2nd Round Table with National Human Rights Institutions / 4th European Meeting of National Institutions

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Contribution on theme 3: Co-operation between national human rights institutions and between them and the Council of Europe and other international organisations

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COOPERATION BETWEEN INDEPENDENT SPECIALISED BODIES FOR THE IMPLEMENTATION OF EQUAL TREATMENT—A PROJECT SUPPORTED BY THE EUROPEAN COMMISSION AS FIRST STEP IN A BROADER CONTEXT?

1. One of the fundamental human rights principles is the principle of equality and non-discrimination. This is enacted in all human rights documents. Therefore, the national human rights institutions play an important role in the implementation of this right. Moreover, some of the participants in the Conferences for National Human Rights Institutions operating in the UN and the Council of Europe, are also specialised in the field of non-discrimination and equality. In this context it has to be said that the policy of the Accreditation Sub-Committee is not very transparent, as some have got the status A while others got only status B because of the restrictions in their competence. Anyhow, equality matters are core business for all national human rights institutions and international organisations.

2. In the Council of Europe, the impact of equality will increase with the coming into force of Protocol nr. 12 to the Convention for the Protection of Human Rights and Freedoms.

3. The third theme of the Round Table of the Council of Europe with national human rights institutions to be held in Belfast/Dublin in November 2002 can be conceived in different ways. Different forms of co-operation are possible between national and international Human Rights Institutions. I would suggest including in the exploration of the possibilities the possibility of thematic co-operation, i.e. co-operation and exchange of national and international experiences in relation to specific Human Rights. Therefore, I want to present the essentials of a current project, financially supported by the Commission of the European Community, which has been initiated by the Equal Treatment Commission of the Netherlands (Commissie gelijke behandeling). Two of the participants in this project are also participating in the organisation of European national institutions.

4. The title of this project is ‘Towards a uniform and dynamic interpretation of EU anti-discrimination legislation: the role of specialised bodies.’

It intends to:

- promote the uniform interpretation of European Union anti-discrimination legislation
- stimulate the dynamic development of legal equal treatment in EU member states (“levelling up”), bearing in mind the EU Directives provide that EU Member States may introduce provisions that are more favourable to the protection of the principle of equal treatment.

Seven national independent specialised bodies and one international policy institute are partners in this co-operation. The mandates of the six specialised bodies cover either one ground of discrimination, a specific area related to a particular ground of discrimination, or more than one ground of discrimination.

5. The partnership will promote the exchange of information and of good practice and facilitate networking between targeted actors, namely specialised bodies. It will include in its programme co-operation with organisations that are designated to become specialised bodies.

in the sense of Article 13 of the Racial Equality Directive of the EU. In this way the programme will support legislation and policy development within the European Union through the improvement of knowledge and the strengthening of the capacity of the targeted actors. It will also facilitate the development of integrated and co-ordinated co-operation across grounds of discrimination within the European Union. As few of the existing specialised bodies have experience in setting up and co-ordinating transnational co-operation at a European level, the group is completed by the Migration Policy Group (MPG) as a transnational partner. MPG assisted in the previous activities and has a wide and comprehensive network of individual and institutional contacts on equal treatment and non-discrimination throughout Europe.

The objective of the project is to lay the foundations for an electronic system of exchange of expertise and information that can be made accessible to the relevant stakeholders. The project shall also put in place a structured information exchange between staff working for specialised bodies. This mechanism will greatly facilitate the further development of national legislation and the uniform interpretation and implementation of EU legislation.

In addition, EU legislation provides for the protection of the principle of equality at the level of the lowest common denominator. The project aims not only to contribute to the uniform implementation of EU legislation; it also aims to stimulate through the exchange of knowledge and experience a dynamic development of national standards for equal treatment, and the protection against discrimination that may well go beyond the level of protection of the EU Directives (“levelling up”).

The project partners have identified three areas in which the co-ordination and co-operation between them is crucial for the dynamic and uniform interpretation and application of anti-discrimination legislation. These areas are the interpretation of legal concepts (a), enforcement of legislation and remedies provided for promoting equal treatment and combating discrimination (b), and policy advice and development (c).

A compilation (and, where necessary, translation) of court cases or rulings of quasi-judicial bodies in Member States (such as the specialised bodies themselves) where these concepts are already part of the law will enable these rulings to be compared. Various follow-up initiatives can be taken, such as informing the judiciary on the rulings in other Member States (including Member States without legislation) and jointly preparing cases in a Member State to take before the European Court of Justice. These initiatives will facilitate the uniform interpretation of European anti-discrimination legislation and have an impact on the increased implementation of anti-discrimination legislation across the Union.

The level of protection offered against discrimination varies - both in national and European legislation - according to the ground of discrimination. EU as well as national legislation includes many more specific provisions regarding equal treatment and non-discrimination on the grounds of sex and race than on the grounds of disability and age. The concepts listed above do, however, have some bearing on each discrimination ground, although sometimes their specific meaning and characteristics are dependent on the particular discrimination ground.
This project will contribute to the harmonisation of the interpretation of the legal concepts across the boundaries of the grounds of discrimination. It will facilitate the application of non-discrimination concepts that are well defined in, for example, the field of gender, in other areas of discrimination and vice versa. Experience in interpreting these concepts in one field will accelerate its correct interpretation in another. This will enhance the level of protection of anti-discrimination legislation and decisions.

6. The activities to be carried out are twofold:

A. Expert meetings

The project will organise seven experts’ meetings for both experienced and less experienced bodies/staff. The meetings will aim to develop staff skills, and will include inputs from external experts, for example ECJ judges, national judges, representatives of key NGO’s etc. Invited to the experts’ meeting will be staff from the specialised bodies and persons who are involved in the setting up of a specialised body in those Member States where such a body does not yet exist (MPG’s network of individual and institutional contacts will be of help to identify the key players in these Member States). It will always include the project manager and secretary (to secure continuity and to monitor the implementation of the project) and, on various occasions, the staff persons responsible for documentation and the working party on the database.

For each experts’ meeting there will be papers/ introductions from 3 external experts on the topic of the meeting. The papers, a summary of the discussions and the main conclusions of the experts’ meeting will be included in the report of the meeting, which will be published. Therefore there will be a series of 7 publications on the experts’ meetings.

B. Development of structure to exchange information

Activity B is the development of a structure and system to collect and exchange information that is relevant to the implementation of equal treatment legislation, including case law and legislation on discrimination on all grounds included in European legislation. Step by step, relevant information or references to relevant sources will be identified. Subsequently it will be decided whether certain information needs to be included in a database, whether references will suffice and how references need to be made, and who will have access to the information. Once protocols and formats have been decided upon, the actual building and filling of the database and the setting up of an intranet can begin.

7. Because of the fact that all partners come from states that are not only members of the EU but also of the UN and Council of Europe, it should be considered whether this form of co-operation could be a step in the process of furthering co-operation, at least in the field of equality and non-discrimination, between national human rights institutions and between them and the Council of Europe and other international Institutions too.