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Press Release

Ludford welcomes measures on religious discrimination

By Baroness Sarah Ludford, Member of the European Parliament,

Liberal Democratic MEP for London.

European Parliament (05.10.2000) / HRWF International Secretariat (05.10.2001) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - Baroness Sarah Ludford MEP (European Liberal Democratic London) has welcomed the Parliament's approval of European legislation which would generally outlaw discrimination on religious grounds in employment while allowing religious organisations reasonable scope to insist on key staff being of the requisite faith. But she has also welcomed the European Parliament's backing for measures to stop back-door discrimination by religious organisations against homosexual staff.

“This Directive will be a landmark in allowing people of all faiths protection from discrimination. It will remove the anomaly under UK law where Jews and Sikhs could invoke laws against race discrimination, whereas Muslims and Hindus as well as Christians had no legal recourse”.

“It is right to allow religious organisations to specify their own faith when it is a genuine requirement for the job, but this relaxation must not be abused”.

“Hence Parliament is rightly urging the Commission and Member States to ensure that religious schools or hospitals cannot invoke spurious religious objections as grounds to discriminate against gay or lesbian employees”.

“I also welcome the Parliament's majority support for my move to allow-rather than require - governments to permit religious organizations to insist on their co-religionists as employees”.

“It is important that this Directive on equal treatment on employment sets the right balance and only allows religious organizations to insist on their faith as an employment test where it is genuinely necessary”.

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The Fight against Discrimination

Joint Public Hearing 23-24 May 2000

Committee on Citizens' Rights and Freedoms,

Justice and Home Affairs

Committee on Employment and Social Affairs

The Treaty of Amsterdam introduced Article 13 which complements existing powers to tackle discrimination against people on the grounds of specific characteristics, most notably Articles 141 (gender discrimination), Article 137 (measures to tackle exclusion from the labour market) and Article 12 (discrimination on the grounds of nationality).

Article 13 however provides new and specific powers for tackling discrimination and states that : "*Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*"

On the basis of Article 13, the Commission adopted in November 1999 a package of proposals to combat discrimination. These measures include a proposal for a Community Action Programme to combat discrimination 2001 - 2006, a proposal for a Directive establishing a general framework for equal treatment in employment and occupation, and a proposal for a Directive implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

The aim of the hearing was to have an overview of the possibilities for tackling discrimination, with particular reference to the Commission proposals.

Key Issues In Tackling Discrimination

on the Grounds of Religion

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I. The term religion

a) Terminology

There is no generally accepted legal definition of religion. It is difficult to define the term of religion in order not to discriminate against free exercise of freedom of religion.

French courts have constantly and expressly until today rejected to define the term, since the constitutional obligation to laicism interdicts all intervention into individual religious beliefs (Cass. Crim. 30.06.1999, Juris-Data n° 003147).

Courts in the United Kingdom have rarely attempted to describe religion. In order for there to be a religion, there has to be some belief in a supreme being or supernatural element, yet no need to be monotheistic or even theistic, leaving ample space for exceptions and developments (A. Bradney, *Religions, Rights and Laws*, 1993, p. 124-126).

German courts have given various descriptions, such as: Religion or philosophical, non-confessional belief is a conviction connected with the human person about certain statements about the world as whole as well as about the origin and the aim of human life (BVerwGE 90, 112/115).

Taken the great variety of individual and collective beliefs traditionally regarded as religion and considering the rapid development in constituting new religions and religious groups, freedom of religion requires an open, dynamic conception of the legal term of religion, respecting the development of new ideas.

Elements of a legal term of religion could, where necessary, be: a coherent set of ideas constituting a holistic view of the world, common worship, requirement to perform a life according to the coherent set of ideas.

b) ***Churches and other religious communities***

It is a social experience that religion regularly is held and performed in community with others. Religious discrimination thus does not only take place against individuals, but most regularly also and especially against religious communities. Respecting religious beliefs therefore also comprises respecting ideas and activities of religious groups like Churches, religious communities or philosophical, non-confessional bodies.

c) ***Religious activities***

Religion is not only a coherent set of ideas, but also a set of cultural performances such as services, keeping to rules for nourishment (e.g. ritual slaughter) or respecting days of rest.

Furthermore, religion regularly comprises the requirement to act according to religious rules and convictions in daily life. Traditional examples are the running of hospitals for the sick, feeding of the poor, helping people in need (homes for the elderly) and to teach one's own ideas (running schools or universities). This requires a broad conception of the institutional range of churches and other religious communities. There are a wide variety of legal traditions in the Member States as to which institutions form part of the church of religious self-determination (see Gerhard Robbers (ed.), *State and Church in the European Union*, Baden-Baden, 1996). Anti-discrimination legislation will have to be devoted to the most far reaching protection of free religiously motivated activities.

Non-discrimination on grounds of religion requires to respect an extensive field of self-determination of religious groups in defining their own set of ideas, organisation and offices as well as performance in daily life (see 2nd European/American Conference on Religious Freedom: Church Autonomy, 1999, <http://www.uni-trier.de/~ievr>).

The present wording of Art. 4 II of the Draft Directive Establishing a General Framework for Equal Treatment in Employment and Occupation does not adequately meet these requirements, since it restricts the range of self-determination contrary to the constitutional traditions in several Member States without sufficient reason.

II. Practical issues of religious discrimination

Anti-discrimination provisions predominantly have to fight discriminations which result from requiring performances contrary to one's own religious convictions.

Non-discrimination requires, e.g.:

As to individuals

- the right to access to work without undue regard to the individual's religion;
- the right to object to professional duties (wearing protective helmets or parts of uniforms where religious outfits are prescribed, such as turbans, long hair, beards, head-scarfs; teachers objecting to teach religious instruction contrary to their own beliefs);
- respecting religious days of rest (Sabbath, Sunday) contrary to working duties;
- respecting obligations of religious ceremony (free time to take part in services during working hours);

As to religious groups

- respecting the requirement to belong to a certain religion to participate in activities of the religious group (school teachers in schools run by religious communities, holding religious offices as priest, teachers of religious instruction);
- respecting internal rules of loyalty obligations (performing a life according to the rules of the religion - divorce and marriage, abortion etc.-);
- respecting internal rules of access to offices;
- respecting religiously motivated and religiously determined activities in daily life (running schools, universities, hospitals, etc.).

III. Limitations

- a) The limits to the field of self-determination could be found in those - and only those - interests which are indispensable for the functioning of a democratic society, prescribed by law, and respecting the high value of religious freedom.
- b) Anti-discrimination legislation must not by itself discriminate against religious activities by inadequately prohibiting, impeding or defining religious activities of religious institutions or individuals.
- c) Anti-discrimination legislation has to adequately coordinate religious freedom of individuals mostly as employees with the legitimate interests of employers. The extensive and not always consistent case law in the Member States in General follows a line of cautious balancing: the employer has as far as reasonable to respect the religious needs of the employee, making adequate efforts to alternative work organisation where needed (see European Consortium for State-Church Research (ed.), Churches and Labour Law in the EC Countries, Milan, 1993).
- d) In case the employer himself be religiously orientated (e.g.: Jewish or Moslem slaughter house, catholic school, protestant hospital, etc.) reasonable respect will be far reachingly determined by the religious identity of the employer. Religious rules will most regularly represent objective justification of practices which otherwise - in secular enterprises - should be regarded as having discriminatory effect against employees. In these circumstances the religiously orientated institution must be free to determine loyalty obligations of the employee in order to safeguard its own religious identity (cf. Report of the European Commission of Human Rights in : Rommelfanger v. Federal Republic of Germany no. 12242/86, Dec. 6.9.1989, DR 62, p. 151 [161]).

IV. Gender discrimination and religious discrimination

Traditionally, the relationship of the sexes and the role of men and women in society as well as in the religious community itself are key issues in religious beliefs. Religious non-discrimination requires autonomy of religions also in this field, within the limits described above.

V. Declaration 11 Final Act of the Treaty of Amsterdam

Anti-discrimination activities under art. 13 TEC are supported by Declaration 11 of the Final Act of the Treaty of Amsterdam and have to respect the decisions taken there. The declaration has legal effect at least in the sense that activities of Member States in line with that declaration cannot be regarded as contradictory to the founding treaties. Furthermore, it gives a framework of interpretation of Art. 13 TEC.

VI. Religious freedom and non-discrimination under the European Convention of Human Rights

The European Court of Human Rights has repeatedly and consistently ruled in protecting religious freedom under Art. 9 ECHR and other provisions, avoiding a strict definition of religion. This jurisdiction balances religious needs and requirements for the functioning of a democratic society and can in general guide the development of European Union anti-discrimination legislation (cf. Gerhard Robbers, Religionsfreiheit in Europa, in: Festschrift für Joseph Listl, 1999, p. 201).

This refers also to the right of parents to raise their children in their own religion. The idea of collective religious freedom can and should be further developed.

VII. General conclusion

Anti-discrimination activities are best performed in respecting long standing traditions (e.g. : Mont Athos). They have to be aware of difficulties and dangers in some regions. Most effective anti-discrimination activities will reach for the convictions of the people by further study, discussion and information.