



Liberal Democrat

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'Europe' Opposes Discrimination

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Introduction

The very bedrock of the European Community is its prohibition of any discrimination on grounds of nationality. Founded after the destruction of two World Wars in which nationalism had wreaked such terrible havoc, this core principle was identified as the necessary condition for peaceful coexistence. It has brilliantly succeeded.

Another core provision of the EC treaty since the beginning was its ban on unequal pay for men and women. There the original inspiration was less than altruistic - it was to stop one firm undercutting another with cheap female labour! The record of achievement is mixed, since women, in the UK at least, still only earn four-fifths of the male rate. But from little acorns mighty oak trees grow, and the provisions preventing gender discrimination are growing in scope.

Quantum leap

But there was a step-change in the 1997 Amsterdam Treaty in the capacity of the European Union to protect civil liberties and fundamental rights and this included for the first time action to prevent discrimination against minorities. Competence was extended to include (in 'Article 13') action against discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation (as well as gender). The treaties also since 1997 provide that the principles on which the EU is founded include respect for human rights and fundamental freedoms, and provide

mechanisms to suspend a Member State in serious breach.

These developments were appropriate and welcome. Peace cannot be secured if some sections of the population suffer from direct or institutional prejudice, it must be rooted in the confidence of every person that they will be treated with justice and respect. That is the basic justification for EU action. Thus the first (1999) EU Annual Report on Human Rights declared that 'human rights begins at home'. It identified racism and xenophobia as the key human rights challenges for the EU, stating that: 'racism, xenophobia and intolerance are the antithesis of what the European Union means in its essence. The defence of the basic principle of non-discrimination is at the centre of our understanding of human rights.'

These areas in which the Amsterdam treaty made a significant addition of powers fell in considerable part within the field of the European Parliament's Committee on Citizens' Rights & Freedoms, Justice and Home Affairs (LIBE). This committee (chaired 1999-2001 by Graham Watson MEP and on which Sarah Ludford MEP has been ELDR group spokeswoman since 1999) is responsible for the Parliament's input into the creation of an 'area of freedom, security and justice'. Work on the specifically employment aspects of the Article 13 programme is done by the Parliament's Social Affairs committee.

The European Parliament has been determined that EU action on justice and home affairs (area of freedom security and justice) should not just cover the repressive

law and order aspects while neglecting citizens' rights. That is not to deny that crime-fighting and security of borders can enhance freedom if conducted under proper safeguards of democratic and judicial controls, but that is not yet always the case and Parliament wants to ensure that the secrecy and lack of accountability is eliminated. We also need policies focussed on the enhancement of liberty and insist both on the full implementation of Article 13 and that other policies should put fairness, non-discrimination and (insofar as legal status justifies it) equality of rights at their heart eg immigration and asylum, free movement and anti-terrorism laws. This would mean for example including all legal European residents (non-EU as well as EU citizens) and same-sex and unmarried partners as well as spouses in the scope of rules conferring the ability to live and work anywhere in the EU.

Anti-racism

Racism and xenophobia are a direct violation of the principles of freedom security and justice, and of the fundamental values of the EU as laid out in Article 6 of the TEU and in the Charter of Fundamental Rights. The European institutions, and the European Parliament in particular, have on frequent occasions reaffirmed their determination to uphold fundamental freedoms and condemned racism and xenophobia.

Thus the fight against racism has rightly become a core element of the EU's human rights mission. The Parliament had been working on the combatting of racism in the EU for many years, including the setting up of committees of inquiry in the 1980s into racism, fascism and xenophobia. It was at least in part due to the Parliament that the EU made 1997 its 'European Year against Racism'. Sarah Ludford was the EP rapporteur on the experience of that year.

It was successful in putting the fight against racism firmly on the agenda at European as well as national level. It led to the creation of both an NGO network - the European

Network against Racism - and of the European Monitoring Centre on Racism and Xenophobia (EUMC) as an EU agency based in Vienna. It also gave impetus to the insertion into the European treaties of the clause which became Article 13.

Events in the year 2000 forcefully established the credentials of the EU in the fight against race discrimination, for the bad reason that racist politics seemed to be on the increase and the good reason that the EU was more geared up to fight it.

The imposition of sanctions against Austria was an expression of shock and disapproval of a party (Haider's Freedom party) with fascist echoes coming into power. It sent a clear signal ahead of EU enlargement to east and central Europe - where discriminatory treatment of the Roma is endemic - of the determination of the Union not to tolerate racist or anti-semitic rhetoric or discriminatory behaviour towards minorities. Over Austria the EU marked a defining stage in its development in asserting that racism and fundamental European values are mutually incompatible.

In 2000 two anti-discrimination Directives based on Article 13 passed into law in record time. One was the 'Race Directive' (a European Race Relations Act) banning discrimination in a whole range of areas like housing, education and healthcare (but unfortunately not the immigration or criminal justice systems). The other (the Employment Directive) outlawed discrimination at work on grounds of race or religion, age, disability or sexual orientation. This meant that for the first time, the EU had a comprehensive set of anti-discrimination measures and a pan-EU minimum standard of legal protection against discrimination.

The Race Directive was an important step forward, as previously the EU's prohibition of direct and indirect discrimination was limited to the labour market only, but it now encompasses the provision of goods and services.

The Employment Directive requires Member States to make discrimination unlawful on the grounds of religious belief, disability, age or sexual orientation in the areas of employment and training.

These Directives were complemented by an Action Programme 2001 - 2006 allocating 100 million euros over six years to fund practical action by Member States to promote racial equality in all the areas covered by the two directives. The Action Programme aims to promote 'transnational co-operation' between organisations in the fifteen Member States in tackling discrimination throughout the EU and to encourage the exchange of best practice and information.

In 2000-2001 the EU participated actively in the United Nations Conference against Racism, firstly the European preparatory conference and then the full World conference in Durban, South Africa. Sarah Ludford was leader of the EP delegation to both. Dogged by controversy over reparations for slavery and attitudes to Israel and anti-semitism (which led to a US boycott), the fact that a worthwhile declaration against racism was nonetheless agreed was due to the commitment of the EU and in particular of the incumbent Council President, Belgium's Liberal foreign minister Louis Michel.

Dangers of racism post-Sept 11th

The European Council held a special meeting in the wake of 9/11 at which it claimed to focus on combating both terrorism and any racist or xenophobic repercussions. However, concern is not assuaged that ethnic and religious (especially Muslim) minorities would find themselves treated with suspicion, unfairness or even physical aggression.

Up to now, the EU's only instrument dealing with racist attacks has been a 'joint action' adopted in 1996. This measure, from the era before the EU acquired a capacity for agreeing common criminal laws, has proved

inadequate. It is now essential to develop a more effective, pan-European policy so that perpetrators of racist violence are unable to escape prosecution by taking advantage of varying (or non-existent) laws across the Member States.

A proposal for a framework decision put forward by the Commission and backed by the Parliament is currently under consideration by the Council. The main concern is to find a balance between having an adequately wide definition of criminal liability while respecting freedom of association, freedom of the press and freedom of expression.

The proposal defines a common approach in the EU in order to ensure that the same behaviour constitutes a criminal offence in all European countries. The obligation to make racist and xenophobic acts punishable as criminal offences would no longer be limited to cases of publicly witnessed incitement to violence or hatred but also include any other racist or xenophobic behaviour, especially the circulation of racist content on the Internet and denial or trivialisation of the Holocaust. Investigations into or prosecutions of offences should not be dependent on a report or accusation made by a victim as often they are too fearful to take legal action. Judicial co-operation procedures across the EU should be strengthened in order to facilitate prosecution, especially of internet offences.

The Parliament in its opinion wanted sanctions to apply when hostility based on an individual or group's race, colour, descent, religion or national or ethnic origin is a contributory reason determining the verbal or physical attack, not just when it is the sole reason. The Parliament also stressed the need for each Member State to ensure that victims of racist or xenophobic behaviour have full access to information, aid facilities, effective protection and appropriate legal assistance. It also underlined the need for Member States to fully report to the European Monitoring Centre on Racism and Xenophobia incidents, prosecutions and

convictions, with specific detail of the ethnic and cultural background of both the perpetrator and the victim, so as to build a picture of the extent of the problem.

Gay and lesbian rights

The European Parliament has been particularly active in keeping the issue of sexual orientation discrimination on the agenda and supporting progress. In 2000 there was the Employment Directive already mentioned. Although this represented a huge advance in banning discrimination against gay employees the Member States insisted (the Directive banned inter alia discrimination on grounds of religion too) on giving considerable derogations to religious bodies as employers. They can continue to discriminate on grounds of religion (in employing the caretaker and teacher as well as the priest) and the fear is that this will allow prejudice against gay staff under cover of 'religious ethos'. The UK's purported implementation has widened the breach even further (against the protests of in particular LibDem peer and human rights lawyer Lord Lester QC) and it is expected that the UK may get pursued for breach of EU law.

Although there is no EU competence for pure 'family law' such as marriage and age of consent the definition of the family is relevant in EU immigration, asylum and free movement laws, to determine who can join the primary applicant. The EP is currently fighting for a broader definition to include same-sex spouses (in some EU member states already), registered partners and unmarried partners irrespective of sex.

Age

Age discrimination is prohibited under the 2000 employment directive but it does not cover such aspects of work as the setting of retirement age and access to social security benefits.

There is also permission for derogations (which must be justified) for occupations

such as the armed forces. The anti-discrimination Action Programme provides funding for organisations working to combat age discrimination.

The Charter of Fundamental Rights of the EU also has chapters relevant to older people. Article 21 contains a general prohibition (ie not limited to the field of employment) on age discrimination. Article 25 recognises the right of the elderly to a life of dignity, independence and participation in social and cultural life. The Charter also recognises the right of elderly people to health care and social protection.

Conclusion

The European Convention in July 2003 has produced recommendations for an EU constitution which would not only allow the EU to accede to the European Convention of Human Rights but also incorporate its own Charter of Fundamental Rights as legally binding on EU bodies. This charter spells out the basic rights and freedoms of the European citizen in the areas of dignity, freedom, equality, solidarity, citizens' rights and justice. The draft constitution reinforces the 'Article 13' provisions and also significantly improves upon the democratic role of the European Parliament in the decision-making process by giving it 'co-decision' (laws need both Parliament and Council consent). Liberal Democrats thoroughly welcome the prospect of these developments in EU and EP competence.

It is foreseeable that the capacity and willingness of the EU to reinforce its protection of minority rights (both through formal legal means and peer pressure) will go on growing, as the Union evolves into a human rights community. Progress so far is encouraging.

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