

**Opinion of the European Economic and Social Committee on 'Vulnerable groups' rights at the workplace — in particular issues of discrimination based on sexual orientation' (own-initiative opinion)**

(2012/C 351/03)

Rapporteur: **Thomas JANSON**

On 19 January 2012, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*Vulnerable groups' rights at the workplace — in particular issues of discrimination based on sexual orientation.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2012.

At its 483rd plenary session, held on 18 and 19 September 2012 (meeting of 18 September 2012), the European Economic and Social Committee adopted the following opinion by 130 votes to 4 with 14 abstentions.

## 1. Conclusions and recommendations

1.1 Any discrimination against individuals based on their identification with a particular group is a threat both to human-rights-based democracy and to economic development in the EU. In the EESC's opinion, the EU has a responsibility to take a coordinated approach towards the objectives of work in this area <sup>(1)</sup>.

1.2 Combating discrimination effectively requires proactive measures based on the participation of the various stakeholders, with representatives of disadvantaged groups working together with the social partners.

1.3 In this opinion, the EESC notes that, with regard to discrimination based on sexual orientation, more needs to be done to reduce the risk of encountering discrimination. This includes increasing funding for research on discrimination in employment, and also developing a road map for achieving the goal of non-discrimination on the basis of sexual orientation.

1.4 It is clear that the economic and social crisis has serious consequences for vulnerable groups in the labour market. The cutbacks currently being made to social welfare systems within the EU are raising unemployment, and also risk increasing xenophobia, homophobia and other discriminatory and offensive statements and actions. The EESC feels that it is important for the EU and the Member States to be more effective and more open in evaluating the risks to vulnerable groups presented by the current cutbacks and to take action to reduce those risks.

1.5 The EESC notes that there are considerable differences within the EU with regard to the treatment of LGBT <sup>(2)</sup> people, and has serious concerns about the discrimination they face. This discrimination presents a threat to the EU's fundamental values and to freedom of movement.

1.6 The EESC urges the Commission to develop a road map for combating discrimination against LGBT people, and highlights the importance of incorporating an LGBT perspective in all policy areas.

1.7 The EESC stresses that it is important for civil society and governments to work together to combat stereotypes and raise awareness of LGBT people's rights. Discrimination on the grounds of sexual orientation and gender identity must be actively included in discussions and negotiations between the social partners. In this context, the EESC would highlight the networking opportunities that can promote equal opportunities and openness in the workplace.

1.8 The EESC stresses that awareness of what the EU's legislation and rules have to say about discrimination in the workplace is important not only for individuals but also for employers and trade unions. Almost 45 % of EU citizens are unaware that there are laws against discrimination on the grounds of sexual orientation, and the EESC feels that targeted information campaigns are needed to tackle this problem.

1.9 The EESC acknowledges the specific issues facing many transgender people, and considers that these specific problems need to be dealt with in a separate report.

<sup>(1)</sup> Article 21 of the Charter of Fundamental Rights of the European Union states: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

<sup>(2)</sup> Lesbian, gay, bisexual and transgender.

## 2. Why combat discrimination?

2.1 The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Article 19 of the Treaty on the Functioning of the European Union gives the Union the authority to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". Combating and countering discrimination of all kinds is absolutely vital to the legitimacy of the European Union. Article 21 of the Charter of Fundamental Rights of the European Union prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

2.2 A number of directives have been adopted pursuing the treaty's objectives, such as Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Protection against sexual and racial discrimination is much more extensive than protection against discrimination based on religion or belief, age, disability or sexual orientation – a fact that may influence people's decisions about working, studying or travelling in another EU country.

2.3 Equal treatment is primarily about promoting human rights, but also about making the most of all the EU's resources. Discrimination is a waste of resources, and leads to social exclusion for the groups affected. The deep economic and social crisis currently affecting the EU, with many countries having cut back their welfare systems and reduced wages, is making things worse for the most vulnerable groups. The EU's various anti-discrimination directives are therefore essential to protect groups at risk of discrimination and to promote their integration in the labour market. The Member States have a real responsibility to ensure that the intentions of the anti-discrimination directives are put into practice.

2.4 The EESC has published a range of opinions giving its views on the various forms of discrimination. It welcomed the Commission's proposal for a Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC)<sup>(3)</sup>. It also supported the idea of proposing a separate directive relating solely to employment and occupation, prohibiting discrimination based on religion, disability, age or sexual orientation, and took the view that it was also important for all inhabitants of the Member States to enjoy a minimum level of protection and rights of legal redress against discrimination. The Committee called for more effort to be put into researching and developing economic arguments for non-discrimination, and regretted the

fact that the Directive made no mention of discriminatory instructions or pressure to discriminate on the specified grounds.

2.5 The framework directive covers both direct and indirect discrimination. Indirect discrimination occurs where people could, in practice, be disadvantaged by an apparently non-discriminatory provision or an apparently neutral criterion or practice<sup>(4)</sup>.

2.6 The EESC has also issued an opinion on the *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*<sup>(5)</sup>, which has not yet been adopted. The Committee welcomed the proposal for a directive on the basis that it would lead to consistent standards across the EU of protection against discrimination on all grounds listed in Article 13 of the Treaty establishing the European Community (now Article 19 of the Treaty on the Functioning of the European Union). It regretted, however, that the directive failed adequately to address the issue of multiple discrimination and called upon the Commission to come forward with a recommendation on this issue. The EESC urges the Council to take a decision on this matter to bolster vulnerable people's rights.

2.7 In its various opinions on discrimination issues (for example relating to age, third-country nationals and Roma), the EESC has *inter alia* made the following points<sup>(6)</sup>:

- it is important for efforts to combat discrimination to be integrated into all spheres of activity and incorporated into both the EU budget and national budgets;
- there is a need for indicators to gain information about the situation;
- the implementation of non-discrimination should be connected with the Europe 2020 strategy;
- appropriate and effective enforcement and monitoring mechanisms should be identified at both European and national level;

<sup>(4)</sup> Council Directive 2007/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

<sup>(5)</sup> OJ C 182, 4.8.2009, p. 19.

<sup>(6)</sup> OJ C 318, 29.10.2011, p. 69; OJ C 354, 28.12.2010, p. 1; OJ C 347, 18.12.2010, p. 19; OJ C 376, 22.12.2011, p. 81; OJ C 182, 4.8.2009, p. 19; OJ C 77, 31.3.2009, p. 102; OJ C 10, 15.1.2008, p. 72; OJ C 110, 30.4.2004, p. 26; OJ C 318, 23.12.2006, p. 128; OJ C 77, 31.3.2009, p. 115; OJ C 318, 29.10.2011, p. 50; OJ C 204, 9.8.2008, p. 95; OJ C 256, 27.10.2007, p. 93.

<sup>(3)</sup> OJ C 77, 31.3.2009, p. 102.

- there is a need for more and better jobs in order to safeguard and improve the economic independence of vulnerable groups;
- it is important for responsibility for families and households to be shared fairly between the sexes, and for social security entitlements to be individualised;
- institutional structures need to be developed, for example to set up a European Disability Committee;
- there is a risk that the economic and social crisis will increase intolerance, xenophobia, racism and homophobia throughout Europe;
- integration is a complex, long-term social process, with many dimensions and many stakeholders involved, particularly at local level.

2.8 Neither the EESC nor the Commission has dealt with discrimination on the basis of sexual orientation specifically and in detail, and there is no road map for reducing the risk of discrimination against LGBT people. This opinion will focus on discrimination based on sexual orientation because the EESC feels that there is a need for policy development work in this field. At the same time, it is important to note that there are a number of other vulnerable groups that are not covered by the listed forms of discrimination but find it difficult to access or remain in the labour market. All policy development therefore needs to ensure general access.

### 3. Situation for LGBT people on the labour market

#### 3.1 Issues with implementation of legislation <sup>(7)</sup>

3.1.1 The Fundamental Rights Agency published two reports in 2009 <sup>(8)</sup> analysing the situation for LGBT people; some of the agency's conclusions are set out below. One initial conclusion is that there is a hierarchy of grounds for discrimination, with protection against discrimination on grounds of sex, race and ethnic origin being stronger than protection against other forms of discrimination. However, Member States are increasingly tending to give all discrimination grounds the same level of protection.

3.1.2 According to the FRA, 18 of the EU's Member States have gone beyond the minimum requirements in implementing the Employment Equality Directive with regard to discrimination based on sexual orientation. The majority of Member States have therefore introduced legislation providing protection against discrimination based on sexual orientation outside the

<sup>(7)</sup> This section is based on reports from the Fundamental Rights Agency (FRA) and the European Trade Union Confederation (ETUC).

<sup>(8)</sup> *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Legal Analysis* and *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation*.

area of employment. Around 20 Member States have an authority responsible for addressing discrimination based on sexual orientation.

3.1.3 The FRA's reports also discuss freedom of movement for LGBT people, which is an important element of the single labour market in the EU. In this connection, it is worth noting that family law is a national legislative competence, which means that different Member States have different rules regarding same-sex couples. Countries also have different traditions in terms, for example, of attitudes towards same-sex marriage and partnerships, but this means, among other things, that problems may arise when people exercise their rights with regard to the free movement of persons.

3.1.4 The FRA notes that same-sex couples encounter significant barriers in exercising their rights in terms of freedom of movement, whether they are married, in a registered partnership or in a long-term stable relationship. The agency points out that, in many circumstances, this constitutes direct discrimination and that Member States' obligations under the Free Movement Directive <sup>(9)</sup> should be clarified.

#### 3.2 Court of Justice of the European Union

3.2.1 The Court of Justice has heard two cases relating to discrimination based on sexual orientation: *Römer* and *Maruko*. In the *Römer* case, the court held that the Employment Equality Directive precluded a pensioner who had entered into a registered life partnership receiving a supplementary retirement pension lower than that granted to a married pensioner, and that there was direct discrimination on the ground of sexual orientation because, under national law, the people concerned were in a legal and factual situation comparable to that of a married person as regards pensions.

3.2.2 In the *Maruko* case, the court likewise held that the directive precluded legislation under which, after the death of his life partner, the surviving partner did not receive a survivor's benefit equivalent to that granted to a surviving spouse. However, it also held that it was for the national court to determine whether a surviving life partner was in a situation comparable to that of a spouse. In addition, it noted that there were significant discrepancies within the EU and that there was a general lack of equivalence between marriage and other forms of legally recognised relationship.

#### 3.3 Issues with discrimination in the workplace

3.3.1 *Difficulty of being open about sexual orientation in the workplace*: Studies show that LGBT people are often "invisible" on the labour market, most often due to fear of victimisation. In many cases they also avoid socialising with colleagues to avoid being "outed". Above all, people were found to be

<sup>(9)</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

afraid of informing superiors in the workplace of their sexual orientation. Openness is significantly below average in certain sectors, such as the military and the church.

3.3.2 *Specific problems make work difficult:* LGBT people on the labour market are in a different position from other vulnerable groups because openness about their sexual orientation impacts their working life. It is common for LGBT people to develop strategies to avoid exposing their sexual orientation, such as changing the subject or leaving a conversation in the workplace. Studies show that these constant efforts to negotiate the workplace have an impact on health and productivity. The discrimination to which lesbian, gay, bisexual and transgender people are exposed in the EU leads to shame-based emotional exclusion, which has consequences both for the individual and for labour-market participation. In the EESC's view, the EU's various institutions need to work actively to combat the exclusion this entails.

3.3.3 *Problems accessing labour market rights:* When people are the targets of discrimination on the basis of their sexual orientation, it is important for them to have access to complaint mechanisms and to a national authority that handles complaints regarding such discrimination. Many Member States simply do not have any such authority.

3.3.4 *Unwillingness to make complaints:* The number of documented cases of discrimination on the grounds of sexual orientation is remarkably low. This is probably due to LGBT people being unwilling to come out publicly, and possibly to a lack of awareness of their rights. There is also a risk that they could lose their job if they complain. In some cases it is important for people who make complaints to be protected by society to counteract the negative consequences of complaining.

3.3.5 *Lack of knowledge:* A Eurobarometer survey showed that there were shortcomings in people's awareness of anti-discrimination legislation. Almost half (45 %) of EU citizens are unaware that there are laws against discrimination on the grounds of sexual orientation when appointing a new employee. An ETUC study also showed that there was a lack of awareness among trade unions regarding LGBT policies and activities. This lack of awareness of employment rights is reflected in a general lack of information and data about the

situation and experiences of people with different sexual orientations. Studies found that levels of awareness regarding sexual orientation and gender identity in the workplace are very low. This general lack of awareness makes it very difficult for people with different sexual orientations to discuss gender identity or discrimination based on sexual orientation with employers and trade unions. There is therefore a case for working to raise awareness, particularly where it is currently low, to improve knowledge of EU citizens' rights.

3.3.6 *Legal protection and other measures to reduce discrimination:* In some countries, the introduction of legal protection and better support for equal rights at national level has helped to increase public awareness more generally, which has also had a positive impact on trade unions and employers. The FRA's study makes little mention of employers' responsibility, which highlights the importance of the responsibility of management. Diversity management and an open culture have a positive impact on workplaces with regard to LGBT people. Diversity management may not necessarily prevent discrimination, but it is an important first step within an organisation.

3.3.7 *Extent of discrimination:* A number of studies have been carried out to map the extent of discrimination against LGBT people in the workplace. They have concluded that up to half of this group are not open about their sexuality at work, and that between a third and half of those who are open encounter direct discrimination or insulting comments and prejudice in the workplace.

3.3.8 A number of projects have been undertaken within the EU involving employers, trade unions and the voluntary sector; the Commission provided financial support for these projects, which boosted their legitimacy. In France, employers and trade unions in one sector have concluded an agreement on equal rights for same-sex families. The Swedish trade union confederation Vision provides training on LGBT issues with the aim of raising awareness about discrimination in the workplace. Experience has shown that it is perfectly possible to work together to change the situation on the labour market for people with a different sexual orientation. The Committee notes with regret that activities of this kind are a rarity and it therefore calls on the European Commission to popularise best practice and on the social partners to be much more active in combating discrimination against LGBT people in the workplace.

Brussels, 18 September 2012.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

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