

UK Race &
Europe

NETWORK



UKREN 2nd Council Meeting 2008 Report
Report of the Second Council Meeting
Held at the Runnymede Trust on 27 November 2008

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UKREN is a formal member of the European Network Against Racism (ENAR)

Introduction

Background

Twice a year UKREN organises a Council Meeting, which is to give members the opportunity to discuss UKREN's future work programme. During the 2nd Council Meeting, the discussion was framed around various topics which currently take up an important place in UKREN's work. Issues included the upcoming European elections, immigration and integration, the proposal for a new European directive on anti-discrimination and the Durban Review Conference. In addition, UKREN invited an external speaker from the Equality and Human Rights Commission (EHRC) to provide an overview of the EHRC's work.

The report contains the contribution of the five speakers and a summary of the general discussion held after each presentation.

Contents

- Wilf Sullivan from the TUC gave a presentation on the European Elections, the challenges UKREN will face and the initiatives which are being taken to counter a rise in extreme right political parties both in the UK and in the rest of Europe
- Don Flynn, from the Migrants' Rights Network and UKREN chair spoke about immigration and integration at a European level and more specifically about a European wide project on services to new migrants in various European countries, which will run over the next three years and for which UKREN will act as UK Partner.
- Barbara Cohen from the Discrimination Law Association provided more information on new European anti-discrimination legislation, specifically about the proposal for a new anti-discrimination directive.
- Sarah Isal, UKREN Programme Director talked about the Durban Review Conference which will take place in April 2009.

The European Elections

Wilf Sullivan

In May 2009 general elections for the European Parliament will be organised across Europe. Within the UK context, getting people to vote will be the biggest challenge. In 1999, the UK had the lowest turnout in Europe, which is of great concern as the foothold of the BNP in certain parts of the country, such as the West Midlands but also in parts of London, is very worrying. In 2004 the turnout was significantly better due to local election being held at the same time as the European elections. It is important to note that the BNP did not have significant support in 1999, whereas today it does. The implications of a BNP seat in the European Parliament are considerable as the party would be eligible for large amounts of funding for example. Also the Parliament would be subjected to a stronger extreme right-wing influence on the discussion. At a European level, extreme right parties are already influencing the debate, particularly in areas UKREN is concerned with and therefore it would be undesirable to see the creation of an extreme right Parliamentary group. Thus far, there has been one attempt to set up such a group in the European Parliament. This one was mainly relying on Eastern European extreme right parties. The Austro-Italian axis however, could potentially create a new block which the BNP could be part of if it wins a seat, and which would provide a stable far right wing block, whereas the first was not.

The main concern is the influence an extreme right wing group would have on the debate and consequently on the decisions taken by the Commission and the Council of Ministers. Policies would likely take an even sharper turn to the right of the political spectrum. The recently adopted Pact on Immigration and Asylum, proposed by the French presidency, can be regarded as an example of this influence. The Pact can be seen as a reflection of the foundation of 'Fortress Europe', which seeks to encourage high-skilled migration on one hand but which imposes strict rules on economic migration and family reunification on the other. Although integration measures are mentioned, the more progressive integration strategies that were previously part of the EU's agenda are not part of the Pact. The Pact does not have legal force but it does set a direction for the Commission and its future work. A lot of issues that are of major concern to UKREN such as family reunification, the security agenda, asylum and migrant workers, are now more regressive than in the past.

UKREN is therefore trying to look at the influence of political parties and the efforts the mainstream parties are making in their manifestos to counter this far right influence. UKREN will try to get a commitment from the other political blocks to counter this regressive path of travel. Both ENAR and UKREN will be issuing documents which look at the European security policy and issues surrounding immigration and asylum to put to political parties and get some commitment to more progressive policies.

Q&A Session

How does UKREN plan to engage political parties, organisations and trade unions in the European election process?

As mentioned, UKREN is drafting a pamphlet which will help its members engage with political parties on the very issues concerning black and minority ethnic communities. In addition, it will seek to cooperate anti-fascist organisations and trade unions. Contact with organisations such as Searchlight is important as they are very good at monitoring the extreme right. Where trade unions are concerned, UNISON has identified the areas most vulnerable to a win by the BNP in the UK and will actively campaign in those areas to prevent that.

How can the turnout for the European elections be increased?

Raising awareness of Europe and encouraging people to vote remains a challenge in the UK. The government will try and increase the turnout by setting up polling stations near supermarkets etc. It should be noted though that one of the problems with the EU elections in the UK is a lack of campaigning efforts by well established parties and a lack of commitment to European politics more broadly. UKREN initiatives are essential to highlight the importance of Europe and to show people that European rules can very much influence British legislation. Highlighting the dangers of the BNP gaining a seat in cases of low turnout might also be a factor in encouraging people to vote.

How can new European immigrants be engaged in the election process?

To ensure a high turnout it seems important to engage European immigrants as well, especially since new legislation affects them directly. They should be informed that they can vote in the UK as many might not be aware of that. The Electoral Commission can be contacted about registration especially of new immigrants from Poland and Lithuania for example. Registration of Eastern European migrants is difficult though as it needs to be in writing with proof of ID, which is an obstacle for many migrants. It is important however to bear in mind that high numbers of registration do not guarantee high turnout on the day of the election, especially where new European immigrants are concerned

Comment on the diversity of MEPs

It would be interesting to do some work on researching the ethnic diversity of the European Parliament. The EHRC for example is looking at the lists of candidates of different countries to see if progress has been made since the last elections in 2004. It remains rather challenging however to measure the ethnic diversity in the European Parliament, with so many member states refusing to do ethnic monitoring. It seems also difficult to determine what type of action might be taken prior to the elections to improve this especially given the wide variety of European countries involved. It seems that the European Commission ought to play a role in this, however.

Immigration and Integration

Don Flynn

This presentation will focus on the broad developments in the area of immigration and integration European policies over the last decade, and will describe a new project that UKREN and ENAR are developing in this area.

The European Union has been playing an increasingly larger role in immigration and integration issues over the past years since the 1999 Tampere European Council meeting, which saw the drafting of common European policies on immigration and asylum. The Tampere process then became The Hague Programme, developed under the Dutch Presidency in 2004 and which is itself being reassessed at the moment, particularly by the French Presidency. The idea that integration is a process that needs to be adopted by all parties and is not just the migrants' responsibility was an important feature of the Hague Programme, in particular through the Common Basic Principles on Integration, signed by all EU member states at the time. However, as highlighted in the previous presentation (see Wilf Sullivan's presentation), common European policies in the field of immigration and integration have recently taken a more restrictive and punitive turn, culminating with the adoption of the Vichy declaration on integration, signed by all EU Ministers on 4 November 2008.¹

The Migration Policy Group, a Brussels-based think-tank on policy issues, has created an index on citizenship, which was meant as an indication for successful integration.² The first one dealt with 15 countries. Among the 15, the UK took up a modest middle position, which was surprising as the provision of good race equality legislation was expected to push the UK further up the list. However, despite this legislation representing advantages for ethnic minorities, from a migrants' perspective there appeared to be less benefits. Belgium and Spain turned out to be very successful at integrating their migrants whereas Germany and Austria found themselves at the bottom of the list by maintaining the position that they were not migrant countries at all and that their immigrant minorities were meant to go back to their countries of origin.

In addition, enthusiasm for common EU policies on integration and immigration seems to have declined. This trend is possibly due to the reluctance of national governments who wish to maintain their authority in this area and which seem therefore determined to keep the influence of the EU in this area as limited as possible. Integration policies are concentrated at national level and in the case of some federations the decision is either at federal or even regional level. UKREN and ENAR are involved in a new project funded by EPIM (European Programme on Integration and Migration.) This project aims to measure the impact of integration policies from the point of view of different migrant communities. The project will look at the awareness of official policies by migrant communities, their role in designing policies and the extent to which they were successful at negotiating their needs to policy makers and their representation in

¹ Available at:
http://www.eu2008.fr/webdav/site/PFUE/shared/import/1103_Ministerielle_Integration/conference_integration_041_108_Final_declaration_EN.pdf

² More information can be found at: <http://www.integrationindex.eu/>

national authorities. Seven countries are involved in the partnership including Belgium, Bulgaria, Cyprus, Italy, Sweden and the UK. Some of these are new countries of immigration, whereas others have longstanding ethnic minorities on their territory. Also the various national minorities have different origins which will need to be taken into account. The project will see the following stages: first, a theoretical framework will be set up, providing information on the various EU and national policies of immigration and integration. Second examples of good practice will be researched in each of the countries and the third and final stage will see the creation of a toolkit, which can be used by various bodies, including public authorities, local authorities, communities themselves, community leaders and trade unions, to assess the effectiveness of integration strategies for migrants. Throughout the project, the national context will have to be taken into account as these will vary according to the countries.

The Migrants' Rights Network has been subcontracted to run the project across Europe. UKREN will act as the UK partner, and as such will be responsible for the organisation of workshops and information gathering nationally. UKREN will also evaluate the toolkit to ensure that it can be used at a practical level. The first meeting will take place in February 2009.

European Anti-Discrimination legislation

Barbara Cohen

Before discussing the proposal for a new Directive, it seems important to start with some background information.

Background

The year 2007 was the European Year of Equal Opportunities for All. A number of initiatives took place both leading up to and during that year. Many of these aimed to assess the current situation on equalities in the areas both covered and not covered by existing directives. A wide range of surveys was organised by the European Commission, including online surveys, which were conducted across Europe to study the experiences of discrimination of individuals, NGOs and businesses. The results showed that discrimination continues to exist on all of the grounds covered by Article 13: race, sex, disability, sexual orientation, religion or belief and age. One of the interesting questions which people responded to as individuals was whether level of legal protection against discrimination outside of work on grounds of age, disability, religion or belief or sexual orientation in a given country would influence their decision to go and work in that country. Nearly 70% of respondents said that such legislation would influence their decision. As the freedom of movement of workers is one of the fundamental principles of the EU, it is interesting to see that this freedom of movement may be hindered or helped by equality legislation. The second interesting point was the response of businesses, a substantial proportion of whom considered consistency in legislation important in their decisions to extend their business operations from one country to another.

Existing Anti-discrimination legislation

A 'mapping study' undertaken by the European Commission during the 2007 year also looked at protection against discrimination outside employment on the grounds of religion or belief, sexual orientation, disability and age, which are the areas that are thus far not covered by any directive. The study also examined to what extent these areas are covered by national legislation. The study concluded that there are large inconsistencies between different countries where anti-discrimination legislation is concerned. Some member states had some legislation that covered some of the grounds in some of the areas, but they are differently framed in each country and differently enforced as well. Therefore a common European minimum standard for anti-discrimination legislation on which national law could be based, seemed necessary. European-wide NGOs pushed for the adoption of new legislation to cover the areas that had not been covered before, just as they had campaigned when the Race Directive was adopted. In current EU legislation there is a hierarchy of protection, the Race Directive providing the best protection as it covers employment, education, vocational training, social services, access to goods and services including housing and health care. For gender there has, of course, been legislation on equal treatment in employment between men and women for a long time. Article 13 provided competence for the Gender Goods and Services Directive, which provides less protection than the Race Directive as education is excluded and the provision of access to goods and services is more restricted. On the other grounds (religion or belief, sexual orientation, disability and age), current non-discrimination provisions only exist

in employment and vocational training. Therefore, the European Commission was intensively lobbied, resulting in the publication in July 2008 of a proposal for a Directive on protection against discrimination on these four grounds outside the field of employment.

The proposed directive

As with other directives, this proposed new directive will only come into effect once it is unanimously adopted by the Council of Ministers. Before that, the European Parliament is consulted on the draft and relevant Committees of the Parliament put forward amendments to the draft directive. However, it is the European Council which makes the final decision. The current French Presidency has reacted enthusiastically to the proposal and at one stage is reported to have hoped to get the directive adopted before the end of December 2008. This has not happened and negotiations are now the responsibility of the next EU member state holding the EU Presidency, namely the Czech Republic, whose priorities do not include the adoption of the directive. It is therefore unlikely to be adopted until negotiations are revived after June 2009, under the Swedish Presidency, which is believed to be much more positive about the proposal. In the meantime however, ministers and civil servants from each member state continue to work on the details of the draft directive. The UK is overall broadly supportive despite some reservations on a series of issues, including the inclusion of education in the scope of the directive.

Contents of the directive and EU competence

It is my personal view that the proposed new Directive is not bad and if it is adopted as it is now, it would be a major step forward and definitely not a disaster. However it could be better. The draft directive covers all the areas which are also covered in the Race Directive, including social protection, social advantages, education, access to goods and services, housing and health care. On the other hand it introduces exceptions and exclusions which are problematic and need to be seen in light of the current political climate in Europe. When the Race Directive was about to be adopted, an extreme right party had just been elected in Austria, and there was a fear of a spread of racism across Europe. As no member state wished to be seen as in favour of race discrimination, the Race Directive, was adopted very quickly by member states, keen to send a strong message against racism.

Some controversial or salient issues in the draft proposal

The proposed directive applies to grounds of religion or belief, sexual orientation, disability and age and it covers a wide range of areas. This means that there is a wide variety of interest groups involved, but also that, unlike the Race Directive, there is less urgency and less political charge on the issues involved and more time for negotiation. The European Commission and national governments have been lobbied to get some exceptions and exclusions into the draft directive. One of the major concerns regards the competences of the national governments and the EU and where the boundaries are between the two. There are issues relating to rules on marital status, family status, reproductive rights and significant aspects of education which will remain under the competence of member states. On education, it is the member states that are competent in the area. Article 149 of the Treaty Establishing the European Union states: "*The Community shall contribute to the development of quality education by encouraging cooperation between Member States and if necessary by supporting and supplementing their*

*action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.*³ This means that member states maintain competence for the content of the teaching and the organisation of education systems.

However that does not exclude the important role of the EU in ensuring that across the member states these functions are carried out without discrimination. Where European wide legislation is considered, the Treaty (Article 5) states: “[...] in areas which do not fall within its [the EU] exclusive competence, the community shall take action in accordance with the principle of subsidiarity only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the proposed action be better achieved by the community.”⁴

One of the main reasons for the directive being drafted was to ensure equality in education on these grounds as discrimination in these instances is proven and well documented. The harassment on grounds of sexual orientation of children, the treatment of disabled children and evidence of discrimination against Muslim children in many parts of Europe for example, made education one of the main reasons for the proposal. There are therefore very strong arguments in favour of strong regulation of the balance between member states’ competence on the one hand and the need for EU legislation to eliminate discrimination in education.

Another problematic part of the directive, which is also an issue under the Gender Goods and Services Directive, is the result of effective lobbying by the banking and financial services sector. The insurance industry argues that differences are needed in rates for insurance policies based on age and disability and an exception for this is in the proposed directive in its current form. The proposed directive would offer less protection than exists under the Gender Goods and Services Directive, in which the basic position is that there should be equality in rates for between men and women, and member states may only permit differentiated rates where they have been provided with good statistical and actuarial evidence that the risks are sufficiently different for men and women.

Currently the proposed directive fails to provide real protection to combat multiple discrimination, which is an issue raised by both UKREN and ENAR. Where multiple discrimination is concerned, the protection needs to be the same as the protection under the Race Directive.

The crucial role for both ENAR and UKREN should therefore be to continue to emphasise that there cannot be hierarchy of protection, to prevent multiple discrimination and to ensure coherent European anti-discrimination legislation.

Q&A Session

How is the EU ensuring that member states comply with directives?

³ <http://www.eurotreaties.com/maastrichtec.pdf>, consulted 07/01/09

⁴ *Ibid*, consulted 07/01/09

The European Commission monitors whether member states have introduced national legislation that is fully compliant. There are also organisations within most member states that also monitor what their governments do or fail to do. The Commission funds a project under which legal experts in every member state report regularly on the status of national anti-discrimination legislation. Another way to try to secure compliance, is to bring cases before the European Court of Justice (ECJ). A recent case *Coleman v. Attridge Law* is a good example. It exposed the fact that the UK has thus far failed to recognise in the Disability Discrimination Act the full implications of protection against discrimination on grounds of disability and has excluded protection for people who are discriminated against because they are associated with a disabled person. Ms Coleman, a mother of a disabled child, was harassed at work for having to take time off to care for her child, complained to the employment tribunal who referred the case to the European Court of Justice. The ECJ said that the directive covering disability in employment included association with a disabled person. The UK had consistently refused to amend the Disability and Discrimination Act for that purpose and is now considering what it must do in light of the decision of the European Court of Justice. A separate case supported by Age Concern, asks the ECJ to consider whether the UK age regulations transpose the European directive in an appropriate way. This case is still pending in the ECJ.

The UK is far from unique in relation to its failure to have laws that meet the standards set by the directives. There are problems with national laws across Europe. Many countries have open-ended lists of grounds as that is consistent with their constitutions. Enforcement agencies therefore get bogged down in cases that are not on any of the Article 13 grounds. Most member states may not be dealing adequately with their duty to ensure reasonable access to justice to enforce rights under the directives, in some instances the failure to do so could be seen as a form of discrimination, preventing groups from seeking legal redress.

The draft of the new directive takes account of the UN Convention on Rights of Persons with Disabilities, which has been signed by the European Commission and by all member states but ratified by only a few. Under the proposed directive there is a duty to anticipate the needs of disabled people and there is a separate duty to make reasonable accommodation for individuals with failure to do so a form of discrimination. If the directive is adopted, UK laws need to fit, which means certain laws will need to be amended.

What are the implications for the UK in regard to both compliance and possible adoption of the new draft directive?

A year ago the UK has been warned about non-compliance with the Race Directive. The two issues of non-compliance regarded the definition of indirect discrimination and instructions to discriminate being made unlawful. Very recently the definition of indirect discrimination in the Race Relations Act was amended, purportedly to deal with the complaint of the European Commission. With regard to instructions to discriminate under the Race Relations Act this is an unlawful act that only the EHRC can enforce. According to the Race Directive, instructions to discriminate should be one form of discrimination about which any person can complain if they are or are likely to be discriminated against because of instructions (i.e. if an employer tells the recruitment agency to discriminate.) To date there has been no further amendment to deal with instructions to discriminate.

The UK is understood to have raised objections to the age provisions in the proposed directive. The directive does not set age limits and protects people of all ages. However, the government has stated that in the new Equality Bill protection outside of employment will apply to people over 18. This will have to change if the directive is adopted. This makes timing an interesting issue, with the draft directive pending and the Equality Bill about to be introduced. One view is that it would arguably be better to finalise the Bill after the directive is approved to avoid the need to amend a brand new law. The problem is however that the UK holds the opinion that the directive needs to fit UK law and currently the UK is continuing to lobby to exclude children from the scope of the directive. On a more positive note though it should be noted that past experience in this area shows that in the adoption process of earlier directives, the UK has failed to win all of its arguments and has needed to amend its national laws to comply with EU laws.

World Conference against Racism follow-up

Sarah Isal

In April 2009 the UN will host the Durban Review Conference, acting as a follow-up to the 2001 World Conference Against Racism. The purpose of the Durban Review Conference is to evaluate the Declaration and the Programme of Action adopted at the 2001 conference and to evaluate how national governments have implemented their National Action Plans, a commitment that they had signed up to in Durban. It is therefore not supposed to adopt new documents or to re-open negotiations. A number of Preparatory Committees have been held in Geneva and the UN Human Rights Council is in charge of organising the Review Conference, including agenda adoption and accreditation of NGOs able to participate in the conference.

In 2001, UKREN was significantly involved in the Durban Conference. At the time, UKREN had been commissioned by the Home Office to consult its members across 13 UK cities on the issues they considered important to be discussed in Durban. UKREN wrote a report on the consultations and took a delegation of NGOs to Durban.

The current picture is very different. First, the participation of NGOs both in the Review Conference and its preparatory process is uncertain. The guarantees for NGO participation, which were provided for Durban are not there now as some members of the Human Rights Council are not keen on NGO participation. During the Preparatory Committees delegations from several countries have tried to exclude NGOs from participating in the process, and unlike the Durban conference of 2001, it is not guaranteed that an NGO forum will even take place alongside the governmental conference. It is therefore more difficult for NGOs to get involved.

Nevertheless UKREN would like to see a scrutiny of the issues the UK government signed up to in 2001 and whether they have complied with their commitment to draft a National Action Plan. After the Durban Conference, UKREN pushed the UK Government hard on this issue, however, the National Action Plan was dropped and it will therefore be interesting to see what the UK is going to report to the Review Conference. Despite the difficulties surrounding NGO involvement and a lack of resources, there might be a role for UKREN in monitoring the UK government and in the provision of an alternative perspective to the follow-up activities undertaken since 2001.

Q&A Session

Engagement in the Durban Review Conference

What could UKREN's role consist of at the Durban Review Conference consist of, given the difficulties NGOs face?

Engagement in the Durban Review Conference is challenging due to various issues involved. Firstly, we are facing a different context than that of Durban. The Human Rights Commissioner at the time of the 2001 Conference was Mary Robinson, former President of Ireland, extremely committed to anti-racism and strong advocate of NGO participation. Today, the Human Rights

Council which is in charge of deciding on the Review Conference's agenda includes members of have limited concepts of human rights and engagement with civil society, which has consequences for the participation of NGOs in the Conference.

Where British and European NGOs are concerned it should be mentioned that the EU does not seem particularly engaged at this stage. Regional meetings have taken place in Africa and in Latin America, however the European Union does not seem interested in organising such a meeting at the present time. As long as the UK government does not want to implement a National Action Plans, it remains very difficult for UKREN to be more proactive. Therefore there is no point wasting energy to try and make the government do something they will not do. It might be possible however to give this some public attention as the government will remain silent on the issue and will send a delegation to Geneva and NGOs are unlikely to be informed about it. Lobbying an MP to ask a Parliamentary Question might be an option.

How can the issue of reparations be addressed?

The issue of reparations for victims of slavery was a very controversial issue at the 2001 Durban World Conference as both governments and NGOs were divided over it. Governments are very reluctant to discuss reparations as they fear having to pay large sums of money to countries of individuals. Therefore a sophisticated response seems needed to address the issue. Some have suggested doing so by abolishing debts of developing countries for instance. Or alternatively, instead of reparations, action such as building schools and hospitals for example, was also advocated. In this sense, reparations would therefore take the form of the provision of social services rather than financial means.

Comment on the issue of antisemitism in Durban by Richard Stone

Durban saw the expression of strong antisemitic sentiments in the NGO forum, in particular, with some Jewish delegates being intimidated and antisemitic literature being displayed at the forum. This has resulted in a number of important Jewish organisations currently lobbying for the exclusion of NGOs from the Review conference for fear of seeing a repeat of Durban. That however is not a constructive solution to the problem. Instead, these organisations should be encouraged and partnerships should be created between Jewish and non-Jewish delegates. Within UKREN and ENAR this sort of solidarity does exist and any Jewish delegates who are represented can be ensured that there will be a deep commitment to prevent anti-Semitism.