

THE PROBLEM OF DISCRIMINATION AND MEASURES WHICH SHOULD BE TAKEN FOR ITS ELIMINATION(*)

Par

Dr. Sevinç ERCMAN LL.M. (**)

Introduction

When considering the problem of elimination of all forms of discrimination, one should perhaps start by defining the term "Discrimination".

What is meant by the term "discrimination"?

The Term "to discriminate" has been defined as:

"To make a distinction on favour of or against a person or thing on the basis of group, class or category to which the person or thing belong, rather than according to actual merit."¹

The Race Relations Act which was passed in the United Kingdom in 1968 uses the following definition:

"Neglecting to provide goods, facilities or services by refusing or neglecting to provide with goods, services or facilities of the like quality, in the like manner and on the like terms in and on which they are available to other members of the public."

*) Background Paper for the Fifth International Conference on Freedom of Residence "Racial Discrimination".

**) Miss Erçman is a member of the staff of the Council of Europe, Directorate of Human Rights. The views expressed in this paper do not represent those of the Council of Europe.

1) Random House Dictionary of the English Language, Random House, New York.

However, the most widely accepted definition of the term, relating to racial discrimination, was that of the U.N. General Assembly adopted in Article 1, paragraph 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. This definition reads as follows:

"In this Convention the term on racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, of national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Discrimination may arise with regard to many different factors, housing conditions, employment, education, social and credit facilities, hotel accommodation etc.

It has been generally recognised that discrimination in housing has a particularly serious effect because many of the problems confronting minorities or concerning members of an under-privileged group may be a consequence of housing segregation alone.

In the economic sphere, racial discrimination shows its effects and restrictions on the right to work of particular racial groups. Furthermore, it affects the living conditions and the standard of living of the individual when practised in such fields as housing, the health services, social security and insurance.

Should one consider the problem of discrimination by itself or in specific fields, such as housing etc. One could determine without hesitation that this constitutes a more acute problem for the United States than for the European States.

This type of discrimination which can lead to the formation of ghettos usually gives rise to discrimination in other fields such as schooling, the use of community or public services, employment, which at the same time affects the delineation of electoral boundaries and thus the civil and political rights of the individual.

However for some years a similar problem is to be observed in Northern Ireland. It may be recalled that the religious minority in

northern Ireland is estimated at about forty per cent of population. There has been evidence of a feeling of injustice and grievance among large sections of the Catholic population in:

- (i) appointments to local government posts, in particular, senior posts;
- (ii) alleged manipulation of local government electoral boundaries which maintains control in the hands of local authorities to the detriment of the Catholic minorities;
- (iii) unfair methods of the allocation of houses; and
- (iv) non-acceptance by the Government of requests for investigations of these complaints and failure to provide or enforce a remedy for them.

The occurrence of events leading to violence and disorder in Northern Ireland after 5th October 1968 was mainly due to the reasons mentioned above. The throwing of petrol bombs and the firing of rifles has been entirely restricted to the Catholic ghettos, where the lack of housing has resulted in people being crowded together in impossible living conditions.

After the troubles from October to January, the three-man "Cameron-Commission" was set up to investigate the causes and nature of the violence and civil disorders in Northern Ireland.

The Commission completed its Report on 11th September 1969, after having held twenty-six private hearings and taken oral and written evidence from more than four hundred persons. The Report stated that:

"The weight and extent of the evidence which was presented to us concerned social and economic grievances or abuses of political power and was such that we are compelled to conclude that they had substantial foundation in fact and were in a very real sense the immediate and operative cause of the administrative and consequent disorders after 5 th October 1968."²

2) Of. The Times and the Irish Times, 12th September 1969 pages 1, 4 and 1, 11 respectively.

The question of human rights³ in Northern Ireland was one of the principle reasons which led the Consultative Assembly of the Council of Europe to adopt its Recommendation No. 583 on the "Suppression of Unfair Discrimination" in January 1970⁴.

Nevertheless, it appears that the Government of Northern Ireland is making some remarkable efforts in the matter of housing⁵.

On the other hand, in the United States three different area policies have so far been considered and experienced with the so-called types of anti-discrimination statutes: fair employment practice; fair housing; and public accommodation laws⁶.

However, the most important factors are not the sole enactment of ...but.

- (i) the recognition of the natural rights of man as just and reasonable demands of the individual of be fulfilled and achieved in a society governed by positive law; and
- (ii) the enforcement and the determination of a State to abide by the provisions of its national and international obligations.

National legislation against all forms of discrimination is the first requirement to combat against discrimination. The value of

2) In December 1968, the European Commission of Human Rights examined six applications filed against the United Kingdom by individuals residing in Northern Ireland. In January 1969, Further applications were lodged by another six individuals and by the Northern Irish Civil Rights Association. It is alleged that various laws and governmental practices in Northern Ireland deprive the applicants of civil rights and employment and exclude the from free and representative elections in violations of Articles 3, 5 to 11, 13 and 14 of the Convention and Article 3 of the First Protocol.

4) Cf. *supra*, for further reference to this Recommendation.

5) Cf. **Mertens**, Cl., Report on Civil and Social Rights in Northern Ireland, in: *Revue des Droits de l'Homme*, Vol. II, No. 3, 1969, p. 536.

6) Cf. **Lockard**, D., *Toward Equal Opportunities*, New York, Macmillan Co., 1968; **Hartman**, P., *The Law on Housing Discrimination in the United States*, in: *Revue des Droits de l'Homme*, Vol. II, No. 3, pp. 459 ff.

legislative action is not limited to prevention and punishment. To give an example in this respect, the new *Race Relations Act of the United Kingdom of 28th October 1968* contains provisions designed to prevent discrimination relating to housing, employment and credit facilities, and was drafted and adopted *inter alia* for its educative effects⁷.

At present, the constitutional and other statutory provisions of the majority of States aim at the elimination of racial discrimination in all its forms and at the achievement of a society free from racial prejudice. The new constitutions contain specific norms of the Universal Declaration of Human Rights and some constitutions which had been adopted before the Universal Declaration of Human Rights were amended so as to reflect the spirit of the Declaration.

It has been generally agreed that constitutional provisions and other legislative enactments could be useful measures in the elimination of racial discrimination provided that they could be effectively enforced. Such measures, as experience has shown, may influence those who do not wish to discriminate but feel compelled to do so because of social pressure. Furthermore, these measures may also serve to form public opinion.

The principle responsibility for fighting against discrimination must be by national action. International action can only have complementary effects but there are fields where it is essential.

It is a well known fact that over the past twenty years, the United Nations and its Specialised Agencies have accomplished a considerable amount of work relating to the elimination of discrimination.

Among the important international instruments to combat discrimination the following may be mentioned: the United Nations Charter, in particular, its Articles 1, 55 and 56, the Universal Dec-

7) See, the speech given by the Chairman of the Race Relations Board, established for enforcing the Act: this Act "affects behaviour, it provides a form of redress for victims of discrimination, it strengthens the weak who do not wish to discriminate, and it stimulates voluntary action in 'his field'", *The Times*, 26th November 1968.

laration of Human Rights, its Article 2, paragraph 1, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the U. N. Declaration on the Elimination of All Forms of Racial Discrimination; and the International Convention on the Elimination of All Forms of Racial Discrimination. These last three have been adopted by the U. N. General Assembly in 1960, 1963 and 1965 respectively. Other relevant Conventions are: the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Political Rights of Women, the Draft Declaration on the Elimination of Discrimination against Women and the Convention on the Nationality of Married Women.

The ILO and UNESCO have also respectively adopted conventions against discrimination in employment, occupation and in education.

The following are the most important of these conventions relevant to this subject: Employment and Occupation Convention, (Convention No. 111, and Recommendation 111) Convention on the Remuneration for Work of Equal Value for Men and Women Workers (Convention No. 100, and Recommendation No. 90) Convention concerning Employment Policy (Convention No. 122) Social Policy Convention (Convention No. 117), and the Convention on Equality of Treatment — Social Security — (Convention No. 118).

The UNESCO Convention against Discrimination in Education and a Protocol instituting a Conciliation and Good Offices Commission.

Three other international instruments of particular importance are:

- (a) The International Covenant on Economic, Social and Cultural Rights;
- (b) The International Covenant on Civil and Political Rights;
- (c) The Optional Protocol to the Covenant on Civil and Political Rights.

The International Covenant Economic, Social and Cultural Rights which, in its Article 2, provides a general implementation clause which applies to all the rights put forth in the Covenant. Furthermore, as regards this specific area of discrimination, namely discrimination in housing, under its Article 11, it lays down that the:

"States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent."

Thus by this Article the Covenant provides a double implementation measure (see Article 2 of this Covenant). It namely obliges the States to take steps to ensure an adequate standard of living for everyone without discrimination (see Article 11, sentence 2).

During the Travaux Préparatoires of this Article, it was decided to include a reference to international cooperation which dealt with the question of the standard of living. This was deemed particularly essential since some countries, especially those which were under-developed, would not be able to provide their people with adequate clothing, food and housing without international assistance⁸.

In this connection, reference could perhaps be made to the European Social Chartes, which in its Preamble sets forth its aims and principles and states that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.

Under its Article 16, it states that "the Contracting Parties should make arrangements for the provision of family housing".

However, this provision seems to be limited and neither covers the question of allocation of housing nor the principle of non-discrimination.

8) Doc. A/3525 Report of the Third Committee, page 19.

It would therefore seem advisable, on the European side, to examine the provisions of the European Social Charter with a view to reforming the housing conditions of everyone without any discrimination and in order to see whether these provisions provide adequate protection for the individual, and if not, to table a motion for a recommendation to amend the provisions of the European Social Charter to this effect.

*
**

As far as action taken by the Council of Europe is concerned, it has so far taken a number of measures dealing with the problem of discrimination among which the following may be mentioned.

The European Convention on Human Rights in its Article 14, contains a non-discrimination clause which states:

"The enjoyment of the right and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 14 of the Convention, however, only establishes the principle of non-discrimination as regards the enjoyment of the rights and freedoms provided for in the Convention. A general provision on equality before the law and on the prohibition of discrimination is not included in the European Convention on Human Rights and its Protocols⁹.

Article 15 of the Convention has been considered in connection with many applications lodged with the European Commission of Human Rights; the Commission has made it clear that it does not consider Article 14 as constituting a guarantee of an independent

9) In 1959, the Legal Affairs Committee of the Consultative Assembly proposed the inclusion in the Fourth Protocol to the Convention of a provision on equality before the law and the prohibition of discrimination (Recommendation 234). This would have corresponded to Article 26 of the International Covenant on Civil and Political Rights. However, this proposal was not adopted.

right; it has to be read in conjunction with other articles guaranteeing the "enjoyment of the rights and freedoms set forth in the Convention".

In the "Belgian Linguistic Case", the Commission stated that the "applicability of Article 14 is not limited to cases in which there is an accompanying violation of another article. Such a restricted application would deprive Article 14 of any practical value".¹⁰

The European Court of Human Rights in this case interpreted Article 14 as follows:¹¹:

"It is important, then to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14 The principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measures under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised."

On the basis of a Report of the Legal Committee, the Consultative Assembly of the Council of Europe adopted on 27th January 1966, Recommendation No. 453 on "*Measures to be taken Against Incitement to Racial, National and Religious Hatred*".

This Recommendation invited member governments to prepare effective legislation against incitement to racial, national and reli-

10) Cf. Report of the European Commission of Human Rights in: Publication of the European Court of Human Rights Series B, Vol. I, p. 305.

11) Cf. Publications of the European Court of Human Rights Series A, Judgment of 23rd July 1968 on the "Belgian Linguistic Case" 1968, Strasbourg, p. 34.

gious hatred and to review or to enforce vigorously the legislation in those countries where it already exists. It was accompanied, moreover, by a model law upon which legislation of member countries might be based. The recommendation also proposed the conclusion of a European Convention relating to an uniform law against incitement to racial, national or religious hatred, which should be prepared by a committee of governmental experts of the Council of Europe, on the basis of the model law which accompanied the recommendation.

The Committee of Ministers, after having consulted the European Committee on Crime Problems, adopted on 31st October 1968, Resolution (68) 30, in which it recommended that Member States of the Council of Europe, should sign and ratify the United Nations Convention on the Elimination of All Forms of Racial Discrimination and give all possible support to its effective implementation.

It could be advisable for all the States (including member and non-member States of the Council of Europe) to ratify the International Convention on the Elimination of All Forms of Racial Discrimination to consider in the field of their national legislation, the drawing up of legislation against incitement to racial hatred on the lines proposed in the model law as a minimal legislative need.

Other Recommendations adopted by the Consultative Assembly of the Council of Europe relevant to this subject are found in: *Recommendation No. 519 (1968) on the Nationality of Married Women*; and *Recommendation 504 (1967) on the Political, Social and Civil Position of Women in Europe*.

The most recent Recommendation (Recommendation No. 583) of the Consultative Assembly of the Council of Europe, which was adopted in January 1970 on the "Suppression of Unfair Discrimination" not only condemns all forms of unfair discrimination based on any grounds whatsoever, but urges that those States which have not yet done so, to ratify or accede to all international conventions directed against discrimination; it particularly, in its operative part, recommends *inter alia* that the Committee of Ministers should invite Member Governments to:

"Re-examine their legislation and practices with a view to tightening up and improving their systems for the suppression of discriminatory practices, particularly in the fields of civil rights, employment and housing, and to repealing any national laws which have discriminatory effects¹²."

Conclusions :

1. International efforts to suppress all forms of discrimination through the United Nations, its specialised agencies and regional organisations, should be urgently pursued. In particular, further consideration should be given to measures for the implementation and real enforcement of the various decisions, recommendations and instruments adopted by International Organisations.

The following Resolutions concerning racial discrimination were amongst those adopted at the U.N. International Conference on Human Rights at Teheran:

Resolution III — Measures to achieve rapid and total elimination of all forms of racial discrimination in general and the policy of *apartheid* in particular;

Resolution VI — Measures to eliminate all forms and manifestations of racial discrimination;

Resolution VII — Establishment of a new, additional United Nations programme on racial discrimination;

Resolution IX — Measures to promote women's rights in the modern world including a unified long-term United Nations programme for the advancement of women;

12) This Recommendation was a consequence of two motions tabled to the Legal Committee of the Consultative Assembly, the latter which was primarily the result of the riots which took place in Northern Ireland. Cf. Document 2398, motion presented by Mr. Silkin and others on 7th May 1968 and Document 2653, motion tabled by Mr. Aiken and others on 1st October 1969.

Resolution XXIV — Asking the General Assembly to declare 1969 or 1970 as "International Year for Action to Combat Racism and Racial Discrimination".

These Resolutions should be given priority and their consideration should lead to concrete action aimed at promptly eliminating all forms of discrimination.

2. Legislation and education has a very important role to play in the elimination of discrimination. Naturally administrative action at the national level should complement legislative action and education.

The significant role of the teacher should not be overlooked in fighting this problem. The influence of the teacher and the example he may set is a fact which needs no explanation. However, teachers should be taught the principles of the Universal Declaration of Human Rights and the principles of non-discrimination; they could then assist in building a sense of awareness on the issues involved. They could also act as intermediary agents between the people and the mass media¹².

3. Finally, the influence of mass media communication, including the press, radio, television, motion pictures, etc. on people and the community should be emphasised, and all forms of mass media should be manipulated for propagating the idea of non-discrimination and its elimination.

12) On 31st October 1969, the U.N. General Assembly at its 1797th Plenary Session adopted Resolution 2499 (XXIV) entitled "Celebration of the XXVth Anniversary of the United Nations". In operative paragraph 15, the Assembly urges Governments of Member States to implement its Resolution 2445 (XXIII) of 19th December 1968 entitled "Teaching in Schools of the purposes and principles of the U.N. Charter and the structure and activities of the United Nations and the Specialised Agencies, with particular reference to human rights".