

Submission to the Council of Europe European Commission against Racism and Intolerance (ECRI) on draft revised General Policy Recommendation (GPR) No. 2 on Specialised bodies to combat racism and intolerance at national level (S463).

The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. We are members of FIDH and the Fundamental Rights Platform. CAJ also co-convenes, with the public sector trade union UNISON, the Equality Coalition, a broad network of equality NGOs and trade unions.

CAJ welcomes the opportunity to comment on the revised draft GPR 2 on the role of specialised equality bodies to combat racism and intolerance. We have considered the draft GPR which is extremely helpful and have the following specific comments in three areas:

1: Jurisdiction of equality bodies

Paragraph 4(d) provides that the mandates of national equality bodies should cover “The whole territory of the member State.” It is clear elsewhere that this does not preclude the member state having more than one body- this could however refer to separate and complementary competencies (i.e. an advisory body v an enforcement/adjudication body). It is not explicitly clear if this provides for a member state, particularly one with a federalised or other complex constitutional arrangement to have different equality bodies with different geographical remits – provided that they collectively cover the whole territory of the member State.

In our domestic context in Northern Ireland an *Equality Commission for Northern Ireland* was established as an outworking of the peace agreement (1998 UK-Ireland Belfast/Good Friday Agreement) – and there are separate institutional arrangements in place in Great Britain. In our view this arrangement in principle is preferable to the absorption of the Northern Ireland Commission within a London-based body covering the whole UK, where Northern Ireland issues would risk being marginalised. This would include issues particular to this jurisdiction such as sectarianism (the form of racism specific in Northern Ireland and parts of Scotland).¹

We would recommend that this section of the recommendation is amended to explicitly clarify that national equality bodies should ‘individually or collectively’ encompass the whole territory of the member state.

¹ See for example ACFC/OP/IV(2016)005 [86].

2: Use of concept of ‘good relations’ with mandates

The draft ECRI recommendation

Paragraph 4A of the draft recommends that the mandate of specialist bodies includes:

The promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society (equality mandate).

Paragraph 12A then provides that the promotion and prevention competences of bodies should include the promotion of “good relations between different groups in society”. The explanatory memorandum – paragraph 14- then sets out that “Good relations between the different groups in society are about fostering mutual respect and friendship between them through tackling prejudice and promoting understanding and interaction.”

Problems with the application of the ‘good relations’ duty in Northern Ireland

As far as we are aware ‘good relations’ is a term not referenced elsewhere in international standards. It has been part of the legislation in Northern Ireland since 1998, Section 75(2) of which places a duty on public authorities to promote good relations on three protected grounds (religious belief, political opinion and racial group.) In theory this duty has to be exercised ‘without prejudice’ to the nine-ground public sector equality duty in Section 75(1) of the same legislation. However, the lack of legal certainty over the concept of good relations, which is not defined in the legislation, has led to perverse outcomes where it is often, in the context of a divided society, used to block equality and rights-based initiatives on the grounds that they are politically contentious and hence ‘bad’ for good relations. This has regularly included the public authorities blocking initiatives on minority language signs and the allocation of resources on the basis of objective need (whereby more monies are likely to go to ethnic groups facing disadvantage given greater objective need) on the grounds they are ‘bad’ for good relations. Other recent examples include an assessment by a public authority here that it would offend the ‘good relations’ duty on grounds of religious belief if the legislature introduced same-sex marriage equality into Northern Ireland. Paradoxically another example involves an assessment that the UK governments ‘Bedroom tax’ – a measure whereby social security benefits are reduced for persons in state-provided housing if they have a spare room – was good for good relations. This was on the stated grounds that if families were forced to move into, by definition, worse housing conditions in other areas it might lead to greater possibilities for such persons to interact with members of other ethnic groups.

There were official proposals in 2013 under the *Together: Building a United Community* community relations strategy to change the remit of Northern Ireland’s specialist equality body into an “Equality and Good Relations Commission”. Whilst these proposals were

supported by the Commission itself they were opposed by civil society as likely to lead to regression in the equality remit. Ultimately opposition by most political parties to the proposals led to them not being taken forward. The Commission has agreed that the Good Relations duty be defined in legislation. The equivalent legislation in Great Britain defines the concept as primarily concerning ‘tackling prejudice and promoting understanding’ (s149 Equality Act 2010).

The assessment of the Council of Europe regarding the Northern Ireland duty:

The problems caused by the Good Relations duty in Northern Ireland in relation to minority rights were recently highlighted in the Fourth Opinion on the UK by the Advisory Committee on the Framework Convention for National Minorities.² One of the two recommendations for ‘immediate action’ in the opinion urged the executive to: *...endeavour to implement the ‘good relations’ duty as provided under the Northern Ireland Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights of persons belonging to all national and ethnic minorities;*

The Advisory Committee report summarizes the Northern Ireland situation as follows:

The situation in Northern Ireland is characterised by political tensions in governing bodies, tensions that often prevent smooth governance, by lack of dialogue with stakeholders and by the continuing lack of an updated legal framework for equality implementing Section 75 of the 1998 Northern Ireland Act. Sectarian politics and a static interpretation of the notion of ‘good relations’ prevent reform of equality legislation and adoption of an Irish Language Bill. They also hamper efforts to put adequate focus on other smaller national and ethnic minorities, whose number has increased substantially in the last ten years owing to European Union (EU) enlargements [paragraph 7].

In relation to minority language rights the report elaborates:

The lack of progress on language rights of persons belonging to a national minority is emblematic of a wider practice of sectarian-driven policy making that appears to dominate the political process, pushing the protection of the rights of other national and ethnic minorities to the fringes. Although the issue of language has become less sensitive in society, it continues to be perceived as an instrument with the potential to alter the balance between the two main communities, thereby becoming a hostage of a “good relations” policy which aims at avoiding tensions. [11]

These issues are picked up in a section on *Community Relations in Northern Ireland*. This notes the adoption in 2013 of the “Together Building a United Community” (TBUC) strategy,

² ACFC/OP/IV(2016)005

which it notes reflects the “Executive’s ongoing commitment to improve ‘good relations’, equality of opportunity and reconciliation between communities in Northern Ireland.” The Advisory Committee refers to interlocutor reports of the ‘good relations’ duty appearing “on several occasions to take priority over wider equality and minority rights initiatives, which were blocked on grounds that they would lead to ‘community tensions’”. The report elaborates that:

This would be due to the fact that, unlike the rest of the country, Northern Ireland does not interpret the ‘good relations’ duty as including a duty to tackle racism, including sectarianism. Instead, the lack of proper definition allows this notion to be used rather as a ‘tool’ to set aside politically contentious issues, such as legislating on the Irish language, and to justify a “do-nothing” attitude, eventually based on ‘perceptions’ rather than objective criteria. The Advisory Committee reiterates its opinion that the concept of ‘good relations’ apparently continues to be substituted for the concept of intercultural dialogue and integration of society, which would include other national and ethnic minorities present in the region, and regrets that this is used to prevent access to rights by persons belonging to these minorities. [85]

The Committee then continues by reiterating the concerns raised in a previous Opinion that sectarianism in Northern Ireland should be treated as a form of racism and goes on to highlight serious concerns expressed by Interlocutors to the Advisory Committee “about the institutionalisation” of sectarianism and its entanglement with the notion of ‘good relations’, which are “causing gridlock in the political debate.” Specifically the Committee recommends:

- The authorities should begin to implement the ‘good relations’ duty as provided for under the Northern Ireland Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights by persons belonging to all national and ethnic minorities. [89]
- It also calls on the authorities to introduce definitions of ‘good relations’ and ‘sectarianism’ in legislation, drawing on international standards relating to racism and human rights in general; and to ensure that sectarian crimes are dealt with in the criminal justice system in a way equivalent to other forms of hate crime. [90]

The application of the draft ECRI general recommendation

The draft recommendation could be problematic insofar as it can be interpreted as suggesting national bodies should have a ‘good relations’ remit without qualifying this as to a legally-certain definition that reflects international standards.

At present a definition is only alluded to in paragraph 14 of the explanatory notes and references tackling prejudice and promoting understanding (as is the case in legislation in Great Britain) but also the *promotion of interaction*. In our experience community relations models which promote *interaction* per se, but do so in a manner which avoids the

addressing of legitimate grievances that interfere with recognised rights, (often on grounds that such subjects are contentious and therefore themselves ‘bad’ for good relations) can be a substitute and in conflict with rather than integral to approaches provided for in human rights standards. In this sense a definition would be better restricting itself to matters which are explicitly provided for in Council of Europe and UN standards, to afford sufficient legal certainty for the concept not to be misused. For example, Article 6(1) of the Framework Convention makes reference to ‘intercultural dialogue’ and ‘co-operation’ rather than simply interaction.

We would recommend that the draft Recommendation is amended to either define good relations on the face of the recommendation in a manner compatible with Council of Europe standards and make clear that the implementation of the duty does not run counter to equality duties or the respect of rights; or in the alternative the reference to ‘good relations’ should be removed for the avoidance of any confusion.

3: Public Sector Equality Duties and their enforcement

Paragraph 10C of the draft recommendation refers to the remit of the adjudication function when attributed to specialist bodies, stating that:

The adjudication function includes investigating, hearing, mediating, and deciding discrimination cases, imposing sanctions and making recommendations and orders, and following up on implementation of these decisions.

Paragraph 16 then covers adjudication functions. There is no reference here however to any adjudication function an equality body may have in relation to public sector equality duties, rather than cases of discrimination or intolerance.

A number of Council of Europe member states have a variety of statutory equality duties on public authorities in pursuit of a mainstreaming approach that goes beyond the prohibition of discrimination. Some duties take the form of Equality Impact Assessments on protected grounds, which provide for analysis prior to policy decisions being taken. The enforcement mechanism for such duties may be through the courts but can also be through powers vested in specialist equality bodies.

ECRI General Policy Recommendation 7 on ‘National Legislation to combat racism and racial discrimination’ recommends, at paragraph 8, that “the law should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions.” The explanatory note to this provision sets out that:

The obligations incumbent on such authorities should be spelled out as clearly as possible in the law. To this end, public authorities could be placed under the obligation to create and implement “equality programmes” drawn up with the assistance of the national specialised body referred to in paragraph 24 of the

Recommendation. The law should provide for the regular assessment of the equality programmes, the monitoring of their effects, as well as for effective implementation mechanisms and the possibility for legal enforcement of these programmes, notably through the national specialised body. An equality programme could, for example, include the nomination of a contact person for dealing with issues of racial discrimination and harassment or the organisation of staff training courses on discrimination... ³

At present draft revised GPR2 does not make reference to the remit of specialist equality bodies in relation to the implementation and enforcement of public sector equality duties or programmes.

CAJ recommends a section is added on public sector equality duties and the role of national specialist bodies in their implementation, including any adjudication and enforcement role. We believe this should be framed as being within the remit of a specialist equality body to use its powers to ensure the implementation of such duties is effective.

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³ ECRI, GPR7, 2002, Paragraph 27.