

Meijers Committee

standing committee of experts on international immigration,
refugee and criminal law

To MEP Claude Moraes
Chair of the LIBE Committee
By email

Date 22 January 2019

Reference CM1902

Subject The fundamental right to non-discrimination

Dear Member,

The Meijers Committee took notice of the final compromise text regarding the Regulation on ECRIS-TCN.¹ According to Article 2 of this proposed text, the ECRIS-TCN database will contain information of both third-country nationals (TCN) and Union citizens who also have the nationality of a third country. Thus, Article 2 for the first time introduces in EU law a difference in treatment between dual and mono Union citizens, those who also have the nationality of a third country and Union citizens who only have the nationality of a Member State.

The Meijers Committee wishes to draw attention to the position of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on discrimination against dual nationals. In a recent amicus brief to the Dutch Immigration and Naturalisation Service the UN Special Rapporteur expressed the view that distinctions between mono and dual nationals are incompatible with the prohibition of discrimination expressed in international human rights law, including Article 26 International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the elimination of all forms of racial discrimination (ICERD).² The Special Rapporteur points out that such distinctions result in the creation of unequal classes of citizenship and effectively differentiate against citizens of migrant and/or ethnic minority backgrounds, in contravention of the prohibition of racial discrimination.

The Meijers Committee has earlier expressed its concern that the inclusion of Union citizens who are also third-country nationals in ECRIS-TCN would similarly result in the creation of unequal classes of Union citizens and in *de facto* discrimination against Union citizen of immigrant origin (see our [letter of 1 October 2018, with reference CM1812](#) and our [Note of 2 October 2017, CM1710](#)). The Committee recalls that the prohibition of (racial) discrimination is guaranteed in Article 21 (1) of the EU Charter of Fundamental Rights and forms part of the constitutional traditions of the Member States, which Article 6 (3) TEU requires the Union to respect. In view of the

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¹ Council Document 15701/18 of 18 December 2018.

² Amicus Brief presented by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Dutch Immigration and Naturalisation Service, 23 October 2018, notably paras 41-42.

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interpretation of this prohibition by the UN Special Rapporteur, the Meijers Committee advises that the ECRIS-TCN database, if adopted, would fail to respect the fundamental right to non-discrimination. The Meijers Committee urges not to adopt proposals which would violate primary Union law or international human rights conventions.

As always, we are available for your questions and remarks.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'T' and 'A' intertwined, followed by a horizontal line.

Prof. Th. A. de Roos
Chairman