RAISING AWARENESS OF EMPLOYMENT DISCRIMINATION IN EUROPE: THE IMPACT OF EU LEGISLATION AND RESEARCH

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ABSTRACT

All 27 countries of the European Union (EU) now have in place legislation forbidding racial/ethnic discrimination in employment. In some countries this has been a recent and entirely new development. This paper looks at how things have changed since the mid-1990s, and the role of EU law and research in spreading awareness of the problem of ethnic discrimination in Europe. In particular, it focuses on the research and data collection work of the EU Agency for Fundamental Rights in Vienna, which has produced comparative research reports on discrimination covering all 27 member states of the European Union.

All 27 countries of the European Union (EU) now have in place legislation forbidding racial/ethnic discrimination in employment. For some, this has been a recent and entirely new development. This paper looks at how things have changed since the mid-1990s, and the role of EU law and research in spreading awareness of the problem of ethnic discrimination in Europe.

Fifteen years ago, in many countries of the EU, the issue of racism and ethnic discrimination in the labour market and at the workplace was nowhere on the agendas of employers, policy makers or trade unions. In 1996, for the first time, a report brought together the evidence on the problem from all of the (then 15) EU member states[1], drawing attention to practices of discrimination that were significantly undermining employment opportunities for immigrants and minorities in Europe (EUROFOUND 1996).

One of the most striking findings of the research, which was carried out by an EU agency—the European Foundation for the Improvement of Living and Working Conditions in Dublin—was the degree of ignorance exhibited by employers, trade unionists and policy makers. The launch of the report at a conference in Madrid in 1996 elicited responses such as "Racial discrimination isn't a problem in our country because historically we have never been a colonial power" or "… because we have traditionally been a country of emigration, and understand the problems of migrants" (Wrench 2000, 276). Three of the most important recommendations of the 1996 report were (i) the need for an EU directive prohibiting racial discrimination, (ii) the need for anti-discrimination legislation at a national level in all EU member states, and (iii) the need for more awareness-raising, information provision and research on the area.

Over the last 15 years, we have seen all of these recommendations take form. Firstly, in 2000, the European Union adopted the Racial Equality Directive, which prohibits direct and indirect discrimination on grounds of racial or ethnic origin, religion or belief.[2] Secondly, all member states now have laws prohibiting racial/ethnic discrimination in employment (and other areas). This is a direct result of the Directive, and for some EU countries it was the first time in their history that anti-discrimination legislation covering racial/ethnic discrimination in employment had been introduced. Furthermore, the Directive required the creation of specialised equality bodies promoting equal treatment in each member state, and offering assistance to victims of discrimination.

Thirdly, there have been a number of EU initiatives designed to raise awareness and stimulate research in the area. For example, the year 1997 was designated the "European Year against Racism," and in 1998, the EU created the European Monitoring Centre on Racism and Xenophobia (EUMC) in Vienna, an Agency with the

primary objective of "providing the Community and its member states with objective, reliable and comparable data at a European level on the phenomena of racism and xenophobia." Between 2000 and 2007 the EUMC published each year various reports exposing aspects of racism and ethnic discrimination in the EU. In 2007, the Agency was strengthened through its metamorphosis into the EU Agency for Fundamental Rights (FRA), with a much broader mandate, including discrimination on grounds of sexual orientation, disability, age, and religion. The Agency's Annual Reports continue to present yearly overviews of developments regarding racism and discrimination in EU member states. The latest comparative report on the subject of ethnic discrimination and exclusion in employment in all 27 EU countries was published by the Agency in 2011 (FRA 2011b).

All of these developments have contributed to a broader awareness of discrimination, and placed it on the agenda in those countries where it had been absent. By the mid-2000s, it was no longer common to hear at European conferences declarations of "there's no problem here".

The purpose of this paper is to give a brief description of how the pan-EU data collection work of the FRA/EUMC has contributed to the body of evidence which has helped to bring about this change, and then to give examples of how the Agency's own research can be used to cast light on the impact of the EU anti-discrimination legislation itself.

To bring public attention to the issue of employment discrimination, the Agency has drawn on three main sources of evidence across the EU: (i) official and semi-official statistics and surveys, (ii) complaints data and legal cases, and (iii) research evidence. Official statistics come from population censuses, national registers, and official surveys. In many countries, statistical comparisons of the achievements of immigrants and their descendants with those of the majority population show that even when taking into account age, gender, educational attainment and skills, minorities still perform significantly less well in the labour market than their majority peers. This suggests that discrimination is the remaining explanatory factor, and constitutes valuable *indirect* evidence of discrimination (see FRA 2007, 46; FRA 2008, 43; FRA 2011a, 111).

Complementary to this, the examples of legal cases published each year by the Agency provide direct and tangible insight into the character of the problem. For example, recent Annual Reports list cases which include a baker in France who rejected a job applicant on grounds of skin colour and was fined €5000; an employer in Hungary who refused to employ a Roma woman because 'colleagues wouldn't want to work with a Gypsy'; a written instruction to a number of supermarket branches in the Netherlands 'not to recruit any applicants of Moroccan descent'; racist bullying against an Asian worker in a Berlin restaurant, and 'deliberate, blatant and unfettered racist abuse' against four Polish workers in Ireland, which resulted in compensation being awarded (FRA 2010a, 49; FRA 2011a, 112).

The Annual Reports also provide summaries of relevant research carried out in member states each year. Three of the most valuable types of research for providing data on employment discrimination are (i) surveys of employers, (ii) victim surveys and (iii) discrimination testing experiments.

The findings of surveys of employers or of employment agency staff often confirm the existence of barriers to employment for migrants and minorities. For example, interviews with personnel managers in Germany in 2006 showed that when recruiting for jobs, they could be influenced by cultural stereotypes and prejudices towards Turkish migrants (for example, they are "not ambitious," "too macho," or "incapable of working in a team") (FRA 2007, 56-57). In Belgium, a survey of 688 members of an organization of self-employed individuals found that 80% would not consider hiring a person of foreign nationality, even for occupations where there were labour shortages (FRA 2008, 52). In Lithuania, 40% of surveyed employers reported that they would not hire Roma (FRA 2009a, 37).

The findings of surveys of victims of discrimination surveys are increasingly reported. For example, in 2006, surveys of Russian speakers in Estonia, immigrants in Denmark, Turks in Germany, Serbs and Bosniacs in Slovenia and Somalis, Russians, Estonians and Vietnamese in Finland all reported subjective experiences of discrimination in employment (EUMC 2006, 48). In 2010, surveys showed that in Germany adults of Turkish origin perceived discrimination when job-seeking, as did Russians, Poles and Belarusians in Lithuania, and ethnic minorities in the Netherlands (FRA 2011a, 111). In victim surveys, respondents describe suspicions of being discriminated against in job applications, or workplace experiences of unequal treatment regarding wages, conditions, access to training and promotion, or being unfairly selected for dismissal.

The method of discrimination testing utilizes two or more testers, one belonging to a majority group and the others to minority ethnic groups, all of whom "apply" for the same jobs. The testers are matched for all the criteria which should normally be taken into account by an employer, such as age, qualifications, experience and education. If, over a period of repeated testing, the "applicant" from the majority background is systematically preferred to the others, then this points to the operation of discrimination according to ethnic or national origin. Over the last two decades the International Labour Office (ILO) has sponsored the test in Belgium, Germany, the Netherlands

and Spain (Zegers de Beijl 2000), and later in Italy, France and Sweden (Taran 2008). Overall, net-discrimination rates of up to 35% were found to be common, meaning that in at least one out of three applications the minority candidates were discriminated against. Another way of presenting results is to state that the minority candidates usually have to make three to five times more attempts than majority candidates to obtain a positive response. Further testing research has been carried out by others in Belgium, France, Greece, Hungary, Ireland, Slovakia and Sweden, providing evidence of similar levels of discrimination (FRA 2007, 58; FRA 2008, 50; FRA 2009a, 38; FRA 2010a, 54; FRA 2011a, 112).

Over the years, enough of this kind of data and information has been generated to marshal against anyone who declares "there is no problem here." However, the Agency has done more than collect already existing data. It has also initiated its own EU-wide comparative research projects, and some of these have been able to throw light on the impact of the Racial Equality Directive, ten years after the Directive was agreed.

One of these is the European Union Minorities and Discrimination Survey (EU-MIDIS), carried out in 2008, and the only one of its kind to survey minority groups across all EU member states using the same standardized questionnaire. This provides comparable data, covering criminal victimization and policing, and also experiences of discrimination in other areas of social life, including employment (FRA 2009b). In total, 23,500 minority respondents were interviewed. The survey asked respondents about their awareness of legislation in their country forbidding ethnic discrimination in employment. Only 39% were aware that such legislation existed. Furthermore, of those who reported experiencing acts of discrimination, the survey showed that the overwhelming majority did not report them to an organization or at the places where they occurred. When asked about their knowledge of equality bodies, as established under the Racial Equality Directive, 80% of all respondents could not think of the name of a single organization that could offer support to victims of discrimination (FRA 2010b, 3-5).

A second piece of research, on the impact of the Racial Equality Directive, was carried out in 2009, and involved a total of 344 interviews with representatives of major employer and trade union organizations across 27 EU countries. The survey covered respondents' awareness of the Racial Equality Directive and relevant national legislation, and their opinions on its value and relevance (FRA 2010c). The employers' views ranged from positive to overtly critical. Some saw the Directive as making a positive contribution to a more open society, and stimulating new training, codes of conduct or complaints procedures. Others expressed strong resistance to any legally binding instruments that might interfere with the freedom of enterprise, and criticized the "naïve idea that the situation can be changed if you come up with a new law".

Some employers believed that the legislation was completely irrelevant to their own organization or national context. This was particularly true for employers' organizations in the 12 newer member states that joined the EU in 2004 and 2007. For example, one respondent from a Romanian employers' organization stated, "I do not consider that there are racial problems in Romania;" a Bulgarian employers' organisation said, "Working people from the minorities… do not feel oppressed or discriminated against;" and a Latvian employers' representative stated, "Ethnic discrimination is not a problem, it has never been here. Never!" Some of these employers viewed anti-discrimination legislation as part of a Western package of "exotic" issues that were forced upon them from outside in the process of EU accession negotiations.

Not surprisingly, trade union respondents tended to be more positive than employers, and many were quite convinced that the Directive had helped to spread a more general awareness of workers' rights among the general public. However, as with the employers, more negative responses came predominantly from trade unionists in the newer EU 12 member states. For example, comments from the Czech Republic, Estonia and Latvia included, respectively: "the racial discrimination issue is marginal," "I think that racial discrimination in the workplace is missing in Estonia," and "The EU non-discrimination law is seen as something forced on the country from the outside, and non-essential."

The conclusion of this paper is a mixed one. A great deal has changed over the last 15 years. "No problem here" is no longer an acceptable stance, and the activities at the EU level in the areas of law and information provision have clearly played a part in this change. However, there is a continuing general "awareness" problem. Firstly, most immigrants and minorities in the EU are not aware of the legislation and their rights in this field. Secondly, employers and trade unionists in the member states that joined the EU after 2004 are far less aware of, or sympathetic to, the Racial Equality Directive and it's rationale than are their counterparts to the west.

This division may be understandable, in that the social partners in the newer member states were not involved in the consultations and discussions in the build up to the Directive, and these countries have also not had the same history of post-war immigration experienced by more western countries. However, many of these new member states contain significant populations of Roma indigenous minorities. In the FRA's EU-MIDIS survey, the Roma came out as experiencing more discrimination than any other migrant or minority group. Yet, in the interviews with

employers and trade unionists in the Impact Study, none of them saw employment discrimination against Roma as an issue to be addressed. Nor did they even see Roma as a group relevant to anti-discrimination measures and the Racial Equality Directive. Clearly, even though legislation is now in place in all EU countries, continuing research, activism and awareness-raising measures are still required.

All the FRA reports mentioned in this paper are available at the Agency's website: http://fra.europa.eu

NOTES

[1] In addition, Norway was included.

[2] Council Directive 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).

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