic minorities. In part this is because governments believe it is an interference with privacy to identify whether an individual belongs to a minority. However, research shows that most members of minority groups are willing to include information about their ethnicity in a census, if this is made anonymous and used to combat discrimination.

It is also difficult to determine how often discrimination occurs. Not all EU Member States keep statistics on how many complaints are made specifically on racial discrimination. Where this information is available, in some Member States rates are extremely high while in others they are extremely low. This may be due to differences in levels of awareness about the law.

The way forward

- **A lack of statistics** prevents governments from understanding what problems minorities face, how these can be solved, and whether improvements are being made.

EU Member States should consider collecting ethnically disaggregated statistics, while taking precautions to respect the law on privacy.

- **Low numbers of complaints.** Research has found that in many EU Member States victims are not making complaints when discrimination occurs. Most members of racial or ethnic minorities appear unaware they have a right not to be discriminated against. Further, the vast majority of those who experience discrimination appear not to make a complaint, as they do not know where to do so, have not heard of any organisations that could help them and do not think that anything would change if they made a complaint.

Equality bodies should be given adequate resources to help increase awareness of the law and how to make a complaint.

- **Levels of compensation** in cases of racial discrimination vary considerably between EU Member States. It seems that these differences cannot be explained just by the variation in living costs in different countries. Moreover, the level of compensation may not be high enough to discourage people from discriminating or to make up for the damage done to victims.

Member States could look into levels of compensation for racial discrimination to make sure that these are adequate.

- **Going to court** can be expensive and time consuming. Although the directive allows organisations like NGOs or trade unions to help victims bring cases, in some Member States the rules setting out which organisations can access a court are restrictive. Public funding available to these organisations also limits how many cases they can help with.

Member States could make it easier for organisations to help victims by relaxing restrictive rules and giving more funding. They could also give equality bodies the power to decide on complaints and order compensation as an alternative to using the courts.

- **The disadvantaged position of minorities is due to several connected problems that cannot be solved just by going to court.** Persons from minority groups often live in poor conditions because of their economic position. Often they are not well connected to job markets or public services, like healthcare and education. These different factors work together to create a situation where people find it difficult to improve their circumstances. It is impossible to resolve these issues simply by going to court and receiving compensation.

EU Member States should consider taking measures to simultaneously address the housing, educational and healthcare needs of disadvantaged minorities.

Further information:

The FRA has published two reports on the Racial Equality Directive:

- *The Racial Equality Directive: application and challenges* (January 2012)
- *The impact of the Racial Equality Directive: Views of trade unions and employers in the European Union* (October 2010)

Both reports are available on the FRA website at:

http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm