



Helsinki Foundation for Human Rights in Poland

**NATIONAL ACTIVITY REPORT POLAND
ANTI-DISCRIMINATION AND DIVERSITY TRAINING**

Helsinki Foundation for Human Rights in Poland

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The training manuals used in the anti-discrimination seminars and the diversity management seminar can be downloaded from the European Commission website:

http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#train

The Anti-discrimination and Diversity training project was managed by Human European Consultancy (humanconsultancy.com) in consortium with the Migration Policy Group (www.migpolgroup.com) and the International Society for Diversity Management – idm (www.idm-diversity.org).

The national activities were carried out by the Helsinki Foundation for Human Rights in Poland (www.hfhr.org.pl).

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II. Introduction

Within the project *Anti-Discrimination And Diversity Training* Helsinki Foundation for Human Rights (further as HFHR) organized in Poland three events:

1. First anti-discrimination seminar for NGOs and Trade Unions (further as TU) took place in Warsaw on Nov. 19-20, 2007. 35 participants took part in the training representing both different NGOs dealing with anti-discrimination issues as well as the TUs.
2. Follow up anti-discrimination seminar for NGOs and TUs took place in Warsaw on Febr. 29th-March 1st, 2008. 29 participants took part in the training representing both NGOs and TUs. Most of the participants took place in the previous training (2005 or 2007) but several were new.
3. Forum: Diversity Management took place in Warsaw (Zielna Center), on April 3rd 2008. 48 participants took part in the Forum representing different businesses and training or consulting firms.

III. Anti-discrimination seminars

a) National activities anti-discrimination seminars

Design of the training

The program of the seminars was prepared by group of national trainers and was based on the general guidelines given within the project as well as national situation and trainers experience.

The group of trainers consisted of:

- dr Adam Bodnar, Strategic Litigation Program Coordinator, Helsinki Foundation for Human Rights, Law Department, Warsaw University
- Łukasz Bojarski, Access to Justice Program Coordinator, Helsinki Foundation for Human Rights, Polish expert in the European network of independent legal experts in the non-discrimination field
- Emilia Nauman, advocate, specialist in discrimination cases, member of the Polish Association of Anti-discrimination Law
- Karolina Oponowicz, programs coordinator, Helsinki Foundation for Human Rights
- Krzysztof Śmiszek, lawyer in NGOs, v-ce president of the Polish Association of Anti-discrimination Law
- dr Edyta Widawska, adjunct in Jan Długosz Academy
- The international trainer, Catherine Casserley, British barrister specialising in anti-discrimination field took part in the first training as observer and in the second training as a guest speaker.

The program of the basic seminar had more introductory character. It included following main sessions: presentations of the activities carried out by participants and their organizations in the non-discrimination field, basic concepts of two EU directives (43/2000, 78/2000), national legal remedies, policy of Polish Government in the field of anti-discrimination, founding possibilities for NGOs and TUs, possibilities of counteracting discrimination by NGOs TUs – case studies and building strategy of action.

In the design of the program of the second, follow up seminar, feedback from the participants was taken into consideration as well as comments of the international trainer, Catherine Casserley who did observe the first seminar.

The main sessions of the follow up training included: repetition of basic concepts of the directives (43, 78/2000), Polish draft law on equal access, role of the NGOs and TUs in legislative process, situation of the groups covered by both directives discriminated against in Poland, good practises – anti-discrimination regulations in companies and role of the TUs in relation to creation of these regulations, formulating recommendations for the Government, good practises in the work of NGOs and TUs represented – what and how might be changed, strategies of legal action of NGOs and TUs in discrimination cases – case studies, pattern motions etc.

Having in mind the composition of the groups – from NGOs and TUs – we included in the program elements addressed to and interesting for both groups. All sessions had presentation part as well as workshop part. Program included different interactive methods like group work, discussion, case study.

On the European level different materials were developed or commissioned by the partners leading the program, this include some attachments to this report, see below. They composed the training manual provided to participants. Also other training materials like presentations, case studies, hypotes, numerous leaflets and publications etc. were prepared by national trainers and organizer.

Preparation of the seminar

The basic seminar was announced by HFHR widely (on Internet sites, via e-mail distribution lists and e-mails sent to different NGOs and TUs) and all together we received ca 100 applications. We invited 46 people, 44 of them confirmed but 4 cancelled prior to the training for different private reasons. Finally 35 out of 40 appeared during the training. The selection of candidates process was done according to criteria elaborated within the project by international partners and explained in the announcement of the seminar. We faced however one problem - after the first announcement of the training we received applications almost only from NGOs and not from TUs. Therefore we decided to contact number of TUs again and finally we received applications also from them.

The selection procedure for the second follow up training was quite complex because the idea was to bring only people who participated in one of two previous seminars (seminar done in 2005 or in 2007 within new project). Therefore the seminar was not announced publicly but information was sent only to previous participants. But in number of cases persons who could not come asked us for the possibility of sending somebody else representing same organization. So in fact only part of the group was "old" one and second part "new" one.

Both seminars took place in Warsaw in Wald hotel and conference center (<http://www.wald.pl/>). It was chosen due to financial constrains but also access for the wheelchairs.

Carrying out the seminars

35 participants took part in the first training and 29 in the second training. In both cases group was balanced by NGOs and TUs representatives from the whole country and representing different organizations and trade unions.

During both trainings participants interacted very well. During all interactive sessions participants from NGOs and TUs were mixed and collaborated well. There were some minimal tensions at some points of discussions but nothing unusual.

During the basic seminar all session included the presentation part and the workshop part. We spoke about basic concepts of two EU directives (43/2000, 78/2000) and tested participants knowledge with hypothetical situations (group work). We presented national legal remedies and other means which could be taken by NGOs and TUs and the presentation was followed by the group work on building strategy in particular cases.

Additionally to sessions prepared by the trainers we invited guest speakers to talk about and discuss Governmental policy as well as funding possibilities within funds governed by the Government (two representatives representing different Ministries spoke) and guest speaker to talk about special funding possibilities for NGOs and TUs within so-called Norwegian mechanism. During the seminar participants decided also to organize additional evening meeting (after the supper) for those who wanted, where we listened to the presentation on Polish Roma and discussed issues vivid for Roma. Participants also asked for the preparation of the contact list as some of them wanted to be in contact later on.

In the evaluation forms from the first training participants stressed that they would like to have more time devoted to the presentation of the problems of particular discriminated groups. They thought that short presentation at the beginning of the seminar were too short and that more time should be allocated for this.

The second training was more practical and agenda was built also upon requests and recommendations received from the participants in the previous trainings (2005 and 2007) therefore it reflected their desires.

The feedback mentioned above was the reason we included special session on problems of discriminated groups during second training. Guest speakers and trainers covered all 5 grounds of discrimination providing audience with the information on particular problems, studies etc.

Since we had several “new” participants we had to repeat session on basic concepts but we did it in different way in order not to repeat ourselves. Additionally we analyzed in groups Polish draft law on equal access as well as compared it with directives. There was special session devoted to the possibilities and the role of the NGOs and TUs in legislative process. One session concerned anti-discrimination regulations in companies and gave number of practical examples.

Participants to the second training were actively involved and dedicated to the subject matter and collaborated easily. Participants also decided – as a consequence of the session on comparison of Polish draft law on equal status and Directives to formulate and sign special statement – list of recommendations - calling the Government for several actions including passing the law on equal treatment, establishing equality body etc. The recommendations were submitted the day after the seminar to the Minister of Labor, news agencies and other media. Two trainers appeared also on the radio broadcast to talk about the training and recommendations.

During the seminar at the end of day one we organized movie evening for participants and group of them watched three documentaries on problems regarding discrimination. There was also meeting organized during one session with guest speaker – representative of the Government responsible for drafting of law on equal treatment.

Some case studies we dealt with during the session on building legal strategy were prepared in advance by participants, who were requested to send it before hand.

The first training was generally a successful one. Participants were actively involved and dedicated to the subject matter. They lacked specialised knowledge on antidiscrimination law but proved to have experience and ability to engage into activities and problem solving put in front of them.

In the evaluation forms from the first training different participants praised different elements: the element mentioned most often was possibility to meet with other and share experience, the next most popular was information about funding possibilities, other: presentations, group work-workshops, jurisprudence and cases, discussions, meeting with Governmental officials. Participants rated different aspects of the training differently but some most important indicators were rated with highest rates – these are (in the scale from 1-5): relevance of the context to their job (4,5) and ability to use knowledge learned in the future (4,6). However same time they were not fully satisfied with the level of practise the training gave them (3,6). Many of participants were willing to learn more, most often comments were: allot more time for the course (13) and increase content covered (11). They also stressed that more information should be provided before the seminar (8).

Almost all the participants claimed that they would use knowledge gained. They mainly mentioned dissemination of the information within organizations, organizing educational activities, organizing legal help for victims and preparing project proposals covering the issue.

The second training was a success as well. Participants rated different aspects of the training differently and generally similarly to the first training (with small differences). All average marks but one were in between 4 and 5. Some most important indicators were rated with highest rates – these are: relevance of the context to their job (4,4), activities which stimulated learning (4,6), usefulness of the materials provided (4,6), accomplishment of the objectives (4,4).

Many of participants are willing to learn more, most often comments were: allot more time for the course (10) and increase content covered (12).

Main lessons learned seminars

The challenge we faced was the participation in the trainings of the TUs representatives as we lacked appropriate previous experience. Therefore we had to make additional preparations to learn about TUs and to make the training interesting for them. They turned out to be very engaged and dedicated participants and collaborated very well with NGO representatives.

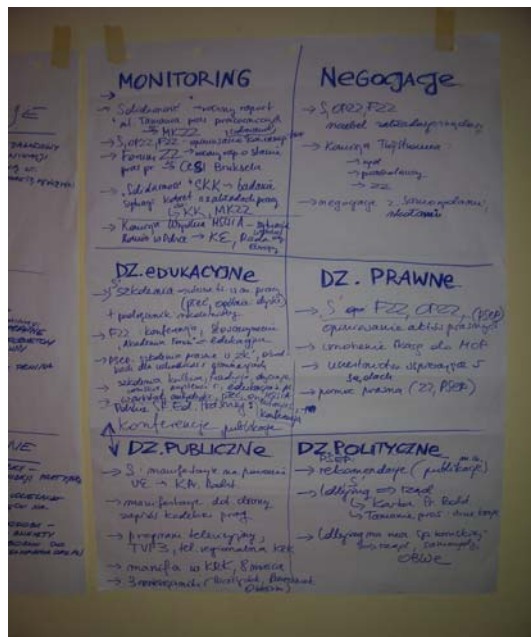
Generally the composition of the group was difficult to deal with since we had in both trainings both lawyers and non-lawyers, people from NGOs and TUs with different interests and expectations. It was difficult to satisfied all of them.

It is difficult to objectively evaluate the outcome of the trainings. It was definitely worthwhile experience and participants evaluation as presented above was rather positive. However the short time of the training, size of the group and its diversity in terms of knowledge and background (NGO and TU, lawyers and non-lawyers), lot of material covered may leave one with the impression that we did not have a chance to go deeply into many particular problems and sometimes rather stayed on the surface.

For number of people however it was the first chance to learn about antidiscrimination European legislation and to share different experience coming from different backgrounds which is very positive. They also had a chance to learn about national legislation and very practical legal tools for dealing with particular cases.

As usually practical exercises were praised most. Participants also included in their feedback several recommendations for the future, including issues like: non-conventional methods of dissemination of information about discrimination, ccooperation in between NGOs and TUs, how to influence officials in practice, add lobbying as a theme, more model legal motions (patterns), work on cases, how to influence resisting employers, how to break bad practices and relations in the work place, court cases, legal strategies, up-dating the law, networking, more work on other legal instruments, common actions – like writing petitions and recommendations, special focus on situation of “uniform forces” (military, prison guards etc.). Participants also suggested organizing seminars on regional level and organizing series of seminars (whole course), couple of people suggested splitting NGOs and TUs, lawyers and non-lawyers, but same time majority of participants praise the group mixture. Finally after the feedback received we decided to organize the follow up seminar on one working and one weekend day, some persons even suggested organizing the whole seminar on the weekend.

Basic seminar for NGOs and Trade Unions



Follow up seminar for NGOs and Trade Unions



b) Mapping exercise: NGOs/Trade Unions working to combat discrimination

I. Profile of NGO's/trade unions working to combat discrimination

1. What types of NGOs/trade unions working on anti-discrimination exist on the national level?

NGOs dealing with anti-discrimination can be divided into two groups:

- (A) NGOs affiliated with particular vulnerable groups
- (B) NGOs promoting values of democracy and human rights in a broad context

Below please find short list of examples of active, widely recognized and professional NGOs dealing with anti-discrimination on different grounds. They might be good source of knowledge and advice.

Age: Academy for the Development of Philanthropy in Poland (www.filantropia.org.pl) – conducts as a pioneer programs related to age discrimination; has contacts with number of “senior organizations”.
Disability: The Friends of Integration Association (www.integracja.org.pl);

Race and ethnic origin and religion or belief (most often organizations address these grounds together):

Helsinki Foundation for Human Rights “Program Minority Rights” (focus on Ethnic, National and Religious Minorities), acts also as Polish focal point for the RAXEN network (www.hfhr.org.pl);

Villa Decius Association (www.villa.org.pl/e_index.php);

Crisis Intervention Association (<http://crisisintervention.free.ngo.pl/>);

Polish Roma Association (www.romowie.com/index.php); One World Association (<http://www.jedenswiat.org.pl/eng/maineng.htm>);

Associations of particular National Minorities.

Sexual orientation: Campaign Against Homophobia (www.kampania.org.pl);

Lambda Warsaw (www.lambda.org.pl).

There are also NGOs dealing with more than one or all grounds. That includes: Helsinki Foundation for Human Rights (www.hfhr.org.pl) – strategic litigation on all grounds, training; New, established in 2007 Association of Anti-discrimination Law.

There are 3 big TUs centrals (see p. 5) on the national level. There are also dozens of branch TUs working on national level (being members of centrals but also working independently).

2. What ground(s) of discrimination, scope or sector are they concerned with (if they are concerned with a specific ground or a specific sector such as for example education)?

NGOs from group A deal with anti-discrimination in relation to the representatives of their group. E.g. organisations working with and for lesbian, gay, bisexual and transgender people (LGBT organisations) deal with discrimination on the ground of sexual orientation.

NGOs from group B deal with different grounds of discrimination and different aspects of anti-discrimination. Most of them focus on two or three grounds for discrimination. Relatively many NGOs are concerned with discrimination on the grounds of racial and ethnic origin. There are fewer organizations concerned with age, disability and sexual orientation as the grounds for discrimination. TUs do not focus particularly on specific grounds with two exceptions. They are concerned relatively more with sex and disability issues. These are two fields which exist on the level of policy, strategy and particular activities, other grounds do not.

They are lot of TUs concerned with particular scope or sector depending on the branch the represent.

3. Is anti-discrimination their main area of work or only a small part of what they do? Do they work on anti-discrimination?

There are no NGOs in Poland working exclusively on anti-discrimination. As mentioned above this field is only a part of the NGOs' work, both type A and B organizations. Only a part of those NGOs have regular long-term anti-discrimination projects, the rest undertake these activities occasionally. There are relatively many organizations located in different parts of Poland involved in awareness raising activities, whereas only a few have other programs such as legal or monitoring.

There are no TUs specializing in discrimination issues. It is always, if at all, only small part of their work. But some of them have special sections dealing with issues of disabled persons as well as "women sections" dealing with sex issues, including discrimination. Issues of discrimination based on grounds of directives 43 and 78 are not mentioned in policy documents, strategies etc. They are not included in the websites. But lately due to international cooperation and programs some surveys has been done by or with TUs and results of it are being processed (this include i.a. 1. research on discrimination of people 50+; 2. research on different grounds of discrimination).

4. Are these NGOs/trade unions registered on the national level? Is it easy or problematic to register as an NGO/trade union?

According to the Polish law all NGOs have to be registered at the National Court Register, accordingly as an association, foundation, or federation. /The only exceptions are: so called "stowarzyszenia zwykłe" – "ordinary associations" having less then 15 members and not allowed to receive grants; social organizations operating on the basis of distinct acts and international agreements, churches, religious associations and organizations, electoral committees and political parties.

The procedure is simple: in order to obtain a legal personality an organization files an application to the registration court found at the district court in the capital of the Voivodship. A motion consists of a filled in registration form and attachments such as an organization's statute, list of founders, minutes from the meeting of the founding committee and the established resolutions. The registration court makes a ruling concerning the organization's registration after stating that its statute complies with the Constitution and other legal regulations, and its founders fulfill the requirements defined by the Act. The provision results in the registration in the National Court Register and therefore the bestowal of legal personality.

TU – theoretically it is not difficult to register a TU, needs only minimum 10 people. All TU are registered on national level (special court register). In practice there are numerous violations of right to form and join TU since many private companies and employers are against TUs.

5. Generally how large are these NGOs/trade unions? (Please mention the size of membership for the main trade unions)

There are no general rules as to the size of NGOs dealing with anti-discrimination. To simplify matters, all NGOs could be divided into three groups:

- (X) NGOs based mostly on the work of regular employees,
- (Y) NGOs based mostly on the work of volunteers,
- (Z) NGOs based on the work of regular employees as well as volunteers.

In most cases NGOs from group X are the biggest, contrary to those from group Z. NGOs from group Y are between X and Z in terms of the size. This is but a general picture and there are exceptions from this rule.

The smallest NGOs can be involved in only one project having 1 or two activists-volunteers, the largest ones can run about 15 projects /of which one or three may be related to anti-discrimination/ and employ even over 30 people. Most active NGOs have a staff of about five to eight people /either volunteers or permanent employees/ and are involved in about three projects /one dealing with anti-discrimination/.

The density of TUs in Poland has dropped from ca. 80 % of workforce to ca. 15 % in last 20 years. There are 3 main TUs in Poland which are also networks (PL population is ca. 38 million).

- i. The Independent and Self-Governing Trade Union Solidarity (*Solidarnosc*). It has mainly regional structure (38 regions) but also parallel branch structure (16 branches, often subdivided into sections). *Solidarnosc* comprise of ca. 14 thousands enterprise TU organizations and ca. 800.000 members.
- ii. All-Poland Alliance of Trade Unions (*OPZZ*). It's the Federation of more than 100 of TUs and branch federations and include 600.000 members.
- iii. The Trade Unions Forum (*FZZ*). Third biggest TUs federation of more than 30 TUs and 300.000 members.
- iv. The fourth group of TUs are those which are not members of 3 big central national networks. There are different structures: one enterprise TUs, branch TUs, small local or branch federations. All together they have 500.000 members.

The number of all TUs members is therefore ca. 2.200.000.

6. Are they part of larger national networks? Or are they working on their own?

Some of the NGOs are parts of national –formal or informal – networks. Usually those working in the same field or region co-operate with each other.

TU from point i. is quite centralized while TUs from p. ii and iii are much more independent. Network structure assist them, give support and power but they work independently as well (or within their branches). There is also big number of small TUs operating in one or some enterprises.

7. Are they mainly based in the Capital or spread out in the country?

NGOs are based in Warsaw and other big cities, as well as spread throughout the country. The ones located in the Capital and two or three big cities outnumber the other ones. In most cases those based in the capital and other big cities are the bigger, most active and professional ones. There are also NGOs which have branches in a few big cities.

TUs are spread out in the country. Even 2 out of 3 biggest networks described above have their central office out of Capital.

8. Are NGOs/trade unions from the capital and the rest of the country doing the same type of work?

Usually NGOs from the capital and other big cities work in the broader field, both in terms of problems covered and types of activities than NGOs spread throughout the country. Awareness raising activities are the most common initiatives undertaken by the NGOs from the rest of the country. Whereas dialogue with the government or monitoring, requiring a more professional approach, are done mostly by those located in Warsaw and other big cities. This is also the case with legal work however there are organizations located in smaller cities or towns which provide free legal aid to victims.

Different TU do sometimes similar and sometimes different type of work but those differences are due to TU character, branch, level in the hierarchy rather than the fact that they are based in Capital.

9. What is the political or societal weight of these NGOs/trade unions on the national level? (Towards, the general public, the civil society, the companies/employers, the government).

Its very difficult to evaluate political and societal weight of both NGOs and TUs. NGOs are visible and try to influence the political situation (legislation, execution of law by state organs) but their power is limited. NGOs sit on numerous boards and advising bodies therefore they have possibility of influence but same time there is no stable tradition of asking them or treating their opinion seriously. Their societal weight seems be growing, slowly but consequently.

Political weight of TUs is often overestimated as they are quite visible. However they are also at the same time scientists who describe the activities of Tripartite Commission for Social and Economic Affairs and other instrument of social dialogue as symbolic (if not false) ones. What more, the previous serious engagement of TUs in political matters caused its problems, they were losing their credibility as employee defenders when for instance their representatives entered the Parliament.

10. Are NGOs/trade unions working in the same field cooperating together: (NGOs with other NGOs, trade unions with other trade unions and also NGOs together with trade unions).

Many NGOs working in the same field cooperate with each other. However the cooperation takes place within a particular community and doesn't often reach beyond that.

TUs only occasionally cooperate with NGOs.

TU do sometimes cooperate with other TU but there are also lot of tensions and problems even described by scientists as "conflicting pluralism" deriving from history and different political "affiliations" of main networks. There is more collaboration on the ground level and less on the national level even though all networks are being members of same advisory and similar bodies.

a. For what purpose(s) (e.g. exchange of expertise, collaboration on case work or campaigns, jointly organising events)

Joint campaigns and events are the most common purpose of the NGOs' collaboration. In opposition to that the expertise, case work, reports are more often done separately by organizations, they are however exchanged and made available to other organizations. In more and more cases cooperation is determined by funding opportunities, which encourages organizations to build coalitions and partnerships in order to receive a grant. NGOs with the experience of successful cooperation tend to continue it either in the form of further common project or regular contacts.

NGOs and TUs are sometimes members of same bodies, participate in same conferences, they exchange publications, they occasionally help in legal matters etc. But there is no permanent collaboration, there is no relevant strategy on both sides.

b. Is there greater collaboration in relation to certain grounds of discrimination? If so, which?

Collaboration of NGOs working in the same field is also strongly related to the current situation in the country. Whenever there is a common goal the collaboration within the particular community increases. Consequently there are periods of greater activity of NGOs working in the same field – such as the cooperation of organisations working with and for lesbian, gay, bisexual and transgender people (LGBT organisations) in relation to the draft bill on partnerships or cooperation of national and ethnic minorities prior to the passing of the Bill on National and Ethnic Minorities. Also, there is often specialization among NGOs working in the same thematic field: some do educational work, others legal or cultural.

NGOs and TUs collaboration is equally rare in all grounds. Same for internal TUs.

11. How are these NGOs funded?

a. Do they receive State funding?

Many NGOs dealing with anti-discrimination receive or have received money from the State. There are, however, organizations which do not apply for State funding – as a watchdog organization they don't want to be dependant on State funds while involved in monitoring of State policies.

b. What are the conditions in order to receive public funding?

NGOs which receive State funding receive it for particular projects and not on their administrative work. Calls for proposals concerning the financing of projects related to anti-discrimination were announced i.e. by The Government's Plenipotentiary for the Equal Status of Women and Men /Polish equality body, closed in 2005/ or other Ministries /presently, EOY funds govern by MoLabor/. Organizations can also apply for State funding on the local level.

c. Do they also receive/apply for private funding?

Many NGOs apply and receive private funding, mostly from Polish and international foundations and organizations. Relatively few NGOs cooperate with donors from the Polish business sector.

There is also tax deduction scheme that many NGOs use. Everybody may declare 1% of personal income tax for the NGO with special legal status.

d. Do private founders impose any restrictions or conditions?

In order to receive private or public funding an NGO has to fulfill a number of conditions, in relation to their legal and financial status and in relation to the conditions of the call for proposal itself. The conditions are rarely restrictive. Most funding opportunities are open for all kinds of organizations and the quality of a project is the major limit.

12. How are these trade unions funded?

There are 3 main funding sources of TUs:

- x. Members' fees.
- xx. Income derived from TUs assets and economic activities.
- xxx. Obligation under the law for the employer to safeguard means for TUs activities including technical means (office, computer, telephone, sometimes car) and personnel (depending on the size of the TU the employer pays salary of TU representative working only on TU issues).

a. Do they receive state funding? (Generally speaking do trade unions receive state funding?)

No, TUs do not receive state funding. But they may and occasionally do take part in call for proposals of particular projects where funding is public.

b. Are they funded by a political party? If so, do they have to adhere and respect the party's line?

No. There is no funding from political parties. But there is some dependence on parties and their lines not related to funding.

c. Do they function only/also with their members' fees?

This is very important (for Solidarity main) source of funds. For instance within Solidarity members' fee is 1 % of member's monthly gross salary. In OPZZ it's less – 1% of “minimal wage” monthly. Majority of fee stays with enterprise organization, the rest is divided into regional and central TUs structures.

d. Are they able to receive private funding and/or participate in project funded by European/international institutions?

Yes, they can, there are no restrictions, and they do participate.

13. Is the lack of funding a significant factor in the size of NGOs/trade unions or in restricting the scope or scale of their activities?

Lack of funding can be an important factor restricting the activity of NGOs doing legal work and watchdog activities. It's easier to get funding for educational and awareness raising projects than for activities undertaken by watchdog organizations. Most sponsors would rather finance campaigns, events, training, publications etc. than free legal aid, strategic litigation, legislative monitoring, research, or the support of victims. It is especially difficult for the NGOs involved in the latter types of activities as they don't want to take the risk of being forced to limit themselves in their work when obtaining money from the government.

TUs are under membership crisis and their size has dropped in last years therefore since they are often dependent on members' fees they face serious financial problems which influence (limit) their activities.

14. Do they work (or are in contact) with similar NGOs/trade unions in other countries?

- a. Neighbouring countries?**
- b. Other new EU Member States?**
- c. Others?**

Many NGOs collaborate with similar ones in other countries, especially the ones based in the Capital and big cities. Smaller NGOs, spread throughout the country, usually work only locally.

a,b,c) NGOs are in contact with organizations in their neighboring countries but with some exceptions Western rather than Eastern neighbors. Some of them cooperate with NGOs from other EU Member States. Some are members of international networks and federations or take part in international projects – most often as participants rather than initiators.

TUs and especially big networks do collaborate with international partners but it is still quite rare. There were projects funded by ILO, international TUs organizations, EU Commission or common project funded by national TUs from countries like i.a. France or Sweden. The Collaboration with neighboring and other new EU Member States is small. The contacts are mainly limited to participation in international events, trainings, conferences, meetings of international TUs organizations.

15. Do they work on the international level (campaigning, case work, other)

A few Polish NGOs work on the international level e.g. submitting alternative reports to UN Committees or the bodies of the Council of Europe. If they get involved in campaigning or lobbying they most often do it as members of international networks rather than individual actors.

TUs are members of international TU organizations and participate in different international activities (see p.14). But they do not work professionally yet (campaigning, cases etc.) on the international level.

16. Can they work in English?

Some NGOs can work in English, especially the ones based in Warsaw and other big cities. The ability of others to work in English very much depends on the age of the staff: the younger they are the more often they speak English. More and more people in NGOs speak English, however not all of them can work in this language.

TU – it's difficult to evaluate. In central organizations there are some staff working in English but majority of TU leaders and activists do not speak. Obviously there are TUs with more members speaking languages like for instance Polish Teachers TU.

17. For countries where this is the case, where trade unions are linked to political parties, does the involvement or non-involvement of the political party has an impact on the trade union's ability to work on anti-discrimination?

It may have an impact and even it is seen as this by some people, but it is based rather on intuition than hard data. Solidarnosc is traditionally affiliated with right wing. Since right wing is in power right now and sends itself lot of discriminatory signals it may influence ability or willingness of Solidarity TU to deal with discrimination. Same time second biggest TU – OPPZ – is treated by many as more left and liberal and by NGOs activists is quite often seen as a more probable ally. But since there is no big difference in antidiscrimination activities of both TUs (they both do almost nothing) this conviction has rather theoretical character.

18. Can specific regional branches of a trade union work on anti-discrimination even if headquarters does not?

It seems be possible. Especially because the structure of main TUs is quite flexible and particular organizations have a lot of independence and own financial resources. However lack of central, national strategy may influence the situation.

II. Expertise of NGOs/trade unions working to combat discrimination

19. What kind of work do they do?

Most NGOs involved in anti-discrimination work undertake educational and awareness raising activities. These activities are limited in two ways:

- Out of all educational projects in this sphere only a small part is related directly to the directives or legal and other mechanisms of combating discrimination. The majority of them are focused on the awareness raising aspect, they refer to the general concept of anti-discrimination: human dignity, equality, universality of rights, tolerance etc.
- Most anti-discrimination projects done by NGOs, which are not affiliated with a particular vulnerable group (NGOs from group B in the question no 1), are related to the discrimination for the grounds of racial and ethnic origin and are linked to the issues of racism, anti-Semitism, xenophobia and intolerance. As for the other grounds for discrimination, disability and gender are also addressed relatively often. The issues of discrimination for the ground of age are still a new concept in the Polish society but a few organizations have started to deal with them in their projects. The issue of discrimination for the ground of sexual orientation is a very controversial issue in Poland. Therefore many NGOs –apart from LGBT organisations' and women's organizations – refrain from addressing this problem in their work.

Apart from educational work many NGOs provide free legal aid as a part of their activity. Discrimination can be one of the problems that their clients report to them. There is no organization specializing in discrimination cases. There are relatively many organizations consulting victims on the legal or other measures that can be undertaken but only a few offering legal representation.

Only few NGOs in Poland carry out regular litigation projects.

Many NGOs offer psychological help to victims.

Some NGOs monitor the observance of anti-discrimination law and work with the government and parliament to create regulations and policies preventing the acts of discrimination. However, so far no comprehensive monitoring has been conducted from the initiative of the civil society covering all grounds for discrimination.

TU activities in combating discrimination are almost none. With the exception of sex discrimination and issues related to employees with disabilities. There were some trainings on sex equality and awareness raising. There is legislative monitoring and TUs formulate their opinions on rights of disabled. They also distribute sometimes relevant materials, leaflets etc. Their representatives sit on different advisory bodies so may influence policies. All those activities only occasionally relate to discrimination.

But the situation will hopefully start to change. For instance, there are some proposals submitted by TUs to Polish Ministry of Labor within call for proposals of the Equal Opportunities Year (not decided finally) including combating discrimination and awareness raising activities.

20. Do they take up complaints of discrimination?

NGOs offering legal advice can take up cases of discrimination as a part of their broader activity. Due to the low social awareness of what discrimination is, and the fact that there are certain measures to combat it, there haven't been many such cases. But the number grows and there were several interesting cases in last two years.

According to TUs information there are very few complaints of discrimination. But TUs definitely take them up if they exist. Every TU member, if in trouble, may turn to the TU at the enterprise level or higher structure.

21. Do they focus on their own community?

Organizations affiliated with particular communities focus on the problems of their own group. Other organizations such as human rights NGOs deal with different human rights violations including discrimination.

TU definitely focus on members and their families. But if working on branch issues, what is quite frequent, they go beyond members however stick to the community and rather do not go beyond.

22. Do they work with victims directly?

Apart from NGOs involved only in educational activities a number of organizations work with victims directly, offering information, legal advice, some also psychological help and social assistance.

TU work with victims directly at the enterprise organization level and sometimes, if needed, with assistance of regional or central structure.

23. Within the company, can trade unions represent only their members or any worker?

According to law TUs can represent any employee (but it is up to them) and it sometimes happen that they represent non-member. However the general practise is to limit to members.

24. Do they do 'case work'?

"Case work" could be an important part of NGOs' anti-discrimination activity. Some organizations have done "case work" before – rarely in regard to discrimination cases but it slowly changes.

TUs have their lawyers (in big companies and regional/national structures) who advice, assist and represent members. They do not do test cases however.

25. Are they able to access state funding for casework?

There are some possibilities for NGOs of receiving this kind of funding from mainly municipalities. There are some donations for “legal aid” work. There are also some other possibilities (Ministry of Interior).

For TUs it’s much more difficult and they depend on their own resources and TUs lawyers. However it should be stressed that in labor disputes in labor courts employees are free from paying court fees. They may also apply to the court for granting legal aid lawyer for those without means.

26. Does this include legal representation?

A few NGOs that have a legal aid program can also offer legal representation in chosen cases. However, it is not very common due to its cost (there are however some pro bono schemes). Each case is carefully chosen according to the organization’s strategy. These are usually litigation cases. TUs employ lawyers to advice and represent TUs members. See also p. 25 on legal aid lawyer.

27. Is it possible for NGOs/trade unions to engage on behalf or in support of victims of discrimination in judicial or administrative procedures?

According to the Polish law an NGO can join a trial as a so called “social representative” in a criminal case. It can also act as a subsidiary prosecutor.

A so called „social organization” can also demand the institution of administrative proceedings or join the trial at the administrative court with the rights of a party.

In civil proceedings a „social organization” can either launch a complaint on behalf of a particular person or join a trial.

It’s worth noticing that only a few NGOs make use of this possibility as well of other available legal instruments such as amicus curiae.

TUs may initiate lawsuit in the name of employee in labor and social security disputes. TU representative may represent the member in civil, labor, social security disputes, before the court or other administrative body.

28. Are NGOs/trade unions able to pursue class actions if the latter is allowed on the national level?

There is no tradition of class action in Poland and no such law. However there have been some attempts to create this institution or interpret existing law adequately. The situation is dynamic.

29. Do they do other practical work? (e.g. assistance to victims or potential victims, social assistance, etc)

Some NGOs provide victims or potential victims with information: at their information centers, on websites, by distributing leaflets, via their trainers and speakers. Some also offer psychological help as well as social assistance.

TUs offer other assistance as well, social help, financial support etc.

30. Do they advocate changes in legislation and policies?

Only some NGOs advocate changes in legislation and policies. There are human rights organizations monitoring the whole of human rights related legislation and policies and advocating changes, as well as LGTB organizations and to some extent the organizations of the disabled and women's NGOs. Some prominent NGOs' activists are members of ministerial and parliamentary consultation councils and cooperate with government and politicians on a regular basis, some submit opinions and recommendations regarding draft bills and policies. Some NGOs are more passive and act upon invitation from the government, some however often initiate dialogue with policymakers whenever it is in the NGOs' interest to express the view and facilitate the change.

TUs work on policies and legislation but so far not on those related to discrimination with the exception of the situation of disabled persons and sometimes sex discrimination.

31. What are their relations with the central government?

The relations of NGOs with the central government very much depend on the character of an NGO and a government's political orientation. To some extent each government must cooperate with the NGOs while realizing its policies. The more controversial issues an NGO is concerned with, the more difficult its contacts with government are.

The relations between NGOs and the government are relatively good on the level of exchanging views and consultations, which is not always reflected in the policies.

There is an obligation of social dialogue in between Government and TUs. The Tripartite Commission for Social and Economic Affairs with its specialized sections is the platform of dialogue in between Government, Employers Organizations and biggest TUs. TUs have also other opportunities to express their views, there are meetings with President, Prime Minister etc. However there are also tensions related to different political affiliation of particular TUs as well as to different protest actions, strikes etc.

32. With regional governments or municipalities?

The Act on social and volunteer work introduced the obligation of public administration to cooperate with NGOs, in particular with the so called "public service organizations". According to the law public administration is obliged to take them into account during the process of identifying social problems and at the stage of discussion on their solution. NGOs, in particular the "public service organizations", are in position to receive funding for the implementation of the commissioned tasks of the local government.

The mechanism of cooperation differs from one city or commune to another, and is also strongly dependant on the character of organizations and the administration representatives' will to cooperate. TU - Tripartite Commission works also on regional level. Usually relations of the TUs with local government are quite good as long as local government is not Owner/Employer.

33. For the trade unions, with the employers organizations?

They are special forms of collaboration of Employers and TUs, like already mentioned Tripartite Commission, otherwise the relations are rather "cold" and "official" since their interests are rarely seen as similar, more often as contradicting.

34. Do they have relations with the specialised bodies/ombudsman?

A significant part of NGOs dealing with anti-discrimination had relations with the Polish equality body closed in 2005: The Office of Government's Plenipotentiary for the Equal Status of Men and Woman. In the framework of the Phare 2002 project "Strengthening of antidiscrimination policy" the Office carried out a series of antidiscrimination courses for representatives of various professional groups, including NGO activists. It helped to establish or in some cases strengthen contacts between the Office and NGOs working in this field. New office responsible for the government's anti-discrimination policy is Department for Women, Family and Counteracting Discrimination in the Ministry of Labor and Social Politics. The Department offers funding opportunities for the projects of NGOs involved in issues related to the problem of discrimination (Equal Opportunities Year).

Some NGOs collaborate with The Polish Ombudsman Office, in particular those which have legal aid programmes but there was no collaboration so far in the discrimination field (with one exception lately – case of Director of Teacher Training Center fired by Minister of Education for publishing Compass – teachers manual prepared Council of Europe including according to PL Minister "promotion of homosexuality").

There were also some relations of TUs with closed office of Government's Plenipotentiary for the Equal Status of Men and Woman (related almost exclusively to sex discrimination).

There is no collaboration of TUs with the Polish Ombudsman (Commissioner for Civil Rights Protection) but there are some occasional relations (common conferences, publications).

There is some collaboration of TUs with Department for Women, Family and Counteracting Discrimination in the Ministry of Labor and Social Politics. For example one TU has a member on advisory panel within EOY program; other TUs took part in call for proposals.

35. What are the qualifications of the staff?

It is impossible to make general statements as to the staff's qualifications. However, the general rule would be as follows: the bigger the city, in which an NGO is located, the more competent its staff is. On the one hand there is a number of NGOs having highly qualified and experienced staff where there is advanced division of tasks between experts, project managers, trainers, fundraisers and administration staff. Their staff members have university degrees /including academics/, they travel abroad, take part in international courses and attend conferences. Such NGOs are in most cases located in the Capitol and other big cities such as Krakow or Gdansk. On the other hand there are many organizations basing their activity on volunteers in the case of which the criterion of a person's availability and enthusiasm can sometimes predominate over the criterion of competence. The majority of organisations are in between the two described types.

The situation differs depending on particular TU and "educational level" of its members. At the local level these qualifications are rather smaller. There are much better at regional and especially national level. But usually TUs activists are trained and capable of helping and assisting members. It does not however relates to discrimination issues.

36. What training has the staff had in relation to anti-discrimination work?

As already mentioned most organizations working to combat discrimination in Poland are involved in awareness raising activities. Thus the knowledge of their staff is also limited to the general concept of discrimination, often in relation with the issues of intolerance, xenophobia, racism and anti-Semitism. A number of activists have come across the issue in the course of their human rights training.

However due to number of recent projects funded by EU there is already group of people in Poland which have in-depth knowledge on the issue of discrimination, which would not only include the general understanding of the idea of anti-discrimination but also the knowledge on the protection offered by the law – nationally and internationally – as well as other mechanism.

TUs staff had almost no training on anti-discrimination. Only some people went through this kind of training. There are also no training programs of this kind within TUs. Some TUs lawyers however declare some knowledge of relevant law (especially at the central level).

37. Are they trained in writing funding proposals and reporting?

Only a small part of NGO activists have been properly trained in writing funding proposals and reporting. Most people learn it by doing it or from their colleagues' experience.

For TUs this is rather still new phenomenon and there is lack of relevant training of this kind. However one can notice that they prepare more proposals than before.

38. How do they evaluate their “success” and the quality of their anti-discrimination work?

In the case of most NGOs only a short-term evaluation is done, directly related to the process of project reporting. For some NGOs – those that are involved in the advocating of changes in the policy and legislation – a policy's improvement or introduction of new legislation is proof of their efficiency. Since TUs do not really conduct any anti-discrimination work there is nothing to evaluate. But in general the evaluation issue is one of the weakest points of work both of NGOs and TUs.

III. Needs and problems of NGOs/trade unions working to combat discrimination

39. What is the main problem faced by NGOs/trade unions involved in anti-discrimination work?

NGOs – different problems for different grounds and different types of NGOs. Main problems are for instance lack of funding for awareness raising training of different occupational groups as well as for strategic litigation.

TUs – main problem is the fact that they seem still not to recognize the discrimination as a separate issue and they do not include it on their agenda, in their documents, strategies etc.

40. Is the lack of staff/funding/expertise one of the main problems faced by NGOs/trade unions involved in anti-discrimination work?

Funding can be a significant problem faced by NGOs, in particular those involved in more than educational projects, including legal activities, litigation, advocating changes in policies and legislation. There are few funding opportunities for this kind of work, which is related to the fact that this activity is a long term process, difficult to evaluate.

Apart from the lack of funding, making use of the available funds is another problem. Organizations are not always capable of finding out about the available funds as well as preparing proper applications and writing proposals.

Lack of staff is not the main problem against the background of other problems faced by NGOs. It is rather a matter of the lack of qualified staff.

TU – mainly lack of strategy, but it is obviously also the consequence of lack of expertise and staff.

41. Is the fact that staff lack necessary knowledge and/or skills one of the main problems faced by NGOs involved in anti-discrimination work?

Organisations handling antidiscrimination could be a lot more efficient if their staff had in-depth knowledge on the issue of anti-discrimination and were able to disseminate the knowledge on a more elaborate level as well as use it in their activity, educational and other. The staff lack skills of effective work for anti-discrimination, including monitoring, reporting, legal measures, public actions, work with the media etc.

Also in the case of many NGOs the organizational capacity is weak, including the lack of such skills as strategic planning. A significant part of the Polish NGOs carry out projects, the content of which is dependant on the available funds and is not necessarily a part of an organization's long-term strategy. Strengthening the above mentioned skills would definitely contribute to the increased effectiveness of the NGOs' antidiscrimination work.

TU – as above, rather lack of commitment and strategy than knowledge and skills (which are however also missing).

42. What training is needed by the NGOs/trade unions in order to perform their work the way they would wish to?

NGOs' staff needs substantial training on discrimination, also in the context of legal mechanisms of combating it. They also need the skills of an organization's capacity building as well as skills of the effective work for public interest.

TU - training for trainers, training for lawyers and training for TU activists (awareness raising and law combating discrimination).

43. Is their staff sufficiently trained in relation to national anti-discrimination legislation?

In most cases the knowledge on anti-discrimination legislation is very weak among NGOs activists, which is related to the fact that law is generally very rarely used by Polish NGOs as an instrument of social change.

If there is some knowledge on national anti-discrimination legislation among an NGO staff it is usually limited only to those aspects of discrimination the particular NGO is concerned with. Very few people in the Polish NGOs have complete and broad knowledge on the issue.

Within TUs lawyers declare some knowledge but since they do not have any relevant cases it is difficult to evaluate. TU activists and trainers are definitely not trained on anti-discrimination legislation.

44. Is their staff sufficiently trained in relation to European anti-discrimination legislation?

Just as it was mentioned above this is also the case in relation to European legislation, except even fewer representatives of NGOs possess even basic competence in this field. Especially since European legislation has been in force in Poland since May 2004. Additionally not many NGOs activists know how this legislation is implemented in Poland and in what its relation to the Polish legislation is.

TU – same as above, even less people are familiar with EU legislation, however some TU lawyers declare this knowledge.

45. Are their staff trained in relation to advising government: formulating policy proposals? legislative proposals?

Only few NGOs in Poland have experts with competences to formulate policy or legislative proposals in a professional way. There are relatively many NGOs representatives involved in advising the government in the form of participation in advisory councils established at ministries, central offices, and governmental agencies.

Most people involved in this kind of activity have never undergone a special training in this field. Also, in the case of many small NGOs, where there is no clear division of tasks, those attending advisory meetings have no special qualifications for the work as they are often the only active staff members at the organization and are responsible for all kinds of things, being at the same time Board members, trainers, projects managers, fundraisers, experts etc.

TU – this is the matter left for the central/national structures of TUs. There are people specialising in policy making, legislative analyses and formulating proposals. But often people lack formal training on those issues.

46. Do they need to do more to promote their anti-discrimination role?

In order to be more effective in their anti-discrimination work the organizations need to promote their anti-discrimination role by incorporating this problem into their long-term strategy. Many NGOs carry out this kind of initiatives once in a while as a part of their work for democracy and human rights. NGOs wanting to be recognised as those combating discrimination need to highlight their mission consequently and not accidentally. The more regularly they get involved in anti-discrimination projects, the more often they are associated with this type of activity by other actors.

TUs need to realize first that they have this role. They could and definitely should do something in this respect. They should include discrimination issues in their strategies, they should start developing relevant procedures and schemes.

47. Do they need to “do more” with victims, clients or potential clients, members or potential members?

Definitely it is necessary for NGOs to work more with clients in order to exercise and publicize the mechanism of combating discrimination.

Usually organizations in Poland, that work directly with clients offering them legal or social assistance don't have problems getting to them, which is not the case with victims of discrimination. It is related to the low social awareness of discrimination, the lack of understanding of the concept as well as the lack of knowledge on existing mechanisms of protecting the victims or potential victims.

Since TUs declare that there are not many victims of discrimination (only few) this is difficult to answer this question. They should work at the beginning on awareness raising of members and potential clients. It is very probable that there are many silent victims who need some assistance and good “atmosphere” to express their problems.

48. Do they need to “do more” with government – to increase their credibility and status?

Working with the government is necessary to increase the effectiveness of the NGOs' work in the field of anti-discrimination. It should not only be an occasional cooperation but a regular dialogue with a coalition of NGOs instead of one or two separate players. In order to achieve success different organizations need to work together aiming for the cohesion of the policies they advocate for as well as on the quality of their presentation to the government.

TU – they seem to work a lot with Government within Tripartite Commission and on other occasions. Their credibility is quite high, same with status. Their influence is limited to normal struggle of interests seen as conflicting.

49. For the trade unions, do they need to “do more” with the companies/employers organizations?

There are platforms of collaboration with employers organizations. TU should definitely do more with those organizations in order to make pressure on them and influence many private companies/employers which ban de facto or limit creation and activities of TUs.

50. Would they need to “do more” with public opinion and awareness raising?

Undoubtedly work with public opinion and awareness raising are among the main challenges of NGOs involved in anti-discrimination activity. As long as the issue is not properly publicized and knowledge disseminated NGOs are not going to be successful with other activities in this field.

TUs should definitely work on awareness raising of general public and members.

51 What would they need to develop?

What organizations concerned with anti-discrimination need most are:

- in-depth knowledge on discrimination,
- different skills of effective anti-discrimination work /monitoring, advocating for policy change, legal work/,
- contact with other NGOs working in the field, including coalition building, exchange of information, access to expertise,
- capacity building, strengthening of professional approach towards organizational aspects of an NGO’s functioning, including strategic planning, division of tasks, fundraising, proposal writing.

TUs need to include combating and addressing discrimination in their agenda and develop relevant strategy. This should include awareness raising, training, establishing special procedures for victims, best practices, collaboration with other bodies etc.

c) National legislation in the field of anti-discrimination

1. The transposition of the Directives into national law¹

The Polish Government did not decide to prepare separate Act transposing directives (see information on new draft law at the bottom of part 1). It rather chose to adequately amend existing Acts or laws that were already in the legislative process. There was no vivid public debate accompanying the implementation.

Polish Constitution provides for general prohibition of discrimination in art. 32. *1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2.No one shall be discriminated against in political, social or economic life for any reason whatsoever.*

There are also several other general constitutional guarantees in relation to the field discussed. The general constitutional provisions are developed more precisely in the Acts of Parliament.

New laws and changes to existing laws implementing directives

Following changes of law took place as a consequence of the transposition of the directives: amendment of Labour Code (2004), Law on promotion of employment and the institutions of labour market (2004); amendment of Code of civil procedure (2004); Act on national and ethnic minorities and regional language (2005).

Labour Code. (changes from 14 Nov. 2003; in power since 1 Jan. 2004). The general rule of equal treatment have been introduced to the Code (art. 11³); the chapter IIa has been changed and renamed to „*Equal treatment in employment*”, it defines discrimination in employment and provides many detailed provisions transposing directives (until amendment the chapter regulated only issues concerning equal treatment of women and men). At the first glance it may look as a full transposition in labour relations, but it is not, which was already pointed out by *i.a.* European Commission, doctrine², NGOs³ and numerous reports of different institutions and organizations. Following are main provisions of the Labour Code which has been changed or introduced (on gaps in implementation see below).

Art. 11³. Any discrimination in labour relations, direct or indirect, in particular, based on sex, age, disability, race, religion, national origin, political beliefs, trade union membership, ethnic origin, beliefs, sexual orientation, and because of long term or short term labour contact or full or part time employment is prohibited.

Chapter IIa Equal treatment in employment

Art. 18^{3a}. §1 Employers shall be treated equally in establishment and termination of employment relationships, terms of employment, promotions, access to professional training aimed at improving professional qualifications in particular with no difference because of their sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, beliefs, sexual orientation [...]

¹ Following publications (including some quotes and translations not marked in the text) were used in the elaboration of the part 1 (transposition of the directives) and part 2 (procedures...):

(1) *Analysis of the status quo of Polish. Anti-Discrimination Legislation and Policies*; B. Liegl, B. Perching, B. Weys; Warsaw 2004; published in Polish within twinning project “Strengthening Anti-discrimination Policies” (FM No. 2002/000-605.01.02);

(2) *Combatting discrimination in Poland. How to defend your rights*; K.Gonera; Warsaw 2004; guide-book published in Polish by office of the Plenipotentiary for Equal Status of Women and Men;

(3) *RAXEN National Report. Poland. 2005 data collection*; at www.hfhr.org.pl ;

(4) Report on measures to combat discrimination. Country report: Poland; P.Filipek, M.Pamula; Jan. 2005, European Network of Legal Experts in the non-discrimination field; (www.migpolgroup.com).

² See for instance I.Boruta, Prohibition of discrimination in employment – new concepts (*Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia*) in: Monitor Prawa Pracy nr 2, 2004; and Prohibition of discrimination in employment – new regulations (*Zakaz dyskryminacji w zatrudnieniu – nowa regulacja prawna*) in: Praca i Zabezpieczenie Społeczne, nr 2, 2004.

³ See letters of Helsinki Foundation for Human Rights to the Prime Minister as of 3 July 2006 (“equality body”) and 18 August 2006 (listing number of gaps in the transposition of directive 2000/43) at www.hfhr.org.pl.

§2 Equal treatment in employment means non-discriminating in any way, directly or indirectly, because of reasons listed in § 1.

§ 3 Direct discrimination takes place when an employee due to one or more reasons listed in § 1 was, is, or may be treated, in a comparable situation, less favorably than other employees.

§ 4 Indirect discrimination takes place when, due to apparently neutral decision, criterion, or action, based on one or more grounds mentioned in Para. 1, disproportions in the scope of terms of employment occur or may occur to employee's disadvantage, unless they can be justified by other objective reasons.

§5 Discrimination, on the grounds mentioned in Para. 1, also consist of actions

1) encouraging other persons to infringe the principle of equal treatment,

2) behavior, which aims or results in harm to dignity or degradation or humiliation of an employee (harassment). [...]

Art. 18^{3b} §1 broadens the scope of the equal treatment clause of Article. Art. 18^{3a} §1 by prohibiting differentiations regarding the position of an employee on one or more grounds, which result in: refusal to establish an employment relationship; termination of an employment relationship; lower remuneration; unfavorable working conditions; unfavorable conditions for promotion or other benefits related to work.

Art. 18^{3b} § 2 and 4 list exceptions to principle of equal treatment:

§2 The principle of equal treatment shall not be breached by actions consisting in: 1)not employing a person on one or more grounds mentioned in Article 183a § 1, if this is justified in performing given work due to its nature, conditions it is performed in, or requirements laid down to employees; 2) giving an employee a notice on change of terms of employment (in the scope of working time) if it is justified by reasons which do not regard employees; 3)applying measures that differentiate the situation in favor of an employee due to protection of parenthood, age, or disability of an employee; 4) setting terms of engaging and dismissing the employees, principles of remuneration and promotions, and access to professional training in order to improve professional qualifications, that take into account the professional experience.

§ 4. Differentiating the employees on the grounds of religion or belief shall not constitute a violation of the principle of equal treatment in employment if – in connection with kind and nature of activities undertaken within churches and religious associations, and organizations whose goals are directly related to religion or belief – religion or belief of an employee constitutes an essential, legitimate, and justified occupational requirement.”

Furthermore Law provides for right to compensation and introduces limited prohibition of victimisation.

Art. 18^{3d}. A person in relation to whom employer broke the rule of equal treatment in employment has the right to compensation in amount not smaller than minimum wage [...].

Art. 18^{3e}. Exercising the rights arising from breaches of the principle of equal treatment in employment may not be the ground for terminating an employment relationship, neither with nor without notice.

Law on promotion of employment and the institutions of labour market (passed on April 20, 2004). The Act regulates the activities of private employment agencies and employment services as well as public institutions assisting unemployed and employed and providing employment counseling and training (at voivodship, poviast level). The Act includes number of provisions of anti-discrimination character (Art. 10.2; 19.6; 36.4&5; 38.2; 40.1&6).

It introduces in all matters regulated by the Act general prohibition of using discriminating criteria related to sex, age, disability, race, national origin, sexual orientation, political beliefs, religion, membership in trade union. The Act provides also for financial fine for breaking the prohibition of discrimination by employment agency or refusing the job because of discriminatory reasons (fine not less than 3.000 zł, ca. 750 euro; Art. 121,123).

Amendment of the Code of civil procedure (effective since Feb. 2nd 2005). This amendment introduced into the provision regarding standing of NGOs new wording in relation to organization working in non-discrimination field. New Art. 61 §4 reads now: *Social organizations, the statutory objectives of which include protection of equality and non-discrimination by unwarranted direct or indirect discrimination of rights and obligations of citizens, may, in matters claiming there under, file complaints with the consent and on behalf of citizens, and, with claimant consent, join proceedings at any phase thereof.* (see more on NGOs standing in part. 2).

Act on national and ethnic minorities and regional language (passed on Jan. 6th 2005 and effective since May 1st 2005). Article 35 of Polish Constitution provides: *1. The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. 2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.*

In April 2001, Poland ratified the Framework Convention for the Protection of National Minorities. Act on national and ethnic minorities... (finally passed ca. 15 years since it was proposed) introduces prohibition of discrimination (Art. 6).⁴ The prohibition however has general character and basically repeats already existing national laws and provisions of the Framework Convention (during the Parliamentary discussions there were voices urging the legislator to use this occasion and fully implement Directives but legislator did not decide to do so).

Art. 6. 1. Discrimination arising from the membership in a minority is prohibited. 2. Public authorities are obliged to take appropriate steps in order to: 1) support complete and actual equality in economic, social, political and cultural life among persons belonging to minorities and members of the majority; 2) protect persons subjected to discrimination, hostility or violence caused by their belonging to minority; 3) strengthen (support) intercultural dialogue.

This Act only partially (in general terms) implements Directive and lacks detailed provisions. It additionally established some organs which have some competences of a non-existing “equality body”. Section 5 of the Act indicates the entities in charge of national and ethnic minorities and preventing discrimination: Minister of the Interior and Administration as a central authority (special National Minority Division within Ministry), local authorities at regional level (voivodships) and Joint Commission of Government and National and Ethnic Minorities as the Prime Minister advisory/consultative body.

Minister is in charge of initiating programs to execute “the principle of equal treatment of all people regardless ethnic origin, conducting analyses of minorities’ legal and social situation including cases of ethnic discrimination, and putting forward methods and strategies to counteract it”⁵. Local government (województwo) tasks include: cooperation with local authorities and social organizations, there may be also special position created – Plenipotentiary for National and Ethnic Minority Affairs. Joint Commission tasks include cooperation with agencies of government administration (and local government) and social organizations; actions aimed at preventing discrimination of minorities.

⁴ See: RAXEN National Report. Poland. 2005 data collection, p. 26; at www.hfhr.org.pl.

⁵ *idem*.

Gaps in the transposition of Directives

As stated above Polish legislator transposed directives into national law but only partially and there are still many gaps and needs for full implementation. Main deficiencies are as follows⁶.

- a) Racial equality directive must be transposed in all fields beyond employment relations (social security matters, education and access to goods and services).
- b) Definition of direct and indirect discrimination is defined only by labour code and only partially comply with the definitions provided by directives. The provision of Art. 18^{3a}§3 of Labour Code defining direct discrimination is erroneous and its practical application seems to be impossible. Directive 2000/43, in Art. 2.2a, “hypothetical” nature refers to the behavior to which the discriminatory treatment is being compared (treatment of another person in comparable situation) and not the discrimination itself (as in Labour Code).
- c) In the case of indirect discrimination Labour Code in Art. 18^{3a}§4 allows disproportions if “*they can be justified by other objective reasons*” while, according to directive (Art. 2.2b) inequality may be justified only “by a legitimate aim and the means of achieving that aim are appropriate and necessary”.
- d) Self-employment and free professions. The provisions of labour code do regulate only labour contract relations and do not apply to self-employment or free professions. That still needs to be addressed by the legislator as so far we can relate only on general provisions of Constitution and relevant Acts. According to Article 65 of the Constitution: *Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute.* In the cases of self-employment provisions Act on freedom of economic activity (2004) apply, which state that: *Art. 6. 1. The undertaking and carrying out economic activities is free to everyone on an equal basis, under the conditions defined by legal regulations.*
There is also in Poland number of “free professions” which regulate till far extend themselves access to them (for instance advocates, legal advisors, architects). Access to those professions depends on the fulfillment of various requirements set out by Acts of law but also acts of professional self-government bodies. In case when a person feels discriminated by a self-government council regarding the access to a certain profession, he or she may appeal to the Administrative Court claiming that the right to freedom of profession has been violated according to Article 65 of the Constitution.
- e) Additionally rights of victims of discrimination to access the court and/or administrative procedure (as provided by Directive 2000/43 in Art. 7.1) applies only partially in Polish law since right to state guaranteed legal aid does not include administrative proceedings (and numerous administration proceedings may concern discrimination). Right to legal aid arises only when person decides to file complaint with administrative court (after two out of court administrative instances). But reviewing administrative decision by court is limited to evaluation of its compliance with law only and not merits (cassation character).
- f) Shift of the “burden of proof” at the time apply only in labour cases and not others.
- g) There are no provisions concerning assumed and associated discrimination and they depend on future judicial decisions.
- h) Act on national and ethnic minorities... relates only to national and ethnic minorities and not all people subjected to discrimination for ethnic or racial reasons.
- i) Equality body. There is no equality body in PL as provided by art. 13 of the Dir.2000/43. There was however special Office of Government Plenipotentiary for Equal Status of Women and Man (established in 2001) which mandate was broadened in 2002 to counteract also discrimination based on race and ethnic origin, religion or belief, age and sexual orientation. But on Nov. 3rd, 2005 the Office of Plenipotentiary was abolished (it was one of the first decisions of new Government after the election in Oct. 2005). It’s power was shifted to newly established

⁶ See also the letter of President of the Helsinki Foundation for Human Rights to the Prime Minister as of 18 August 2006 at www.hfhr.org.pl.

(Dec. 2005) Department for Women, Family and Counteracting Discrimination within Ministry of Labour and Social Policy (MLSP).

There are also other institutions which should be mentioned as exercising some powers of non existing “equality body”:

- Ombudsperson (Commissioner for Civil Rights), see more in part.2,
- Ministry of Internal Affairs- the National Minority Division and other institutions as described above.
- Government Plenipotentiary for Disabled, within Ministry of Labour and Social Policy.

However those organs do not fulfill Directive’s obligation, for instance „providing independent assistance to victims of discrimination in pursuing their complaints about discrimination” (Art. 13.2.). Even Ombudsperson do not have an obligation to pursue the case and is free to choose which cases to deal with. Also new comprehensive draft Act on Equal Treatment do not envisage establishing “equality body” and it seems be it’s main failure (despite it’s positive evaluation as mentioned below).

New draft Act on Equal Treatment (dAET). On April 2nd 2007, Ministry of Labour and Social Policy has announced dAET and sent it for social consultations (the list of 11 addressees includes 4 trade unions and 2 NGOs – newly established Association of Anti-discrimination Law and Helsinki Foundation for Human Rights). The aAET aims to implement 4 directives: 2000/43; 2000/78; 2004/113 and 2006/54. The dAET, if passed, would be definitely a milestone on the road to non-discrimination. Art. 1 of the dAET reads: “The aim of the Act is to secure equal treatment, counteracting or combating discrimination **in particular** (underlined by LB) because of race and ethnic origin, nationality, sex, religion or belief, political views, disability, age or sexual orientation, property owned, civil status (marital status) as well as securing equal treatment of men and women in access to goods and services and delivery of goods and services”. Art. 2 provides that discrimination is prohibited in *i.a.*: employment and self-employment relations; social protection (including social care and health care); social benefits, education and access to publicly accessible goods and services (in both public and private sector) including housing. dAET defines both direct and indirect discrimination, harassment and sexual harassment. It also includes prohibition of instruction to discriminate and victimisation. It provides for reasonable accommodation of disabled (if not disproportionate). There are in the dAET some exceptions from the equal treatment rule but in accordance with the directives.

The dAET strengthens the legal position of the victim. It shifts the burden of proof in the civil proceedings and provides that the victim may demand from the perpetrator (before the court or during mediation procedure) to give up discriminating practices/actions, to remove results of discrimination as well as may demand damages and/or punitive damages. The damages/punitive damages should be proportionate to the harm/damage, effective and dissuasive. Term of prescription was set for 10 years. dAET also provides that social organizations (NGOs) may help to bring action or (with consent of the victim) bring a law-suit, accede/intervene and take part in existing proceedings as a third party as well as provide *amicus curiae* brief if they do not take part in the case.

From the introductory analyses of the dAET it seems that the only missing important element is lack of establishment of “equality body” (act does not say anything about this). In the first (not official) draft version of the dAET there was a provision providing for establishment of the separate “equality body” but it was not accepted by the Government and is missing in official draft announced. There is also no provision regarding assumed or associated discrimination. According to legislative plans dAET should be passed till the end of 2007.

2. Procedures – administrative and legal channels appropriate for challenging violations of anti-discrimination legislation

According to the Directives, there is a requirement that their implementation shall in no circumstances be grounds to reduce the level of protection already provided for under national law.

The European Court of Human Rights and the European Court of Justice (see section on Key Concepts) have made it clear that the protection of fundamental rights must be “practical and effective not theoretical and illusory”.

Legal and administrative channels presented below do not comprise an exhaustive list. They should be however taken into consideration by NGOs and Trade Unions when planning strategy in each concrete case of discrimination.

2.A Employment and occupation related - all grounds

2.B Non-employment or occupation related - race and ethnic origin

- a) *Introductory note: since number of procedures might be used in both – employment and non-employment related cases, for the sake of the resume these procedures have been put together. It is clear from the text below which procedures relate only to employment issues and which also to non-employment.*
- b) *There are different remedies for challenging employment and occupation related discrimination on different grounds. They include special procedures for employment relations as well as general procedures which might be also used in the case of discrimination at the work place.*

Assistance of the Trade Unions. Person discriminated in the labour relations may seek advice and help from the Trade Union (Unit at the work place or within regional or national TU structure). Trade Unions are established to represent employees and defense their rights as well as occupational and social interests. TU may also represent non-member if it chooses so (art. 30 of Law on trade Unions). TU may try to solve the problem in the informal way using it’s contacts with the representative or employer itself. TU in the labour and social security matters may also initiate formal proceedings in the name of an employee. TU representative may represent an employee in such proceedings (out of court and in court). Trade Unions employ, contract or collaborate with lawyers who assist their members. TU lawyers are mainly placed at regional and national headquarters but sometimes also in the big companies. They specialize in employment matters and are good source of information, legal advice and assistance.

Mediation Commissions (MC) in the individual matters (Komisje pojednawcze). An employee before initiating court proceedings may demand initiating of the mediation procedure in front of MC. Labour Code provides for possibility of establishment of Mediation Commission for solving individual labour dispute (art. 244-258). The Commission shall be formed together by an employer and TU unit at the work place (art.244).

National Labour Inspectorate (NLI) (www.pip.gov.pl/html/en/html/index.htm). NLI and its regional branches (Regional Labour Inspectorate) provide free of charge legal advice on labour matters and provisions of occupational safety and health regulations. They might be contacted by phone, in person or in written form. There is also lot of information, including guidebooks on the NLI website. Every employee may file a complaint within the system of NLI.

Labour Inspectors may execute a control at any work place and at any time. Labour Inspector may send a warning (statement) to an employer. In the case of breach of law revealed during the control they may issue an administrative decision demanding to eliminate the identified irregularities. They may also fine an employer with financial fine or lodge complaint for fining in a court.

According to Code of Civil Procedure Labour Inspector may also initiate in the name of an employee or accede court proceedings (but only in cases for establishment of the existence of employment relationship; Art. 63¹). In other cases however Labour Inspector may represent employee in a court (for instance in a case of compensation for unequal treatment of an employee by an employer; Art. 465).

Legal representation in a court. According to Code of Civil Procedure not only (as mentioned above) TU representative or Labour Inspector may represent an employee in a court. It might be also done by other fellow employee from the same work place the victim is or was employed (Art. 465). In the case regarding social security (national insurance) it may also be representative of the organization representing pensioners and disabled pensioners (rencisci).

Collective disputes. In the case of collective dispute an employer is obliged by law to begin negotiations (also informing about a dispute the office of Regional Labour Inspectorate). If negotiations do not lead to a positive result an employer shall initiate mediation procedure involving independent and impartial mediator (art. 8 and 10 of Law on Solving Collective Disputes).

Civil protection. Protection of “personal values” (“personal welfare”) (art. 23-24 of Civil Code).⁷ According to Article 30 of the Constitution: *The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.*

Article 23 of the Civil Code (which should be interpreted in line with mentioned constitutional provision) provides general protection of so-called “personal values”. According to this provision: *Personal values, in particular health, freedom, dignity, freedom of conscious, name or pseudonym, image, secrecy of correspondence, inviolability of home, academic, artistic, inventive and rationalizing creativity are protected by civil law without prejudice to protection provided by other regulations.*

Provision quoted does not include dignity, or for instance age, disability, ethnic origin, race or sexual orientation. But listing „personal values” is not exhaustive. There is no doubt that personal dignity is protected (as stated in Constitution and confirmed by rich doctrine and jurisprudence). Therefore, if a person is being discriminated because of age, sexual orientation, race or any other reason, a dignity of a person is obviously infringed.

On the basis of Article 24. of the Civil Code §1. *A person whose personal values become endangered by other person’s action can demand to abandon the action unless it is not unlawful. Furthermore, if personal values have been infringed the person concerned can demand from the one who infringed them to remove the effects of violation, in particular to make a statement of appropriate content and form. The claimant can also demand pecuniary satisfaction or payment of an appropriate sum for indicated public interest based on the rules of compensation laid down in the Civil Code. §2. If the consequence of the infringement of personal values is material damage, the victim may demand the reinstatement on general law terms.*

Art. 445 and 448 of civil code regulate pecuniary damages (punitive) and state that damages should be appropriate which means that should ensure effective address of suffered damage.

Art. 448 regulates payment of an appropriate sum for indicated public interest.

Art. 415 and following, regulate general terms of compensation in case of material damage. The compensation should cover all damages being consequence of unlawful act or lack of acting of the person who discriminated the claimant.

⁷ See: *Combating discrimination in Poland. How to defend your rights*; K.Gonera; Warsaw 2004; *Analysis of the status quo of Polish. Anti-Discrimination Legislation and Policies*; B. Liegl, B. Perching, B. Weyss; Warsaw 2004.

It should be also underlined that if an employee considers him or herself discriminated on the basis of one of the grounds mentioned in Art. 11³ of labour code (see above) he or she can apply to the Labour Court and launch litigation also in order to protect human dignity and personal values. The legal basis for this kind of claims can be found in Article 23 and 24 of the Civil Code together with Article 11 of the Labour Code.

Additionally, as it was already mentioned according to Art. 18^{3d} of labour code *A person in relation to whom employer broke the rule of equal treatment in employment has the right to compensation in amount not smaller than minimum wage [...]*.

Claim against the State (state treasury). According to Art. 417 of the civil code *for the damage caused by unlawful act or lack of action of public authorities responsibility lies with the State Treasury, local government or other public entity executing public authority de iure*. It relates also to damages caused by passing Law, giving (or not giving if appropriate) final decision or court verdict (some additional conditions shall be fulfilled).

Where to go with the claim

District court, labour division – in all labour matters. Lodging a complaint with Labour court is free of charge. Legal aid lawyer might be appointed on motion (if justified).

Regional court – with the claim for the protection of „personal values”. One can apply for waiver of court cost and appointment of legal aid lawyer (if justified).

Administrative procedure. According to Code of administrative procedure (Art. 127.) in all administrative matters one has a right to appeal any decision to relevant second administrative instance (each administrative decision must inform about appropriate organ and conditions of appeal).

According to Law on procedure before administrative courts (Art. 3) after exhausting two administrative instances one has right to appeal the decision to Voivodship Administrative Court and from the verdict of this court to Main Administrative Court (both judicial instances have character of cassation control – courts do not decide on merits but on legality of decision issued by administrative organs).

There is also special complaint mechanism (Code of administrative procedure), when one wants to present a complaint (Art. 227-230) or petition (Art. 241-242) in relation to the work of all public organs or their staff (any public organ, central and local government). Complaint brings attention and describes wrong or questionable practices while petition may include ideas how to make things work better.

Criminal prosecution⁸. In cases where discriminatory acts fulfils the elements of a public crime, a public prosecutor is obliged to initiate and conduct a preparatory procedure and to bring charges against and support the charge against the prosecuted (ex officio or on notification). In case of a issuance of a refusal to initiate proceedings (if issued twice) or of discontinuance of the proceedings, party may independently lay charges in court (Art 55 of the Penal Code).

There are several crimes as prescribed by the penal code which relate to discrimination. The amendment of the Penal Code in 1997 led to the introduction of two articles concerning the prohibition of discrimination into Chapter XVI of the Penal Code, dealing with offences against peace and humanity as well as war crimes (Art. 118,119).

⁸ See: Analysis of the status quo of Polish. Anti-Discrimination Legislation and Policies; B. Liegl, B. Perching, B. Weyss; Warsaw 2004.

Example, Art 119 of the Penal Code: *Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years. The same punishment shall be imposed on anyone, who incites commission of the offence specified under paragraph 1.*

Additionally Art. 256 of the Penal Code punishes the public propagation of fascist or totalitarian systems of state and the incitement to hatred based on national, ethnic, racial or religious differences.

Article 257 of the Penal Code prohibits public insult of a group or an individual because of their national, ethnic, racial or religious background: *Who publicly insults a group of people or an individual person on account of his or her national, ethnic, racial, or religious affiliation or because of his or her irreligious attitude, or on these grounds infringes physical integrity of another person, is liable to penalty of imprisonment up to three years.*

Also general rules regarding sentencing provide (in Art. 53 § 2) that *courts, when determining the penalty, have to take into account the perpetrator's motivation and manner of behavior. In order to efficiently combat racist, anti-Semitic, xenophobic or homophobic tendencies it seems crucial to investigate by the police, public prosecutors or judges whether criminal offences were racially motivated.*

Both Constitution (Art. 13) and Penal Code (Art. 258) contain the prohibition of formation of organizations and political parties which invoke racial and national hatred.

Separate part of Penal Code (Art. 194-196) deals with crimes against freedom of conscious and belief (religion). Limiting rights, disturbing, obstructing different religious ceremonies, offending peoples beliefs and symbols of their faiths is prohibited and punishable.

Penal Code defines also crimes against rights of workers, including irritating and repetitive breaking rights of employees (Art. 218).

Finally Art. 18.1 and 18.2 of the Penal Code lay down the concept of directing or instigating the committal of a criminal offence. Therefore, instructions to carry out discriminatory acts, which are prohibited under the Penal Code, are unlawful too (even if not called "instruction to discriminate").

Offences against the interest of consumers⁹. In the case of discrimination in access to goods and services (not implemented) one can try to use law on petty crimes defining refusal of selling goods and providing services as a petty crime. The provisions stem from the communist era and had different meaning but it seems that in the case of lack of special prohibition of discrimination in the access to goods and services they might play this role till some extend. In such a case one should turn to the Police who plays the role of the prosecutor in the case of petty crime (district court).

Code of petty crimes (minor offences) provides: (Art.135) *Whoever, dealing with selling goods in a retail sale or catering business, hides the goods meant for sale or deliberately refuses selling them without a founded reason, is subject to fine.*

(Art. 138) *Whoever, being a professional service provider, demands or collects payment higher than one in force, or deliberately refuses to provide the service without a founded reason, is subject to fine.* It should be stated however that fine mentioned above does not comply with the requirements set out in Directive, as it cannot be seen as efficient, proportional and dissuasive sanctions.

⁹ See: Analysis of the status quo of Polish. Anti-Discrimination Legislation and Policies; B. Liegl, B. Perching, B. Weyss; Warsaw 2004.

Complaints to Ombudsperson (Commissioner for Civil Rights) (www.brpo.gov.pl). According to the Constitution (Art.80) *In accordance with principles specified by the statute, everyone shall have the right to apply to the Commissioner for Civil Rights Protection for assistance in the protection of his freedoms or rights infringed by organs of public authority.*

Relevant Ombudsperson Act (1987) provides that an application is free of charge and does not require any special form (just identity of the person and subject of the case; art.10).

Ombudsperson may take up the case and carry out his own explanatory proceedings or request that the case or a part thereof be explained by relevant agencies, especially agencies involved in the supervision, prosecution and State, professional or public control (art. 11). Having examined a case, the Commissioner may *i.a.* (art. 14): initiate on behalf of the victim or join/accede any administrative, civil or penal proceedings. It may also refer the case to appropriate agency for solving it. It may also lodge cassation (and constitutional claim) against each final and valid court verdict.

The agency, organisation or institution to which Ombudsperson sent a motion must, without unreasonable delay and no later than within 30 days, inform the Commissioner of whatever action or view has been taken. Should the Commissioner disagree with such a view, he can approach the relevant superior entity for necessary actions. In connection with the cases examined (art. 16) the Commissioner can present to the relevant agencies, organisations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve. The Commissioner should collaborate with associations, civic movements or other good-will societies for the protection of the liberties and rights of a human and a citizen (art. 17).

Although the Ombudsperson has wide range of competencies regarding the protection of civil rights it nevertheless does not fulfill the requirements set out by the Racial Equality Directive. The Ombudsperson is not obliged to take up a complaint but can choose freely, which case he or she wants to take up.

Complaint to the Constitution Tribunal¹⁰ (www.trybunal.gov.pl/eng/index.htm). According to Constitution (Art. 79) *everyone whose constitutional freedoms or rights have been infringed, has the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon basis of which a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations as specified in the Constitution. However, the right to appeal may only be asserted after all available means of legal protection have been exhausted.*

This formula encompasses all constitutionally protected rights and freedoms regardless of their nature. A constitutional complaint may only be submitted in a situation in which the violation of the complainant's constitutional rights and freedoms was effected by an individual act of applying the law, in practice by a judicial decision. The decision must be final in nature, in other words, the constitutional complaint can only be submitted after the complainant had used all available appellate procedures before the universal court or the administrative court. It is not possible however to question the decision itself.

The complainant must submit the complaint within the time limit of three months from the day when he was serviced the final decision in her/his case. The complaint submitted to the Constitutional Tribunal must be drawn up by an advocate or a legal counsel (or Ombudsperson).

The annulment of a decision, on the basis of which a constitutional complaint was launched, does not occur automatically. The complainant is allowed to demand the reinstatement of proceedings in the case. The same opportunities are open for all the other persons, to whom the "nonconforme" provision was applied.

¹⁰ See information at: www.trybunal.gov.pl/eng/index.htm

The complainant's sole privilege is demanding the Constitutional Tribunal to issue a temporary order suspending the execution of the decision against which the complaint was submitted (Article 50 of the Constitutional Tribunal Act). This way of expressing the effects of a decision may substantially impair the complainant's situation. Even if he/she "wins" his/her case before the Constitutional Tribunal, he/she shall still be awaited by further proceedings before a common or administrative court.

Standing of NGOs

Civil cases. According to Article 61 of the Code of Civil Procedure lodging complaints and participation of social organizations in proceedings before civil courts is allowed in some selected types of cases (§ 4 regarding discrimination issues added in 2005 as mentioned in part 1).

Article 61 of the Code of Civil Procedure reads: *§ 1. In the cases regarding alimony claims and consumers' rights protection, social organizations, which do not have as task running economic activity, are entitled to file claims on behalf of citizens. § 2. In the cases mentioned in the § 1, the organization may join the proceedings at any stage. § 3 Social organizations which statutory objectives are protection of environment, protection of consumers [...] may join the proceedings at any stage, providing the case falls within the above mentioned scope and the claimant consents to it. § 4. Social organizations, the statutory objectives of which include protection of equality and non-discrimination by unwarranted direct or indirect discrimination of rights and obligations of citizens, may, in matters claiming there under, file complaints with the consent and on behalf of citizens, and, with claimant consent, join proceedings at any phase thereof. § 5. The Minister of Justice shall specify in the form of regulation a list of organizations referred to in § 1, 3 and 4.*

Polish law does not provide explicitly for possibility of submitting *amicus curiae*, but it states (in Art. 63 of Code on Civil Procedure) that organizations which do not participate in a proceedings may submit an opinion (statement).

Administrative cases. According to Code on administrative procedure (Art.31§1) *A social organization, in a case concerning another person, may submit a demand to: (1) start a proceeding, (2) permit it to take part in a proceeding, if it is justified by statutory objectives of the organization and by public interest.* The provision quoted concerns out of court administrative procedure. Law on procedure before administrative courts however also provides for a possibility for social organizations to take part in the proceedings within it's statutory activities and in cases provided by particular provisions (Art.9).

Criminal cases. According to provisions of Code on criminal procedure (Art. 90-91) representative of social organization may file a motion for taking part in the proceedings if there is a need for protection of social interest or important private interest within statutory objectives of the organization, *in particular protection of rights and freedoms.* The court grants it *if the interest of justice so require* (discretionary decision). If granted, the representative *may take part in a proceedings, speak and deliver written opinion.*

2.C Where a choice of avenues for raising either an employment related or a non-employment related complaint exists:

Victim and supporting organization (TU, NGO) should identify the purpose of making the complaint as well as identify the criteria that should be used by NGOs/trade unions to select the mechanism appropriate to the identified purpose(s). Experienced NGO representatives, TU activists and lawyers should be consulted in order to make most appropriate choice. The following list of issues should be discussed and decided upon: what outcome does complainant want?; urgency of resolution of complaint and time likely to be taken for procedures to be completed; time limits applicable to different procedures and whether the complainant can comply with them; possibility of quashing the adverse decision complained of; whether or not a legally binding solution is sought and required, and available; assessment of facts - matching facts to requirements of remedies; assessment of available

evidence - appropriateness and sufficiency of evidence for mechanism to be used; whether or not legal representation is required or highly desirable; availability of legal assistance; possibility of financial compensation for victim(s); possibility of re-instatement or re-engagement (if desired in employment cases); possibility of group complaints; possible costs and fees incurred by using a particular mechanism; object of complaint – is it justice for the individual or raising awareness of discrimination?; suitability of complaint for awareness raising; impact on public opinion of different mechanisms; potential consequences on the complainant.

2.D What are the technical procedural requirements of each available remedy?

In order to use each mentioned legal tool or procedure one have to fulfil some conditions and criteria (they may concern: time limits, level of formality of the claim, evidence needed and way of presenting it, financial burden etc.). There are “easy” procedures, like complaint to Ombudsperson which is informal, and more difficult ones when the assistance of lawyer might be needed (example: “personal goods” claim) or obligatory (example: constitutional claim). Number of those conditions and criteria was mentioned when presenting particular procedures. Nevertheless one should consult appropriate sources, guidebooks, information points, NGO, TU lawyers in order to avoid misunderstandings (please see below the list of organizations which might be helpful).

2.E What support exists at national level for accessing the different procedures, and what can be done to overcome any impediments/obstacles?

Common problem faced by victims of discrimination (despite their fear to raise the issue of discrimination) is lack of professional legal support. There are however number of instruments and organizations which might be of the assistance.

In all court procedures there is a possibility for a claimant (or victim in criminal case) of receiving waiver from court cost and legal aid lawyer (paid by the state). There are 5 different systems which slightly differ (different procedures apply before administrative, civil and criminal courts, before Constitutional Tribunal and in trans-border disputes). Generally speaking one should filled appropriate motion for waiver of legal aid lawyer and describe his/her financial situation (in some procedures relevant forms should be filled, in others general motion). The information and guidelines might be found at Internet sites and from number of institutions and organizations (see below).

List of offices and organizations providing free of charge information and legal advice.

Main Administrative Court – information on waiver and legal aid lawyers motions (www.nsa.gov.pl).

Office of Ombudsperson site in e-guidebooks section (www.brpo.gov.pl). Also telephone and in person information. 00-090 Warszawa, Al. Solidarności 77, tel. (22) 551-77-60; 551-78-11.

National Labour Inspectorate and regional offices – telephone and in person; Warszawa; ul. Krucza 38/42; tel. (0-22) 628-58-07; www.pip.gov.pl.

Association of Citizen Advice Bureaus – informs about ca. 30 offices in the country. 00-656 Warszawa, ul. Śniadeckich 12/16 m. 17; tel. (22) 622-55-54; www.zbpo.org.pl

University Law Clinic Foundation – informs about 30 Clinics at Polish universities; 00-031 Warszawa, ul. Szpitalna 5 lok.5; tel. (22) 828-91-28 wew. 143; www.fupp.org.pl

Poviat and City Consumer Spokespersons – in all local governments.

Poviat Centers for Family Support - in all local governments

Prosecution offices.

NGOs – there are hundreds of them in the country. The specialized organization (and one close to the person in need) might be found through NGO Internet sites, for instance www.ngo.pl.

2.F Referrals to the European Court of Justice

Where there is a disputed issue of EU law and the judge is uncertain how to interpret a provision at EU law, a referral can be made by a national court to the European Court of Justice in Luxembourg under Article 234 of the Treaty. The parties to the proceedings can ask the national judge to grant a request for such a referral, or the judge can decide spontaneously to refer the case. Any court may make a referral, but only the national court of last instance is obliged to do so.

This may be a highly effective procedure because:

Requesting a referral can concentrate the mind of the presiding judge and ensure that s/he gives proper consideration to the complaint, especially to the fact that it raises issues of European rights.

National bodies, particularly public bodies, are impressed by its high profile and may take steps to avoid the exposure of discrimination at national level to pan-European scrutiny.

The European Court is the only body that can give a **definitive** interpretation of the terms used in the Directives.

However this is a specialised procedure and expert EU lawyers familiar with its use need to be retained. In addition, it is important to note that the national case is "stayed" (put aside) until the ECJ has decided the issue before it, and this delay of sometimes two years can have serious consequences for the complainant.

2.G Petitions to the European Parliament

The Committee on Petitions of the European Parliament can receive petitions from Citizens of the Union who wish the Committee to investigate their complaint/s that their rights under European Union law are not being properly respected.

2.H Alerting the European Commission to discriminatory administrative practices

It is also possible to write directly to the Commission, which may often be a quicker process than that outlined above under 3.2.G. This could be done with a view to encouraging the Commission to initiate infringement proceedings against the offending State.

The Commission and the Parliament would be bound by the EU Charter of Fundamental Rights' provision on the right to good administration (Article 41) if adopted:

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interest of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.

Every person has the right to have the Community made good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

2.I Complaints to the European Court of Human Rights

In addition, when all effective national legal remedies have been exhausted, a person may, if the case concerns issues covered by the European Convention on Human Rights, apply to the European Court of Human Rights in Strasbourg (see Key Concepts section).

This can be done under Article 14 of the Convention provided another Article is also engaged. Unfortunately Poland has neither signed nor ratified yet Protocol 12 to the Convention introducing autonomous general prohibition of discrimination.

Collective complaints can also be made under the Council of Europe's European Social Charter. One can find information needed and assistance in for instance: National Bar, Commission on Human Rights (consist of advocates specializing in representation before ECHR); Helsinki Foundation for Human Rights (strategic litigation, free of charge); Council of Europe information center in Poland.

2.J Other international remedies

Where the state is a party to the 1st Optional Protocol to the International Covenant on Civil and Political Rights, or has accepted the right of individual petition under the Convention on the Elimination of all forms of Racial Discrimination or the Convention on the Elimination of Discrimination Against Women, complaints can be brought to those Committees.

NGOs/trade unions should also ensure that they alert the Committees which examine the State's periodic reports under the ICCPR, CERD, CEDAW and the Convention on the Rights of the Child to instances of discrimination.

Poland is a party to all mentioned instruments. There are also national organizations which do prepare and present "shadow reports" to different bodies and who may be consulted on this matter. It includes Helsinki Foundation for Human Rights and several "Women Rights Organizations".

2.K Professionalism

Everyone in a NGO/trade union who takes up the case of an individual or a group of individuals must be aware of the need to observe high standards of professionalism, including confidentiality and efficient management of case files. For individuals whose cases the NGO/trade union is not able to assist with, the NGO/trade union should be able to provide relevant information and, wherever possible, referrals to another agency that is able to provide further advice and support.

3. Societal issues

There are no detailed data as to the phenomenon of discrimination in Poland. Main information still comes from NGOs representing discriminated groups or working in the field of discrimination.

The concept of discrimination as well as knowledge about mechanisms of combating discrimination and protection of rights are still missing (however lot of work has been done in the last couple of years - mainly due to EU funds - and one may easily notice the difference, for instance in number of lawyers trained, number of court cases, number of media report etc.). But still lot of victims of discrimination remain anonymous and do not look for the assistance because of many reasons including fear, lack of knowledge, lack of sources.

Traditionally the situation of disabled brought most attention and there are number of projects addressing this issue. However still there are many obstacles in exercising their rights, most visible are physical barriers still being the "norm". One can still rarely notice disabled persons in public places of all kind. Despite programs addressing the issue of employment of disabled still vast majority of them do not look for a job and only small percentage of employers are willing to hire disabled persons.

People with disabilities still have problems in access to education due to barriers and very often learn at home (individual learning programs).

Age discrimination (especially of elderly) is a new phenomenon in Poland, only couple of years before it was not discussed issue¹¹. People aged sixty or over constitute almost 17 per cent of the Polish society. However, the number of senior citizens does not directly correlate with the strength and position of this social group. Voices of the aged are not heard in the public debate – Decisions concerning the aged are made on the local and national level without consulting the issues with seniors. The aged are discriminated - much too often our society makes seniors feel redundant, marginalized and as if their knowledge and experience were obsolete. As a result, the aged deem their views and opinions not significant and therefore they believe their voices will not be listened to and taken into consideration. The aged do not participate in the changes taking place in our country - the transformation process and a fast pace of changes in the country after 1989 caused that seniors find it extremely difficult to adjust to the new reality. Polish Integration with the European Union poses a threat of similar lack of identification among the aged with the ongoing changes. Therefore, we find it crucial that Polish seniors living within the UE structures will not find themselves excluded but will become active and fully aware participants of the social debate. Experience and knowledge of the aged is the potential we can contribute to the integrated Europe. In face of the ageing process of the Polish society, supporting the senior movement seems the challenge of our times. There are far too few strong organizations in Poland that represent the needs of the aged. Organizations operating in this field apart from financial support require access to expert knowledge and the ability to profit from foreign experiences.

As to the issues of discrimination based on race or ethnic origin Poland remains relatively homogenous country both ethnically and racially, 97 % of population declares Polish nationality.¹² Periodic research on Poles' attitudes toward other nations¹³ indicates that the level of declared national xenophobia is decreasing. However there is a noticeable overall tendency to treat representatives of highly developed countries with greater affinity while poorer nations decrease in popularity. The situation of people from beyond the eastern border is more difficult. Majority of them work illegally, their occupational and salary conditions are inferior to that of Poles. Refugees face the problem of unemployment. Other major problem is access to housing. The situation of Roma is most difficult. This group has ca. 90% level of unemployment which results in poverty, lack of medical care. They also have lowest level of education. There are still incidents of physical racist violence. Hate speech is quite common, usually of an anti-Semitic nature.

There are ca. 150 official churches in Poland (registered), some religious groups act as associations (in 1989 there were 29 registered churches). 96% of Poles declare being Roman Catholic. In the mid-90ties the term "sect" (in pejorative meaning) has appeared in public debate and numerous religious groups were seen and present as dangerous to public morality, order, young generation (manipulative, criminal). A sensitive issue is also problem of religious education in schools. It is a voluntary decision but those who choose not to attend those lessons (while vast majority attend) feel sometimes the pressure and unconformity. Other problems declared by members of religious minorities are: access to housing, difficulties in practicing religion in public, dietary problems in public institutions (hospitals, army service, prison, school).

Discrimination of homosexuals and bisexuals seems be most evident currently. It is due to the publicly homophobic approach of current state government (voiced by one wing of government – League of Polish Families).

¹¹ Following information on senior citizens was combined from the Internet site of the Academy for the Development of Philanthropy in Poland, at www.filantropia.org.pl/english/e_menu.html

¹² Following information combined from *Ethnic and racial discrimination in Poland – overview*, Helsinki Foundation for Human Rights, 2007, www.hfhr.org.pl

¹³ CBOS, www.cbos.pl

One of the first decisions of Minister of Education (representing League) was dismissal of the director of National Teacher Training Center (CODN) for translating and publication of “Compass teachers manual” (prepared by Council of Europe) which includes the chapter on discussion of the issue of discrimination of homosexuals and proposes teachers to consider invitation of this group to relevant class. Many other public statements and draft laws proposals were of discriminatory character (for instance proposal to prohibit “gay promotion and propaganda” in schools, statement by v-ce minister of education that gay teachers should be dismissed – the last one was quickly removed). Last research¹⁴ shows that bi and homo-sexual persons face many problems in daily life.

Majority of them (ca. 80%) hides their identity at school or work while reveal it to families (ca. 70%). 18% of persons surveyed faced some kind of physical violence in last two years while 51% psychological violence.

¹⁴ *Social situation of bisexual and homosexual persons in Poland. Report for 2005-2006*, published in April 2007 by Campaign Against Homophobia and Lambda Warsaw, www.kampania.org.pl

d) Funding opportunities in the field of anti-discrimination

1. EU FUNDING AT THE EUROPEAN LEVEL FOR NGOs/TRADE UNIONS OPERATING AT THE EU LEVEL

1. EU funding for NGOs/Trade Unions operating at the EU level

a) *European-level NGOs*

European-level NGOs are in a central position to influence and contribute to European employment, social and equal opportunity policies at different levels – both in its formulation and implementation – through the information and expertise supplied by their national members. This is vital in order to ensure that EU policies meet the actual needs of EU citizens, and that citizens are informed about them.

Between 2001 and 2006, the Community Action Programme to combat discrimination provided funding for a number of European umbrella NGO networks representing and defending the rights of people exposed to discrimination:

AGE (The European Older People's Platform); ILGA Europe (International Lesbian and Gay Association – Europe); ENAR (European Network Against Racism); and EDF (European Disability Forum) have been granted a total of 3 000 000 € per year towards their running costs up to the end of April 2007. A number of smaller organisations – the European Blind Union, The European Union of the Deaf, Inclusion Europe, Autisme-Europe – also received support under the Action Programme.

Until the end of 2006, the European Women's Lobby received running cost support through the Gender Equality Programme with an annual amount of around 800.000 €.

A number of NGOs working to tackle social exclusion (European Anti-Poverty Network, European Federation of National Organisations Working with the Homeless, European Transregional Network for Social Inclusion, Eurochild, European Social Network, Caritas-Europe) received funding from the Community Programme to Combat Social Exclusion with a total of 3.600.000 € between 2005 and 2007.

For the new 2007-2013 programming period, the European Commission decided to create a new integrated programme known as **PROGRESS** (Programme for Employment and Social Solidarity). The programme was approved by the European Parliament and Council in November 2006: http://ec.europa.eu/employment_social/progress/index_en.html

PROGRESS combines the four former Community Action Programmes, including that relating to non-discrimination: Section 4 of PROGRESS, entitled "Anti-discrimination and diversity", thus aims to support the effective implementation of the principle of non-discrimination and to promote its mainstreaming in all EU policies.

Calls for proposals and tenders under PROGRESS are published on the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities on: http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm

A first PROGRESS call for the award of a financial contribution towards the operating costs in 2007 of European-level networks active in the field of combating discrimination, promoting gender equality and promoting the integration of disabled people in society was launched in November 2006. Grant agreements for the successful EU-level networks will run until December 2007.

b) European Trade unions

The European Trade Union Confederation (ETUC) represents workers across the industries at European level. Set up in 1973, the ETUC includes 81 national organisations from 36 European countries (among them all the EU countries) and 11 European industry federations, with some 60 million members.

The ETUC is one of the four main European social partner organisations. Numerous European social partners' projects are supported every year by the European Commission's social dialogue budget lines (04.03.03.01, 04.03.03.02 and 04.03.03.03). For more information:

http://ec.europa.eu/employment_social/social_dialogue/grants_en.htm

2. EU funding for national NGOs/Trade Unions

While the EU does not provide for core-funding of national NGOs or national trade unions under PROGRESS, organisations may be able to receive funding for projects through their participation in specific initiatives such as national awareness raising activities or trans-national projects. National organisations are therefore advised to regularly check the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities and consult the guidelines published there to check whether projects from national NGOs/trade unions are eligible for funding:

http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm

The EU-level NGOs such as AGE, ILGA-Europe, EDF or ENAR are also a good source of information. It is therefore recommended to also check the information that is provided on their web page.

In addition to PROGRESS, the European Social Fund (ESF) can be a source of project financing for national organisations. The ESF will between 2007 and 2013 focus on four key areas for action, including reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people. More information can be obtained from:

http://ec.europa.eu/employment_social/esf2000/2007-2013_en.html

The European Commission does not directly fund ESF projects. Member States are responsible for identifying their priorities for funding and for selecting individual projects. For further information, you should contact the relevant national/regional authority whose contacts are available on:

http://ec.europa.eu/employment_social/emplweb/esf/esf_matrix_en.cfm

II. FUNDING OPPORTUNITIES FOR NGOs/TRADE UNIONS WORKING ON ANTI-DISCRIMINATION AT NATIONAL LEVEL IN POLAND

The situation on the “funding market” is a dynamic one (some grant programs end, some begin). Taking into consideration the fact that national trainings will take place at the end of 2007 and at the beginning of 2008 this funding chapter in my opinion *should be up-dated and translated* in the late 2007 in order to be as actual as possible.

1. **Does the European Commission delegation in your country provide for specific funding for NGOs/trade unions working on non-discrimination at national level? What form does that funding take? (project subsidy, provision of meeting room, etc). Is it easy to access such funding? What are the conditions to receive such funding?**

European Commission Representation in Poland (ECR)

(<http://europa.delpol.pl/>) (http://europa.delpol.pl/index.php?id=index_e&version)

At this point European Commission Representation do not provide any specific funding on non-discrimination.

However in April 2007, ECR has announced an open invitation for organizations which would like to organize a seminar/conference in 2007 within aims of the Lisbon Strategy. One of thematic priorities is labour market and it includes non-discrimination issues. Proposals shall be submitted to ECR till the end of April 2007.

Additionally according to information provided by ECR it is open for the subject of discrimination (seminar and conferences organized by ECR or co-financed by ECR).

2. **Does the central government provide for specific funding for NGOs/trade unions working on anti-discrimination?**

There are several programs administered by central government (mainly from EU funds) which include non-discrimination component and are source of funds for relevant organizations (see list of the programs).

3. **What form does this funding take? (core funding, project funding, facilities) Are such funding possibilities part of specific governmental programmes? (which ones and from which ministries?)**

A. European Social Fund (www.fundusze-strukturalne.gov.pl) (www.efs.gov.pl)

Administered by Ministry of Regional Development. In the framework of the new operational program (still being negotiated) "Human Resources Development" for the years 2007-2013 there are funds foreseen for projects related to Active labour market and professional and social inclusion policy. Target groups are i.a. refugees and other foreigners with different kind of status who face difficulties with professional and social integration, members of ethnic and national minorities (excluding Roma). (activity 7.3. Equality of chances for all and promotion of social integration).

B. Civic Initiatives Fund (www.pozytek.gov.pl) (www.pozytek.gov.pl/What.is.FIO.581.html)

Administered by the Minister of Labour and Social Policy, it is a governmental long-term program in the years 2005-2007. The FIO is a grant program addressing non-for-profit organizations (incl. NGOs). CIF organizes grant competitions (project funding). Some program activities are related to discrimination issues. For instance 3.6 combating discrimination and protection of rights of discriminated groups. 2.7 integration and occupational activation of foreigners. TU are not eligible to apply for CIF funds.

C. Polish Ministry of Labour and Social Policy (www.kobieta.gov.pl/) (www.mpips.gov.pl/index.php?lang=2)

- a. **European Year of Equal Opportunities for All.** Within the program Polish Ministry of Labour and Social Policy (Department of Women, Family and Counteracting Discrimination) offers grants (project funding) for NGOs combating discrimination (this includes trade unions and there are TU on the list of possible grantees who passed 1st stage of selection as of March 2007).

- b. **Program PROGRESS** (1997-2013). Administered by Ministry of Labour and Social Policy, the program will support NGOs working i.a. in the fields of social integration and non-discrimination. It includes social partners (TU).

D. Ministry of Interior and Administration (www.mswia.gov.pl)
(www.mswia.gov.pl/portal/en/10/)

The National Minorities Division in The Department of Denominations and National Minorities. Ministry offers different kind of grant competitions for national and ethnic minorities. There are also separate grant schemes for Roma community (core funding, project funding). The grants focus on protection, preservation and development of cultural identity of minorities but this includes also issues related to combating discrimination. Additionally there are also since 2006 small grant competitions (project funding) for providing „citizen/legal advice” for victims of discrimination based on race and ethnic origin.

E. Norwegian Financial Mechanism (www.eog.gov.pl) (www.eog.gov.pl/English/)

National Focal Point in Poland – Ministry of Regional Development; Department for Aid Programmes and Technical Assistance. The mechanism includes several possibilities for Ngo’s (trade unions). It includes fund for NGOs (component „Democracy and civil society”). The component (starting late 2007) foresees i.a. support for gender equality, counteracting racism and xenophobia and all forms of discrimination, improvement of the situation of groups discriminated against. More information: Information Desk: open on working days 10 am – 3 pm.; Tel. + 48 22 461 33 17; e-mail: eog@mrr.gov.pl;

F. EQUAL Community Initiative (www.funduszestrukturalne.gov.pl/English/EQUAL/)

EQUAL Programme is to be implemented in Poland in 2004 – 2008 (second round of the program). The program is currently administered by the Ministry of Regional Development. The objective of Community Initiative EQUAL, financed by the European Social Funds (ESF), is to test and promote – within international co-operation – new ways of combating all forms of discrimination and inequality on the labour market, affecting both the employed and job seekers. EQUAL includes also activities for asylum seekers. EQUAL enables the identification and anticipation of changes on the labour market, and provides new tools for the monitoring, preventing and solving identified problems. The program was closed to new projects in VIII 2004 and projects granted are still executed. There will be most probably new additional competition announced in 2007 but only for those organizations and TU which already conduct projects within Equal (continuation of the project, enlargement of the project scope etc.). All detailed information can be obtain from Cooperation Fund Foundation (www.equal.org.pl/).

4. Is it easy to access such funding? What are the conditions?

All different programs and particular grant competitions have specific criteria set and it is impossible to evaluate in general accessibility of funding. Within Civic Initiatives Fund (B. above) many NGOs has received funding, also European Year of Equal Opportunities for All creates good opportunity and number of NGOs and some TU were short-listed during the first grant competition within the project (still pending). Specialised funds for national, ethnic and Roma minorities have different character and relevant minorities organizations are experienced in applying and receiving relevant funding. Some opportunities mentioned above (new program of European Social Fund, Norwegian Financial Mechanism, Progress) are at the stage of preparation of concrete grant competitions). In general there has been opinion among Polish organizations that applying procedure and application forms for European Funds distributed in Poland are complicated and subject to frequent and surprising changes. However the situation slowly changes for better and also organizations are much more experienced and it is easier for them to fulfil the set criteria. The big problem organization face (especially small ones) is lack of sources for obligatory co-funding and delays in payments.

5. In case of federal countries, are there funding possibilities at the federated level?

Poland does not have federal structure.

6. Are there other governmental funding possibilities at regional level? At municipality level?

Local government of 3 different levels (municipality, poviats, voivodships)

Act of Parliament on Public Benefit and Volunteer Work (24.04.2003) in art. 4 provides that *“the public tasks sector as described here in shall extend to work in the fields of: social welfare, including aid offered to families and individuals with social problems, and work to offer equal opportunities to such families and individuals”*. These includes i.a. *“4) working to support national minorities; 6) work to support the disabled; 8) promoting and protecting women’s rights, and work to support equality of rights regardless of gender; 18) promoting and protection of human and civic rights and freedoms; work to support the development of democracy”*.

According to Art. 11 of the Act Public administration authorities (including local Government) shall: *“1) provide support – in the field described in Article 4 – whenever public tasks are performed by non-governmental organisations [...] 2) entrust – in the field described in Article 4 – the performance of public tasks to non-governmental organisations [...]”*.

Local Governments of different level are i.a. obliged to prepare and pass plans of collaboration with NGOs, including grant programs. Law provides that *“the support and commissioning procedures [...] shall be subject to an open bid competition, unless separate regulations provide for another course of commissioning.”* Art. 12 provides also that *“non-governmental organisations [...] may –upon their own initiative – submit an offer of engaging in public tasks, including those formerly handled by other entities, public administration authorities included.”*

It is difficult to evaluate the scope of this kind of grant giving by local government in general but many of them provide for different kind of activities aimed at support for vulnerable and marginalised groups. Combating discrimination is definitely not a priority (it is social help) but there is number of examples that different NGOs were granted some funds for activities including combating discrimination (quite often activities like providing citizens and legal advice are funded).

The above mentioned Act of law obliging local government to collaborate with NGOs (prepare plans of collaborations and provide funds) seems be a good possibility for NGOs. Even if in many instances it is only theoretical possibility NGOs should keep asking relevant local offices for these plans and in such a way put some pressure on them.

It shall be also stressed that the Public Benefit and Volunteer Work Act directly excludes trade unions.

Additional comment to central and local government

In 2004 Council of Ministers passed well prepared *National Action Plan for Counteracting Racial Discrimination, Xenophobia and Related Intolerance for the years 2004-2009* (result of UN “Durban Action Plan”, 2001). The program obliges all public authorities responsible for it’s execution (at national and local level) to cooperate closely with NGOs and envisages funding possibilities. Unfortunately the program in most cases is not executed and it is even not clear who is responsible on national level for its administration.

It does however creates one more possibility for NGOs to make pressure on public authorities by keeping asking and alerting about lack of its execution.

The program do not include TU as a partner or it’s beneficiary.

7. **Are there any private funding possibilities? (private foundations, private companies, headquarters of trade unions, etc.) What are they? Is it easy to access these sources of funding?**

A. **The Stefan Batory Foundation** (www.batory.org.pl) (www.batory.org.pl/english)

- a. **Program for Tolerance** supports projects that foster attitudes of openness toward racial, ethnic and religious differences as well as organizations working to prevent intolerance and xenophobia (program financed by the Ford Foundation).

The program offers grants within two grant making schemes:

The Shared and the Different – micro-grants for organizations operating education and cultural projects (three grant competitions over 3 years); grant will continue to be awarded until 2008.

Preventing Intolerance – long-term support of organizations that monitor and combat intolerance, xenophobia and anti-Semitism (a single two-stage competition for 3 years projects); grants were already awarded.

There is also a possibility of supporting projects of particular value for pertaining program's goal which do not comport with the above-referenced activities.

- b. **Legal Education Program** supports initiatives that promote legal education for citizens, increase their access to justice and legal assistance. Program offers grants for NGOs for research and monitoring, information and free legal advice, strategic litigation and advocacy efforts for protection of citizens rights (combating discrimination is a priority).
- c. **„Watch dog” fund** – offers grants for „watch dog” NGOs. Includes organizations combating discrimination.

B. **Trust for Civil Society in Central and Eastern Europe** (www.ceetrust.org)

Includes separate fund for „watch-dog” NGOs which includes organizations working to combat discrimination.

C. **Polish-American Freedom Foundation (PAFF);** (www.pafw.pl)
(www.pafw.pl/strona.php?setlanguage=2)

- a. **PAFF with Program Manager: Institute of Public Affairs**

“Citizen and Law” program regularly organizes grant competition for NGOs providing citizens advice and legal information (legal aid) for those in need (people from marginalized social groups, including groups discriminated against).

- b. **PAFF with Program Manager: Foundation for the Jagiellonian University** (www.utw.pl)

“Third Age Universities” Program offers grant competitions (small and regular grants). The purpose of the competition is to activate senior citizens by providing supplementary financing for projects enhancing the quality of educational offers of Third Age Universities as well as encouraging the elderly to get involved in community affairs (i.a. work with schools and children, mentoring).

All mentioned programs create opportunity for NGOs to receive funding. However there is always big competition and only part of organizations receive funding.

8. **Are there any other source of funding?**

- A. **“1 % of personal income tax”** for these organizations who have status of “Public Benefit Organization” and convince tax payers who devote 1% of their PIT to heir activities.
- B. **Embassies.** Small grants and donations of different type and amount from programs conducted by Embassies of different countries to Poland.
- C. **International network (umbrella organizations)** like for instance ILGA-Europe.
- D. **CoE campaign All Different All Equal** (<http://alldifferent-allequal.info/>)

- E. Polish branches of different foreign foundations as well as some foundation of corporate entities** who do not have special programs which support non-discrimination but might be approached and may support different kinds of activities (seminars, research, publications, Internet sites, individual stipends etc.)
- F. Different public and private funding possibilities for disabled**, however not aiming at combating discrimination directly.

IV. Diversity Management seminar

Design of the training

The training DM Forum was designed in the collaboration of the international and national partners to the project. International partners provided guidelines and different materials including Manual on Diversity Management which was translated into Polish, suggested the choice of the national trainer: Ewa Mroczek (Deni Cler) and organized preparatory meeting in Munich in which the local trainer took part.

Prior to the DM Forum “Country needs assessment for diversity management in National Businesses/Companies” was prepared by local trainer.

The assessment pointed out that in Poland “Diversity Management” activities are understood as counteraction to all the aspects of discrimination, especially in hiring practices. The groups that are being discriminated are: women, elderly employees and disabled.

Agenda of the Forum was prepared by the local trainer in collaboration with international trainer (Anjelika Plett, mitte consult GbR) and seminar organizer. Guest speakers for “business case” were identified and invited by local trainer.

The agenda included following sessions: world trends in diversity management, theory and practice (presented by Anjelika Plett), two local business cases, group work on advantages of DM for company and employees and designing of the individual plan of action.

Preparation of the seminar

Forum announcement and invitation letter were prepared in collaboration of organizer and local trainer. However it was difficult to collect enough number of applications. Initially local organizer contacted main Employers organizations and all of them declared to distribute the announcement to all their members. However the result was disappointing and we had to include number of other means: newspaper add, Internet add in the special “labour site”, appearance on the radio broadcast, sending invitations and contacting additional organizations, number of personalized emails, private contacts etc. After all more than 60 people sent their applications (for 60 places). The list of the organizations which were contacted (and responded positively: promising to distribute the information within their networks, asking for additional information, sending applications of their employees etc.) include: BCC (Business Center Club) (president of the BCC sent us a letter promising to deliver invitation to all members)

KPP (Confederation of Polish Employers)

KPP Lewiatan (Polish Confederation of Private Employers Lewiatan)

FOB (Responsible Business Forum)

Centrum Corporate Social Responsibility (CSR Centrum)

The Intercultural Vocational Adaptation Centre

Polish Council of Shopping Centres

Polish Organization of Commerce and Distribution (POHiD)

UNDP

British Council

Chambre de Commerce et D’Industries Francaise de Pologne

Polish-German Chamber of Industry and Commerce

British Polish Chamber of Commerce

Polska Izba Handlu (Polish Chamber of Commerce)

PSZK (Polskie Stowarzyszenie Zarządzania Kadrami), Polish Association of HR

Materials prepared for participants included Manual on DM, number of leaflets regarding discrimination issues (produced by EC as well as local ones), other EC publications like “Business Case for diversity” in 3 language versions.

Carrying out the seminar

The DM Forum took place in Warsaw, in Zielna Center (www.centrumzielna.pl). 48 persons have appeared representing different businesses and well as training and consulting companies (several persons have cancelled just before the forum or simply did not appear).

After opening and trainers/participants introduction first session conducted by international trainer was kind of introduction to the subject matter of DM. The presentation, inter alia, defined diversity and DM, provided information on world trends in DM, business arguments for DM and elements needed for implementation of DM. Three short exercises followed.

Two Polish business cases were presented. The first one (KRUK S.A., jewellery company, company was given the title of “Company – mother’s friend”) concerned the company policy regarding maternity leave and come back to work of mothers. In Kruk S.A. women employees from the moment they know about their pregnancy and inform the company are assisted by the staff in order to plan their leave and return in a way that both sides are satisfied (it include even the special financial benefits for mothers). As a result company has very high level of employees trust confirmed by external evaluation and law rate of mothers not coming back to company.

The second business case was prepared by Polish Association for Persons with Mental Handicap¹⁵ and presented one of its project: Center for occupational advice and support for mentally handicapped¹⁶, program in which organization finds employment for mentally handicapped, train them and help in learning the job responsibilities (person is assisted by personal trainer during first days/weeks of work). The presentation accompanied by documentary showed how beneficial for the company handicapped employers might be (it included interviews with persons employed, their trainers and owners of the companies). After the presentation and documentary participants had a chance to discuss the issue of employment of mentally handicapped and ask additional questions to presenters who joined groups.

Finally workshops have followed and participants identified and listed on “ideas charts” advantages of introducing DM for companies, employees, clients. Each participant had a chance to formulate as many as possible ideas and to learn about others ideas.

Group work followed on what in practical sense could be done in the framework of DM. Ideas brainstormed within groups were presented and discussed. At the end participants had also a chance to work on individual plan of action.

Majority of participants left the Forum after the lunch and last coffee break therefore we received only 9 evaluation forms (from persons who stayed until the end of the forum) and the picture received may not be treated as objective. However those persons were most interested and gave interesting feedback and quite positive one (most marks are more than 4). Marks range from 3,4 to 4,9. and this border numbers somehow show the main problem of the Forum. On one hand highest substantial (not related to venue) mark - 4.7 - was given to questions regarding relevance of the content to the job and relevance/usefulness of the materials, but the lowest one - 3.4 - was given to the question “The activities gave me sufficient practice and feedback.” Therefore participants definitely need more seminars of this kind and especially practical ones.

Even many persons have left before the end of the Forum it was nevertheless often the first chance for them to listen about diversity management and let’s hope that at least in several cases it was useful and worthwhile exercise. And especially those who stayed until the end of the Forum were satisfied and dedicated to the subject matter till such extend that they decided to stay in touch and organize next

¹⁵ Polskie Stowarzyszenie na Rzecz Osób z Upośledzeniem Umysłowym.

¹⁶ Centrum doradztwa zawodowego i wspierania osób niepełnosprawnych intelektualnie DZWONI.

smaller meeting in the next couple of months. Also some participants wrote after the forum with requests regarding the materials and electronic version of Manual.

Main lessons learned seminar

We finished the Forum with about 10-12 participants (out of 48). It is difficult to judge why so many people have left but one of the reasons might be that during the first part of the training there was not enough interactivity even it was planned in the agenda. Presentations of two polish business cases planned for 20 minutes each took much too long and there was not enough time for the group work and sharing experience. First presentation took almost hour and big part of it was information about the company (W.Kruk) and not the subject matter. The second presentation was also longer than agreed and furthermore it was in a way repeated by showing the documentary touching upon many same issues already presented. Much more interactive exercises have started when in fact many people have left. Therefore it turns out that agreements with the presenters of local business case should be more precise.

Other lesson learned is the flexible approach to application process which at the end helped us to attract enough participants. Contacting just Employers organizations is not enough. Also some people suggested different approach to different groups – separate meetings for HR, PR and management people.

What was helpful in attracting participants was definitely nice venue in the center of the city.

Participants who filled evaluation forms suggested more exercises of this kind and subjects of their interest, this includes: more group work on case studies and group discussion, concrete tools for DM, more time devoted to different aspects of diversity, including session on cultural diversity, gender issues, including other aspects of diversity (international companies and DM in those kind of companies, usage of the research done by specialists, for instance anthropologists of culture), practical examples from companies, publication/presentation on good practices.





Annexes

The role of trade unions combating discrimination

Intended learning outcome:

- For the participants to have explored the roles trade unions can and should play in combating discrimination.

1. What is a trade union?

A trade union is an organised association of workers, whose aims are to protect, and further workers' rights and interests and represent them at a variety of levels (workplace, sector, national). Originally, unions organised workers along the lines of specific 'trades' and professions (such as hairdressers, teachers, construction workers) but increasingly common are unions with a wider remit (like: workers in commercial services or 'the public sector'). Trade unions can be organised at company level (which is quite common in several countries) or by sector (education, transport, etc.). Unions can also be organised as federations and can also be part of European or international networks.

In several countries, trade unions may have historical links with certain political groupings, ideologies or denominations (socialist, communist, liberal, Christian), and a few have close links with a political party.

However, a common and essential feature to all trade unions is that they are democratic and independent organisations. Democratic because they are membership based and representative organisations, in which every member has a vote and is part of the decision-making process. Independent, because they have to be independent from employers and public authorities to be able to play their role of representatives of workers properly, in which negotiations and compromises but also conflicts (such as strikes) are part of the game.

Trade unions are normally funded by members' subscriptions.

2. What is the role of a trade union in combating discrimination?

When considering what role trade unions can have in combating discrimination, they should take full advantage of the special roles that have been given to them under Articles 7 and 11 of Council Directive 2000/43/EC, and Articles 9 and 13 of Council Directive 2000/78/EC.

Trade unions are clearly important to the development of peaceful, democratic, well-managed, healthy and prosperous workplaces that engage with and promote equal opportunities, and through the workplace also contribute to these same goals in society at large.

Trade unions as instruments of social dialogue can combat discrimination in the following ways:

- Negotiating with employers to ensure that discrimination in the workplace is eliminated and that equal opportunities are promoted.
- Providing a means for expressing and addressing the needs of workers who are discriminated against in the workplace.
- Supporting victims of discrimination in securing a settlement with the employer (alternative dispute resolution).
- Supporting victims of discrimination in their search for access to justice.
- Promoting equality and diversity in the workplace and in the sector.
- Establishing mechanisms to influence decision-making by employers and Government.

- Mainstreaming non-discrimination and equal treatment in policies and practices.
- Challenging employers, organisations and authorities to combat discrimination.
- Monitoring, documenting and denouncing discrimination.
- Ensuring that equality is prominent on the political agenda and encouraging campaigns and action to eliminate discrimination and promote equality.

A trade union can

- Work in partnership with other trade unions to achieve shared aims.
- Work in partnership with NGOs in order to achieve shared aims.
- Cooperate with national equality bodies, for example in building up networks of equality representatives, or in organising training and expertise for workers' representatives.
- Empower groups to engage in campaigns, to be self-advocates and to assert and enforce their rights.
- Work, where appropriate, in partnership with Governments/employers to achieve common aims and objectives.
- Challenge, where appropriate, Governments/employers when they are promoting policies which are contrary to the trade union's objectives.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities within the framework of Government policies and adopt and promote strategies of Trade unions and strategies negotiated between Trade unions and Government.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities outside the framework of Government policies and adopt and promote trade unions' objectives and, strategies even if those are contrary to Government policies.
- Ensure the co-ordination of its own services and to engage Government/employers in discussions on the co-ordination of services between the Government and trade unions, where those services relate to equal opportunities.
- Provide properly professionally researched advice to Governments/employers on issues of concern.
- Advocate and campaign for change as a response to need.
- Guide and contribute significantly to legislative and policy making processes, by providing properly researched advice and briefings to politicians in Government and to employers and other persons of influence.
- Be vigilant "watchdogs" - pointing out where Governments/employers are actively discriminating, or failing in their obligations to combat discrimination or where they need to improve their performance, and enforcing the operation of the checks and balances that characterise democratic society. In this role trade unions must target Government and the business community by advocacy, lobbying and negotiating functions when required.
- Challenge, by appropriately selected mechanisms, acts, omissions, administrative practices or policies which are contrary to the trade unions' and the workers' objectives.
- Keep track of and ensure that advantage is taken of all new developments in combating discrimination, e.g. new legislation (national, EU and international), new policies (national, EU and international), new sources of funding, and landmark judicial decisions (at both national, EU and international level).
- Be open, transparent and accountable to members and to the public.
- Increase the strength of trade unions' participation in social dialogue by forming networks and coalitions, and promoting original initiatives and solutions. This can help to reduce prejudice within society, thus promoting equality.
- Work openly and in a spirit of collaboration with other trade unions and NGOs operating in related fields and prevent conflicts and disputes occurring between trade unions or NGOs.

- Put pressure on a state to ratify international instruments which allow for the international spotlight to be shone on Government practices relating to equal opportunities.
- Supply national and international bodies with essential and reliable information on which they can draw when examining a country's record on discrimination.

In summary, the role of trade unions should be to check, monitor and challenge the actions of employers and Governments and other organisations, in order to combat discrimination and to assist workers and groups of workers in asserting their rights.

3. What activities can a trade union do to combat discrimination?

The following is a suggested list of activities and services that a trade union can carry out or provide in order to help combat discrimination on all grounds:

- Negotiating.
- Awareness-raising.
- Monitoring/Influencing the development of policy & law.
- Providing support to individual victims of discrimination, and to individuals as part of a collective complaint.
- Litigation.
- Alternative Dispute Resolution including mediation.
- Campaigning and organising.
- Advocating changes in practice (as distinct from policy or law).
 - Promoting the establishment of focal groups around a specific ground of discrimination (disability, race-ethnicity, etc.) to offer workers a place where they can share common experiences and discuss which policies to develop in their workplace and their union, and how to join forces to put their interests on the general trade union agenda
 - Adapt their recruitment campaigns to an increasingly diverse workforce, and making the diversity of the trade union movement more visible in internal and external publicity
 - Promote female members and members from a minority background in positions of decision-making and leadership.

4. What does a trade union need to fulfil its role?

- Human Resources.
- Skills.
- Knowledge.
- Expertise.
- Openness.
- Transparency.
- Accountability to their members.
- Non discriminatory attitudes within its own organisation.
- Appropriate national legislation in place regarding its establishment and functioning.
- Funding. Although clearly the core functions and activities must be funded independently by members' contributions, many unions make use of project subsidies by governments and private funds for specific aims. Especially in the area of non-discrimination, a variety of possibilities for funding are available.

5. Why are trade unions better placed than other organisations to work towards combating discrimination in the employment field?

- Because trade unions are active in the workplace, they are often best placed to detect patterns of discrimination at work, and to take action to combat disadvantage.
- Trade unions can represent workers collectively, for instance in works councils and collective bargaining, which can often be the most effective way of achieving change and eliminating discrimination in the workplace.
- Trade unions play a crucial role in engaging with workers and employers at the local, regional, national and international level.

6. What are the obstacles for trade unions and how might these be overcome?

- Lack of standing in order to participate in relevant political debates. Trade unions will need to be sure that they brief an individual or organisation that does have standing.
- Lack of standing in order to bring complaints, either individually or collectively. Trade unions can support and assist those who do have standing, or seek to reform the rules.
- Perception of affiliation to Government or a political party or other group so undermining their reputation as impartial advocates of equality issues. A trade union needs to ensure to act in a way that does not conflict with members' fundamental rights to equality, and ensure that any connections with political parties or other organisations or causes do not conflict with members' rights.
- Passivity from some of their members/employees or even their leadership regarding action to be taken against discrimination.
- Conflicts between the interests of the majority of members, and the rights of minority members.
- Own prejudices.
- Lack of effective 'partnership' between Government/employers and trade unions. Lack of effective cooperation with NGOs.
- Lack of membership among the discriminated groups of workers, and therefore a lack of interest among the members and the leadership to deal with these issues. This may be a vicious circle, as clearly a trade union that does not show an interest in representing the interests of for instance women or migrant workers will not easily convince those workers that they should join a union.
- Inability to reach some parts of the workforce or senior management due to ineffective structures, poor organisation, externally imposed priorities, or cultural or language barriers. Trade unions should ensure that *their own organisations* have a diverse workforce with personnel who have received equal opportunities training and who are aware, of relevant social and political history, including the history of exclusion and discrimination of certain groups within the community and, where relevant, a range of language skills.