



NATIONAL ACTIVITY REPORT ROMANIA ANTI-DISCRIMINATION AND DIVERSITY TRAINING

CENTER FOR LEGAL RESOURCES

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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

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II. Introduction

The Centre for Legal Resources was responsible for the organization of the two Anti-discrimination seminars in Romania: the first AD seminar took place in Sinaia, Hotel Cota 1400, between 7 and 9 November 2007 and the second one in Predeal at Belvedere Hotel between 5 and 7 March 2008.

The Diversity Management Seminar was organized by the Centre for Legal Resources in partnership with the Interact company in Bucharest at Hotel Novotel in 24 January 2008.

For the first group of participants invited to attend the AD seminar between 7-9 November, the CLR started the selection process during the summer of 2007, when 40 letters of invitation and applications were sent to the potential participants. Afterwards, in September 2007, the CLR organized a working session with the trainers in order to select the final future participants for the November AD Seminar. NGOs' representatives and trade unions representatives have been invited to this seminar, and also, a representative of the Board of Directors of the National Council on Combating Discrimination. The seminar took place in a location in a mountain resort, which was appreciated by the participants as a good location for training.

Immediately after the November Seminar, the CLR started working on selecting participants from the 2005 anti-discrimination seminar which took place in Constanta, with the aim of inviting them to the March 2008 Seminar. Also, at the end of the training session, the participants in the November 2007 seminar have been informed about the possibility of continuing training on fighting discrimination during the March 2008 Seminar. This AD second seminar took place in Predeal, in a location which accommodated 44 participants and allowed for organizing parallel training sessions. The preparation for this second seminar was much easier as most of the 2007 participants were excited to continue the training program in this field of anti-discrimination.

The Diversity Management seminar was organized by the CLR and Interact Company (experts in training and consultancy) in Bucharest at Hotel Novotel on January 24, 2008. The CLR selected a number of 50 participants from private companies in Bucharest and invited them at the DM Seminar. The representatives of the private companies were informed that the participation in the seminar was free of charge through the letter of invitation.

In order to present their experience in the diversity management, the seminar has special guests: a foreign trainer and representatives of ABN AMRO Bank and Coca Cola HBC. All the participants had the occasion to raise questions and interact with each other during the plenary sessions, presentations made by the guests or during the exercises in small groups.

During the preparation of the seminar, the CLR received several calls and letters from the NGOs' representatives who heard about the DM seminar and wanted to participate in it. They all received information about the Diversity Management Manual and explanations that this seminar's a target group were the representatives of the private companies.

III. Anti-discrimination seminars

a) National activities anti-discrimination seminars

Design of the training

This seminar improved a lot in content and organisation than the one in 2005. This was the result of the changes in the team of trainers and the experience of the national NGOs in organising this kind of ample events in the field of combating discrimination.

The first seminar was organized between 7-9 November 2007, at Hotel Cota 1400 in Sinaia. The following seminar was organized in Predeal between 5-6 March 2008.

4.85% of the respondents declared that this time, the objectives of the seminars were more clear for them, 4.82% that the activities developed during the seminars have stimulated their future learning. 4.73% from the respondents suggested that the activities developed during the seminars gave them sufficient practice and feedback, 4.52% declared that the level of difficulty was appropriate and a percentage of 4.27 responded that the places where the seminars were organized were appropriate.

Preparation of the seminar

The team of trainers collaborated very well with the organisers to prepare the seminars. They were all very helpful and always available to contribute to the seminar. Although half of the team of trainers changed this year as comparison to 2005, the team worked very well, because many of the trainers have been colleagues in other projects. The team met several times to prepare the seminar, from the meeting of selecting the participants to the detailed meetings for drafting the agenda and deciding on the exercises and presentations for the seminar. In order to ease the work of the team of trainers, we organised the work for some of the tasks in smaller group of 2-3 trainers: for drafting some of the presentations the legal trainers and the non-legal trainers worked separately, the team of two trainers that worked with the trade unionists in one session prepared the session in detail, each group of two trainers for the working group prepared themselves separately. However, we kept the track of these activities, had long consultations and debates, and took decisions together within the whole team of trainers.

Carrying out the seminars

The exercises discussed during the working groups improved and developed a lot. The participant from the national equality body was better prepared and had a larger amount of varied information to transmit to the participants, because the activity of the national equality body developed a lot in the last two years. However, the time allocated to him during the seminar was too short for the amount of information and exercises prepared. More moments of informal activities for networking and outdoor thematic activities would have helped for better networking, especially between trade union representatives and NGOs' representatives.

During both AD seminars, in parallel with plenary training sessions the trainers prepared exercises related to law and advocacy.

The plenary sessions included the following main subjects:

- the anti-discrimination legislation;
- means of using the anti-discrimination tools in the working relations (for trade unions representatives)
- lobby and advocacy tools;
- case law from domestic legislation, European Court of Human Rights and European Court of Justice (much more developed during the 2nd seminar in March 2008 when the participants had more skills and knowledge).

The main objectives of the presentation of the anti-discrimination law were to help participants acquire the key concepts of the anti-discrimination area according to the European legislation and the transposition in the Romanian legislation, and to help them understand how to access the legal ways of fighting discrimination under the Romanian legal system.

- the Council Directive 2000/43/EC from 29 June 2000 regarding the implementation of the principle of equal treatment of persons;
- the Council Directive 2000/78/EC from 27 November 2000 regarding the establishment of a general framework for the equal treatment of employed persons and employment conditions;
- the Government Order no. 137/2000 regarding the prevention and punishment of any discrimination acts, republished in February 2007.

Discrimination is forbidden in the following areas:

- in any act related to exercising any rights mentioned by the law (Protocol no. 12 ECHR);
- in any political, economic, social and cultural act or related to public life (art. 2, par. 1);
- in working relations (hiring, profession), access to public services, goods, facilities, access to education, freedom of movement, right to free choice of domicile, right to personal dignity.

Discrimination of the following persons is forbidden:

- natural persons;
- legal private or public persons;
- public institutions.

Discrimination of the disadvantaged groups is forbidden as well.

Key concepts:

- direct discrimination;
- indirect discrimination;
- determined occupational requirements;
- harassment;
- victimization;
- reasonable adaptation;
- affirmative measures.

Legal means of fighting against discrimination:

- documentation;
- complaint to the National Council of Combating Discrimination;
- court act.

Documentation – partition of the proof:

“The interested person has the obligation of proving the existence of facts that allow for supposition of direct or indirect discrimination acts, while the person against whom the complaint was made has the obligation of proving that the facts are not discrimination acts.”

- Any probation means, including audio-video recordings or statistical data;
- complaint to the National Council of Combating Discrimination;
- court act.

Also, during the presentations of the legal frame in the March 2008 seminar, the participants were introduced to the **European Institutions**.

The objective of this session was that to allow participants to acquire information about the relevant institutions in the field of antidiscrimination at the European Union level and how to access them. As a main result, the trainers expected that by the end of the training programme the participants would know the essential preceding of the jurisprudence of the European Court of Justice.

This session approached the European Institutions with an important role in combating discrimination and presented the following: Art. 13.1 of the Amsterdam Treaty, DG Employment, Social Affairs and Equal Opportunities - Anti-discrimination Unit, Fundamental Rights Agency, European Court of Justice (different from European Court of Human Rights), European Ombudsman, European Parliament – its members, groups, inter-group committees (e.g.: LGBT, minorities, fundamental rights, reporters), FRALEX: Network of Independent Legal Experts, the Network of Legal Experts in Combating Discrimination – only on the 5 criteria.

Some of the most important cases introduced at the European Court of Justice were presented:

Gender:

- **Defrenne v. Sabena** (1976)– equality in the form of the principle of equal payment for equal work appears to be a social objective of the EU - **Art.141 EC Treaty** – applicable only in cases of clear direct and indirect discrimination
- **Mcarthys v. Smith** (1980) – woman employed against man, but on lower wages– CEJ: evaluation of the scope and nature of the work as against comparison.
- **Dekker v Stiching**(1991) – discrimination against a pregnant woman is direct discrimination.

Age:

- **Félix Palacios de la Villa v Cortefiel Servicios SA**– Directive 78 does not impede the application of the Spanish law which allowed for special clauses in the collective labour contracts, according the which employees could be forced to retire when reaching a certain age;
- **Mangold v Helm** (2005) – the objective of professional inclusion of aged workers does not allow for national legislation to interdict the limited labour contracts for employees aged over 52; the difference of treatment is non-discriminative if objective and rationally justified by a legitimate objective.

Sexual orientation:

- **Grant v. SouthWestTrains** (1996) - Art. 141 TEC is applied only in the case of gender and not sexual orientation;
- **P v S and Cornwall County Council** (1996) – Equal Treatment Dr. – the only reason for dismissal was the decision of the employee to be subjected to a sex-exchange surgery: “To tolerate discrimination determined by the intention to have a sex-exchange surgery or by the existence of such a surgery would be equivalent to failure to respect the dignity and freedom to which every person has the right to and which any courthouse is obligated to protect.
- **KB v. National Health Service Pensions Agency** (2004) – Equal Treatment Dr. +141 – limitation of retirement retributions to surviving husband or wife in the UK when the legislation did not allow performing marriage between gay persons.

Disability:

- **Coleman v Attridge Law (2008) – AG Opinion:** protection against discrimination due to disability is extended also to the employees who take care of such a person – **discrimination by association**

At the participants’ request, the last day of the March 2008 seminar included a session for discussing “When is discrimination going penal?”. On this occasion, the participants had the opportunity to learn about the aggravating circumstance, insult, calumny, sexual harassment, power abuse by interdicting rights, impeding freedom of religion.

The session addressed to the trade unionists approached the following topics:

- The specificity of the instruments available to trade unions;
- The role of the trade unions in combating discrimination;
- The types of intervention.

The specificity of the instruments available to trade unions

- Articles 7 and 11 of the Directive 2000/43/EC, and Articles 9 and 13 of the Directive 2000/78/EC – the obligation of the member states to establish provisions so that NGOs and trade unions are able to represent victims of discrimination – Directive 78
- Law no.54/2003- regarding trade unions – the purpose of any trade union is to defend the interests of its members and protect its members also against discrimination
- Law no. 53/2003- regarding the Labour Contract – change to Art.269
- Law no.202/2002, Art.32,33, 38 and change to Law no.340/2006– equality of chances
- Government Order no.137/2000 – Art.28.1 AD – complaint under own name or supporting members: „NGOs having the purpose of protecting Human Rights or legitimate interest in combating discrimination have the active legal quality to represent cases of discrimination manifesting in their field of work and affecting a certain community of group of people.”

Another topic approached with the trade unionists was the one called „What is discrimination in working relations?”. On this occasion, the participants were given the opportunity to discuss about various acts of discrimination at work and social protection. Also, the following aspects were presented as discrimination:

- the refuse of a natural or legal person to employ a person because he/she belongs to a protected category.
- The condition of employment by advertisement of contest organised by the employer or his representative who belongs to a protected category.

- Discrimination of employees by employers with regards to granted social income due to the fact that employees belong to a protected category.

The role of the trade unions in combating discrimination

What a trade leader should do?

- Get used to company policies and legislation
- Implement those policies, be an example
- Make sure the employees are aware of the policies and of their rights and means of intervention – Communicate!
- Monitor, document, intervene, advise

How can the trade union act?

- Proactively
- Reactively

Within this session the representatives of the trade unions were informed on the proactive role with regards to:

- Informative campaigns for their members to educate them on their rights and avoiding unpleasant situations.
- Elaboration of internal rules which include disciplinary sanctions, according to the law, to those employees who break the personal dignity of other employees by creating a degrading environment of intimidation, hostility, humiliation and offence.
- For the negotiation of national labour contracts and collective labour contracts, to ensure the introduction of special clauses of forbidding discrimination and finding solutions to complaints
- Within own organization, to ensure gender equality and respecting diversity by mentioning these aspects in own statutes (e.g. promote and support the equal participation of men and women to management and decision and adopt the necessary measures to ensure the equal participation of men and women to management and decision)
- Participate in social dialogue together with other NGOs, trade unions and authorities.

The discussion about the reactive role of the trade union raised the following issues:

- Representation of the victim of discrimination at work if one of its members is discriminated (due to a any reason of for being a unionist) – mediate and support the case at the National Council of Combating Discrimination or court according to GO 137.
- Legal intervention based on the legislation regarding equality of chances for gender discrimination - Art.32 Law 202.
- Discussion on potential intervention means in case its members perform discrimination acts and the employer's responsibility is involved.
- Monitor, document, analyze and intervene at the public policy level – the watchdog role related to authorities and employers

The training allowed for the trade unions to involve in an exercise which responded to the following questions:

Which are the acts falling under the antidiscrimination legislation?

How can a trade union leader intervene?

- a. On short term: objectives, steps, actions, potential partners, necessary resources
- b. On long term: objectives, steps, actions, potential partners, necessary resources

What other actors would you relate to for each type of intervention? How?

In parallel with the legal frame, the participants received information on the means of interventions which they can access as representatives of NGOs and trade unions. Thus, the participants learned about the tools used by lobby and advocacy campaigns, about the way a campaign can be supported by fundraising, information, education and communication, the steps of such a campaign, the monitoring steps and networking, the principles that are the background of a network.

The participants were divided into three working groups for the exercises on both seminars. Each group received an exercise that aimed at using and substantiating the legal information acquired during the training and also using this information during a lobby and advocacy campaign for the preventing and combating discrimination.

Strengths: the new team of trainers worked very well as a team, its members are experts in their areas and have a very good practical background; the national NGO implementing the project has a very good reputation at the national level, and the advantage that the legal expertise is considered a great asset within the civil society in Romania; also, there was the experience of similar projects for NGOs, trade unions and human resources managers in the field of combating discrimination, the experience of casework and strategic litigation at the national level, including in the national civil courts and good cooperation with the national equality body.

Weaknesses: the limited budget that had an impact on the agenda (number of nights covered by the project).

During the seminar session the participants worked together interactively (NGOs and trade unions) during the working groups and that was pointed out in their evaluations as a positive point. Other than these moments, because the programme was very intense, only dinners and coffee breaks were moments to mingle. Few respondents mentioned networking among the valuable things of the seminar.

Because the time was very short, outside the seminar sessions, one could still see two groups: the NGOs and the trade unionists. This aspect improved a lot during the Follow-up Seminar held in March 2008 at Predeal when we organized a combating discrimination movie evening and a NGOs/Trade union coffee evening.

Main lessons learned

Most of the participants declared that everything was valuable and useful about the seminar. However, the ones who detailed their answers mentioned as most valuable things the information about ways of addressing a case of discrimination (casework) – especially how to draft a complaint to the national equality body and how to draft a complaint to the civil court. In addition, other participants considered that the most valuable thing about this seminar was also the information about the antidiscrimination legislation, how to apply it to a case. Minority opinions mentioned networking with other NGOs and between the NGOs and the trade unions as the most valuable thing about the seminar.

In general, the participants either did not answer to this question or they answered that everything was useful and valuable about the seminar. There were some participants who did not understand the question, maybe also because in the Romanian translation the difference between the affirmative version and the negative version of the question differs only by a short expression “cel mai puțin”/(less). Probably, they did not expect such a question in an evaluation questionnaire. Consequently, they mentioned in their answer the valuable things about the seminar, repeating partially some of the answer to Question 20.

The large majority (2/3) of the respondents suggested allocating more time for the course, as the main measure to improve the course in the future. Almost half of the respondents proposed to increase the content covered by the seminar, which may explain also the proposal to allocate more time for the course. This is especially relevant since the percentage of respondents declaring that the seminar should slow down the pace or speed up the pace is identical (1/6). The proposal made by 1/3 of the respondents to update the content of information covered for the future seminars is a natural one rather than a reproach about the recent seminar. Opinions regarding the increase in the level of difficulty of the seminar were more present (around 1/4) than the ones suggesting decreasing the level of difficulty (less than 1/10). A relatively well represented suggestion was to clarify the objectives (around 1/3). And almost 1/4 of the respondents thought the organisers should provide more relevant information before the seminar, in order to better prepare for their participation. A more than welcome suggestion made by 1/4 of the respondents was to make the course activities more stimulating for the participants. Minority opinions suggested the improvement of the teaching methods and of the seminar organisation (less than 1/10).

In order to improve the future training, the suggestions made by participants varied a lot. The most frequent proposals suggested: to present NGO's good practices and bad practices in the field of involvement in the combating discrimination, to introduce more examples and more case studies of situations that have been already given a solution. There were proposals to organise trainings targeted on different groups exposed to discrimination (NGO mentioned persons with disabilities – physical or mental, immigrants, women, youth, positive discrimination of minorities, or discrimination for employment). As methods of training, two respondents suggested role play of a case of discrimination and a kind of moot court for solving the respective case. The respondents asked also for trainings at the local level.





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

The study was carried out taking in consideration representatives of the Romanian civil society working in the field of combating discrimination or developing activities with contact points in the anti-discrimination field (for the grounds of racial and ethnic origin, religion and belief, age, disability and sexual orientation). The National Coordinator interviewed several NGOs' representatives in meetings taking place at their organizations or at the Center for Legal Resources. Every person was asked the same questions. These questions were formulated so as to offer enough information to respond the questions in the general template. Additional questions were asked where needed for clarification regarding the NGOs' activity.¹ At the same time in various ways (interviews, research of websites, of newsletters) the main trade union federations were consulted².

1. Profile of NGOs/trade unions working to combat discrimination

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

We found out that it is relatively difficult to find a large number of NGOs working on anti-discrimination in Romania. There is a small number of mainstreaming human rights NGOs which dedicate part of their work combating discrimination, and there is a number of NGOs focusing on the situation of certain categories of people exposed to discrimination (Roma origin, other ethnic origin, mental or physical disabilities, religion or belief, sexual orientation).

Anti-discrimination is not in itself an area of particular interest for many NGOs in Romania. This is because anti-discrimination involves many times providing legal assistance or even representation and because there is little funding available for these kind of activities. NGOs generally do not have access to expertise in the field of discrimination (within their staff or from external sources). There are not many experts in the field of anti-discrimination within the civil society and even within the legal profession. Another obstacle in developing casework on anti-discrimination is that people exposed to discrimination refrain themselves from reacting to discrimination. The stigma regarding certain vulnerable categories is so profound and so extended that they prefer to keep silence or to step back from action. Another aspect that contributes to the present situation in the Romanian civil society is that most of the NGOs do not perceive discrimination in its substance, with its consequences upon people's lives. For example, NGOs providing social services to vulnerable groups do not realize that the origin of the lack/difficulty of access to services is frequently discrimination.

As for the trade unions the situation is much more worrisome because none of the existing trade unions displays any interest on antidiscrimination policy or activity. Local trade unions are pretty weak while nation wide federations although have some interest on gender aspects lack understanding and expertise on discrimination based on other grounds.

¹ The following NGOs or individual experts were taken in consideration for the assessment (interviews, analyses of their activity, annual reports, projects etc): Center for Legal Resources, ACCEPT, Open Society Foundation, Partnership for Equality Center, Association Partners in Development, ESTUAR Foundation, National Association of Persons with a Neuro-Motor Handicap – National Council of Handicap, National Union of Organizations of People Living with HIV/AIDS, Romanian Association Anti-AIDS, members of the Coalition on Mental Disabilities organized by the Center for Legal Resources, Romani CRISS, Public Policies Institute, Romanian Helsinki Committee, Association Solidarity for Freedom of Consciousness, Jehovah's Witnesses Association, PRO EUROPE League, Press Monitoring Agency, independent experts: Eugen Crai, Romanita Iordache, Emil Moise.

² The National Confederation of Free Trade Unions of Romania "Brotherhood"; the National Trade Union Confederation "Cartel Alpha"; the Democratic Trade Union Confederation of Romania; the National Trade Union Confederation "Meridian"; the National Trade Union Block; the National Confederation "Sanitas".

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)?

Human rights NGOs are either concerned with discrimination in general regardless of the ground of discrimination or they are concerned with racial and ethnic origin discrimination. This ground is of particular interest in Romania.

Although there is also a number of NGOs working for particular vulnerable groups (grounds of racial and ethnic origin, religion and belief, age, disability and sexual orientation), few NGOs address the issue of combating discrimination in their work.

We want to stress out that organizations acting in the field of Roma rights are pretty strong in expertise and attracting funds. Unfortunately, only one organization Romani CRISS is focusing on combating discrimination, doing studies and casework in the field of discrimination.

NGOs working for the protection of persons with disabilities center their activity mostly on providing social services, even legal services to their target groups. The assistance provided aims to ensure their complete realization of rights and the access to special rights and facilities supplied by the state because of their disability. The issue of anti-discrimination is frequently at least one of the causes of their social problems, but it is not addressed appropriately, sometimes because it is not given the suitable importance.

Religious minorities are in some cases in the care of religious organizations (e.g. Jehovah's Witnesses, Greco-Catholics). They provide basic legal assistance in cases of discrimination based on religion perpetrated against their believers. Sometimes they ask for the help and expertise of the few NGOs or independent experts. There is one NGO aiming to ensure the respect for freedom of thought, religion and belief and the separation between the State and the Orthodox Church. Its actions are however not yet focused on combating discrimination based on religion or belief.

There is only one NGO targeting the LGBT community, placed in Bucharest. It has a very strong component of lobby and advocacy in the field of combating discrimination. It also provides legal assistance to the community. However, the LGBT community in Romania is one of the groups that suffer a serious degree of stigma and many people prefer to stay silent when discriminated against.

Age as a ground for discrimination is not actually covered by the Romanian civil society. There are organizations aiming to work for the elderly, for the youth, or students' organizations, but they do not address the anti-discrimination component. This is even more alarming since age is not explored regarding the discrimination phenomenon in Romania. Furthermore, there are reasons to believe that in employment discrimination on the ground of age is present at a large scale.

Trade unions are not really concerned with antidiscrimination issues. More recently, and mainly because 2007 is the Year of Equal Opportunities, some trade union federations have started to promote equal opportunities policies but only between women and men. The other discriminatory grounds are not at all considered by the trade unions.

Some of them have issued statements announcing that their work is non discriminatory. For example Meridian Confederation states that it fights for promoting equal chances between men and women, for the elimination of discrimination based on sex, age, race, nationality, religion, political orientation and sexual orientation. These statements are not accompanied by programs aiming at implementing antidiscrimination policies. Moreover Carte Alfa Confederation announces on its website that its activities are based on "Christian values justice, solidarity, care for the others...", solidarity that makes no distinction among races, sexes, ages, level of education or social status. The reference to Christian values does not mean the confederation carries out discriminatory policies in relation to their members on religious or belief grounds, but merely that such statements are considered "normal".

At the same time it speaks about their level of expertise on what discrimination is and shows that often antidiscrimination, particularly at the level of speeches, is considered an <unfortunate political correctness> that they want to avoid.

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 is no organization working on anti-discrimination as their single area of work. The mainstreaming human rights NGOs have a program on anti-discrimination issues. Some NGOs addressing special groups have a component on anti-discrimination within their human rights department or lobby and advocacy department.

Other NGOs do not have a distinct component on anti-discrimination in their activities, but they come across discrimination when campaigning for their target groups' rights, organizing special programs for enabling their target groups to live in the society, when lobbying for legislative changes, when advocating for law implementation at the local or central level or when assisting cases of human rights infringements containing the discrimination element.

Trade unions do not carry out projects or activities aiming at raising awareness on anti-discrimination or addressing discriminatory acts.

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 Romanian law on the right of association in non-governmental associations, these organization register at the national level and establish their quarters in a town in Romania. Many of the NGOs who work in the field of discrimination are placed in Bucharest, the capital of Romania. However, they develop collaborations with NGOs working at the local level or they carry on their activities also at the local level. By the time of writing this report the law regulating the status of associations and foundations is in a changing process, hopefully making again very easy for the NGOs the registering process.

It is not very difficult to register as an NGO according to the Romanian legislation. However, the process might suppose a relatively long period of time and some money, because of the bureaucratic advises and documents that should be issued by public authorities at the central and local level. NGOs might confront with some problems when accessing available public funding because they must have the public utility status. This presupposes going through a separate, time-consuming procedure. At the national level an extremely limited number of NGOs possess this statute – only one NGO working in the field of anti-discrimination.

Romania has both local and nation wide trade unions but the local ones are generally very quiet. Very rarely they undertake by themselves some strikes but most often trade unions specific activities are carried out at the national level. In principle it is not difficult to register trade unions but the reality is that most trade unions exist in old companies, those which used to be state companies and were privatized during the years or in the state sector in general (education, health, etc). Trade unions are almost non existent in new companies some of them being small and medium size enterprises where there is not enough strength for setting up trade unions; in transnational companies trade unions are pretty weak.

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

Generally the NGOs working to combat discrimination are relatively small NGOs. This is the general situation in the Romanian civil society. Even more, there are NGOs which do not have a constant number of employees or which do not even have employees at all, only people working on the basis of volunteer ship – members of the association or students. On the other hand, NGOs working with part-time or full-time employees do not usually work with volunteers.

In each of these organizations from the smallest (4 persons) to the largest (15-20 persons to 60 persons, in the case of national unions of NGOs) only 1-3 people are working in the field of anti-discrimination (except for national unions where usually the person/persons working in anti-discrimination is placed at the center and there are some local persons monitoring and providing information about the case or helping with the logistics).

Regarding the trade unions, their size is highly questionable. All nationwide federations pretend they have tens of thousands of members (“Brotherhood” Confederation claims having 800,000 members!) although no certain number has been offered and no transparent data exist on the membership fees. The truth is that no one can be sure about the correct number, having in view that all the sectors where they work, with the exception of public education, are very dynamic in terms of internal changes: many companies disappear, others are being privatized, etc.

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

Some of the NGOs interviewed were part of national formal networks, especially the NGOs of persons with disabilities (including HIV/AIDS). This is because they are formed of beneficiaries at they are local based NGOs united at the national level in order to advocate better for their interests. Generally the logistics, representation, funding but also expertise is ensured from the center of the union (NGOs member of the Association of Persons with a Neuro-Motor Handicap and of the National Council of Handicap, NGOs members of unions gathering parents’ associations of children living with HIV/AIDS like National Union of Organizations of People Living with HIV/AIDS, associations working to prevent HIV transmission like Romanian Association Anti-AIDS).

The rest of NGOs, especially those having a strong and visible component of human rights and combating discrimination work are not part of national formal networks. However, they collaborate with each other and with other NGOs in particular projects as partners or they take public standings and advocacy together.

In Romania there are two informal networks aiming to combat discrimination. One is the National Alliance Against Discrimination. The other is The Legal Working Group to Combat Discrimination. National Alliance Against Discrimination is an informal network of 77 NGOs created at the initiative of the National Council for Combating Discrimination. This governmental institution is the General Secretary of the network. We have information from members of the network that since its first meeting sessions it has no longer gathered or worked, which demonstrates its inefficiency. Even more, it is important to point out that most of the NGOs member of this large network are not actually working to combat discrimination and do not have the expertise or the outlook to do so. Moreover, the National Council of Combating Discrimination has re-considered the role of this Alliance and a change of its status due to the fact that so far the Alliance has produced no study and has not initiate any significant activity on combating discrimination.

The legal Working Group to Combat Discrimination is an informal association of NGOs, which along the time has been working in the field of human rights and anti-discrimination. It has been set up in the summer of 2003, but its bases were established since 2000 with the occasion of the advocacy campaign for adopting legislation in the field of anti-discrimination (Open Society Foundation Romania, Center for Legal Resources, Romani CRISS, ACCEPT, Public Policies Institute, Partnership for Equality Center, Romanian Helsinki Committee, UNOPA, ARAS, Aven Amentza, Association Partners in Development, PRO EUROPE League). The group collaborates in activities of advocacy and takes public standings in cases of discrimination, which came out in the attention of the public. It

works also at the level of changing expertise and assisting individual cases or strategic cases of discrimination – making complaints before the National Council for Combating Discrimination or actions before courts. The members of the group work together in partnership in several European projects or at the drafting of studies on anti-discrimination.

As mentioned above local trade unions have modest activity and only national federations are very active and vocal but mostly regarding the level of salaries, the labor stability. They are also part of international networks but do not carry out common projects.

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

The NGOs working in the field of discrimination are mainly based in the capital of Romania. Nevertheless they develop activities at the national level or at the local level and collaborate with NGOs from the rest of the country in combating discrimination.

A couple of NGOs have even more than partnerships at the local level; they have monitors of the situation of human rights infringements, especially discrimination cases. These monitors are trained by the organization to investigate cases and to give the minimum of assistance, legal representation and assistance being provided for by either local lawyers or lawyers from the mother-NGO placed in the capital. (organizations like Romani CRiss, Center for Legal Resources, PRO EUROPE League, National Union of Organizations of People Living with HIV/AIDS).

All nation wide trade union federations are based in the capital.

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

Generally NGOs from the capital are more focused on lobby and advocacy activity or developing media campaigns at the national level, realizing studies and analysis, representing strategic cases of discrimination or assisting more complicated cases of discrimination coming from the local NGOs, providing training to legal professionals or advocates. The local based NGOs do not work so much in the field of discrimination, however they are the ones who come in contact with persons exposed to discrimination and frequently they must provide them with information and assistance.

Trade unions based in various localities have little power to influence decision makers, because most of them are based in Bucharest. Therefore in most of the cases they speak with authorities through their federation representatives.

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)

The NGOs' political or societal weight is different depending on their field of work. Those who work in the field of human rights or anti-corruption have more power to influence political decisions, they reach easier mass media and thus reach also the public at large. The antidiscrimination activities however, although sometimes carried out by the same NGOs, are less attractive to the media and certainly not considered as interesting by the political sphere. However, recent developments have shown that if united and with a good strategy these NGOs can influence the decision makers from the Parliament or the Government in the antidiscrimination field.

Trade unions have much more influence on decision makers, employers, the general public, particularly when they decide to go on strike. But they also are pretty powerful during various negotiations processes which, unfortunately, have never touched upon the issue of discrimination.

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

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

As we mentioned before, these NGOs are cooperating together. The most frequent purpose is advocating for legal amendments where the need for a larger representation is very important. Important successes have been recorded in this area.

The second purpose as importance is doing casework together, which automatically involves exchange of expertise and experience. Some NGOs (especially beneficiaries' NGOs) come in contact on a daily basis with cases of discrimination comparing to general human rights. Yet, the last ones have more legal expertise and capacities of legal representation. In the same time it is a strong need of persons with basic expertise on basic anti-discrimination issues and procedural law issues (investigation procedures, obtaining and presenting proves) at both levels for efficiency and good communication.

NGOs from The Legal Working Group to Combat Discrimination organized events jointly to celebrate diversity or Human Rights Day focusing on anti-discrimination. At the realization of studies on Anti-discrimination, participation from many organizations is provided.

During the years some cooperation between a couple of NGOs and trade union federations took place on subjects related to citizens' participation in the legislative process. But these were rather seldom, specific projects for a particular purpose and did not continue afterward.

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

During the years some collaboration has taken place between NGOs and trade unions in relation to Roma origin as ground of discrimination particularly at the local level. More recently, in 2006, a common project between trade unions and NGOs was initiated by the Partnership for Equality Center, a women rights NGO, and was carried out with Cartel Alpha Confederation on the new pension system touching upon the discriminatory effects but only from a gender perspective.

11. How are these NGOs funded?

c. Do they receive state funding?

From the NGOs interviewed, only those on HIV/AIDS receive state funding. The rest have never accessed state funding. In this case intervenes also the problem of obtaining public utility status (discussed above). Some of the representatives interviewed thought that realistically speaking, in order to obtain efficient results in anti-discrimination work, state funding is essential. Consequently, they consider that the National Council for Combating Discrimination should fulfill its role in persuading ministries and other public authorities, including local authorities, with competence or interests in the field of combating discrimination to allocate money for developing anti-discrimination projects in cooperation with NGOs or by NGOs. The danger involved by this kind of founding is the fact that the NGOs can become dependent of the state funding and loose their critical voice regarding state's activities.

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

Presently, only European grants are available in the Anti-discrimination field, and in these cases the partnership with a EU country based NGO is essential. Consequently, Romanian NGOs are required with the consequence of being not eligible to develop partnerships with EU countries' NGOs.

The situation in this area is not very helpful for Romanian NGOs. They are not very well represented abroad and in case they have the opportunity to enter in these partnerships they are only service suppliers and do not have the power of deciding and administrating the project.

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

Private funding is scarcely reached by NGOs. Some associations based on membership attain regularly small contributions from their members, other get private funding from private companies. Some of the NGOs interviewed manifested their intention to use the 1% Law regarding private funding from individuals. The advantages consist in the almost boundless number of possible donors and their fiscal advantages, but the methodology for implementing these provisions is relatively rigid, involving bureaucracy, dependent on the will of employers who have the obligation to pay from the employee's venues the 1%.

Another disadvantage regarding combating discrimination activities' is a fact demonstrated in other countries that adopted this mechanism of private founding – mostly NGOs providing social services beneficiate from this legal provision.

f. Do private funders impose any restrictions or conditions?

In spite of the fact that there are financial benefits for companies that support NGO activities, funding them is not common to or considered attractive by private donors.

Generally companies prefer to avoid subjects they think Government may consider sensitive such as human rights abuses, discrimination, corruption and prefer to give grants to social projects on children, elderly, more recent on assistance to victims of domestic violence, of trafficking in human beings, or on cultural activities and sport.

Other funders such as the Soros Foundation (the Open Society Foundation), or various embassies do not impose any restrictions and their conditions refer mainly to a more sound outcome of the projects.

12. How are these trade unions funded?

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

Trade unions do not receive state funding as institutional support neither at the central level nor locally. However, they are allowed to participate in any open competition organized by central government or local authorities.

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

No, trade unions are not funded by political parties.

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

Trade unions function on members' fees and although they are financially accountable to state authorities this aspect is not transparent and accessible to the public.

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

Trade unions may receive private funds and are allowed to participate in projects funded by any international institution.

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?

Every NGO interviewed expressed their concern that funding is a big concern for the civil society in general and in particular for activities in the field of anti-discrimination. Furthermore, a certain problem is regarding financing casework, especially legal assistance and legal representation. Consequently, in NGOs where there are people with certain expertise in the field of anti-discrimination, there might not be finances to pay for their work. Even more, there is no funding for external complex legal assistance or representation in difficult cases.

Besides, in the situation of NGOs that do not have any employees or that have an employee working on a project (limited time) the lack of funding is determinant for their anti-discrimination work. In these cases, even basic assistance in cases of discrimination is provided with difficulties and the assistance coming from a stronger NGO is essential.

Regarding the trade unions it is a vicious circle: their lack of expertise in some areas have prevented them to access funds for specific projects.

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

k. Neighbouring countries?

All of the NGOs contacted by the Center for Legal Resources have partners or collaborator NGOs from other countries. Some of them are NGOs or structures at the international level (relations of membership, exchanging information), others are national NGOs (partnerships in projects, exchange of experience). The relation with NGOs from neighboring countries is not very well developed. The relation with EU Member States NGOs is developing in the last period of time for reasons of exchanging expertise and sending joint funding application to the EU Commission (Especially Roma rights organizations collaborate with the European Roma Rights Center; organizations working on mental health programs cooperate with Amnesty International or Mental Disabilities Advocacy Center; sexual orientation organization is member of ILGA Europe; freedom of consciousness NGO is member of the International Humanism Europe).

Trade unions are not in contact with partners in neighbouring countries.

l. Other new EU Member States?

Some trade unions federations are part of European networks. For example “Brotherhood” Confederation is part of European Trade Union Confederation.

m. Others?

“Brotherhood” Confederation is part of International Trade Union Confederation and member of its Executive Committee. The National Trade Union Block and Cartel Alpha Confederation are also part of ITUC.

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

The NGOs interviewed by the Center for Legal Resources do not work at the international level. Some of them have experience of working at the regional level (LGBT rights NGO).

Trade unions do not really work on the international level, they support statements some European/international campaigns such as the Year on Equal Opportunities.

16. Can they work in English?

All of the NGOs’ employees working in projects know English quite well and work in English at a daily basis.

Some trade unions, due to their international relations, are able to work in English, but most of them do not have this capacity.

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?

Not applicable in Romania.

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

In principle, the regional branches are allowed to work on any project they want and consider to be relevant for their activity, including antidiscrimination.

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

19. What kind of work do they do?

Their main areas of work are (arranged from the point of view of incidence): advocacy for legal amendments and for the implementation of the existing legislation, realizing studies regarding the discrimination phenomenon with regard to certain grounds of discrimination, analyzing the anti-discrimination legislation and mechanisms of protection, raising awareness campaigns regarding the rights of vulnerable categories of persons including the anti-discrimination component as annex, and to a less extent casework.

Trade unions have no expertise to work on antidiscrimination. In recent years they have started to develop some skills but only in relation to gender issues.

20. Do they take up complaints of discrimination?

The great majority of NGOs interviewed were notified with cases of discrimination. An important number of cases received basic assistance regarding the complaint procedures before the National Council for Combating Discrimination. The staff alone provided this assistance or with the help of collaborating NGOs having more experience in this area. The victims themselves generally send the complaints. There is a number of NGOs, which use their right to stand in courts for themselves as well as for victims of discriminatory attitudes, including before the NCCD, according to the Anti-discrimination Law provisions. Other NGOs intervene in the favor of the victim in cases opened by the victims themselves.

In 2006, trade unions sent 5 complaints to NCCD.

21. Do they focus on their own community?

There are three kinds of situations: NGOs dedicating their entire activity only to the group of beneficiaries because of the lack of resources or because of their limited mandate, NGOs focusing on their own community but opened to collaboration with other NGOs representing the interests of other communities, especially in activities of lobby and advocacy or campaigning for raising awareness or organizing joint events or trainings on general issues, and there are a very limited number of resource NGOs working to support with expertise and programs NGOs representing all grounds of discrimination.

Trade unions are interested particularly on what happen in the field they work.

22. Do they work with victims directly?

Most of the NGOs work with victims directly either because they provide non-legal assistance and come across discrimination or because they legally assist and represent victims – in this last situation they can only assist a limited number of cases, consequently they focus on strategic cases or create

their own test cases. There are also NGOs who are more dedicated to the theoretical study of discrimination, providing reports, social studies, and legal analysis. (NGOs such as Public Policies Institute, Romanian Helsinki Committee, PRO EUROPE League, Partnership for Equality Center, Association Solidarity for Freedom of Consciousness).

Trade unions do not have the capacity to offer assistance to the victims.

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

There are no restrictions regarding whom a trade union may represent.

24. Do they do ‘case work’?

As we mentioned before, many of the NGOs try to do case work. There are several situations: when NGOs put into contact victims and NGOs able to provide assistance, when NGOs provide basic information about the legislation and mechanisms and help the victim to right a complaint, but no longer intervene in the procedure of obtaining remedies, NGOs who give full assistance to victims before administrative authorities or even before courts. Even in these cases victims are not protected against victimization, because this would be in the competence of state authorities. In many cases the difficulty of doing casework is the victims’ attitude – they refuse to get involved in legal procedures in order to sanction the discriminatory behavior for fear of adverse treatment or for fear of making public their belonging to a particular group that faces stigma.

The cases supported by trade unions represent a too small number to speak about “case work”. They may do it but in reality when it happens is not based on a strategy.

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

In principle, both NGOs and trade unions are allowed to access state funding for case work. There are however, two major aspects which so far have prevented this to happen. The lack of expertise, particularly regarding trade unions, and more important the lack of state funding for such projects and activities.

26. Does this include legal representation?

Legal representation is provided by a limited number of NGOs because the rest of them do not have resources for hiring a lawyer or a legal counselor. In several cases NGOs collaborate with each other for offering legal representation, but this can only be applied in a limited number of cases comparing with the requests. The difficulties in accessing the services of a lawyer or legal counselor could be passed if the NGOs would use their legal standing in cases of group or community discrimination and also in cases of individual discrimination. NGOs are not very familiar with this solution and they need further training in this field.

Another problem is that in several cases NGOs assist or represent victims before the National Council for Combating Discrimination, but when contesting the NCCD’s decision before courts or acting for civil remedies in favor of the victim, the NGOs do not continue the process. In addition, there are many cases when because of the ambiguity of the NCCD’s procedure (time limits, phases of procedure), NGOs send complaints to the National Council for Combating Discrimination, they do not receive any answer to their complaints, and they do not follow the procedure because they do not know what to do, in what limit of time etc.

Trade unions that would undertake casework and offer assistance to victims would offer legal representation as well, although their own legal staff is not trained on how to tackle discrimination cases.

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

As we mentioned before, there is a legal provision in the Anti-discrimination Law providing legal standing for human rights NGOs or NGOs working in the field of anti-discrimination and minorities' rights. This is a very useful tool for NGOs to combat discrimination and to engage in casework. Some of them use the personal legal standing; others prefer to support the victim in sending and sustaining her/his complaint. One NGO tries to intervene with amicus curiae in cases filed by other NGOs or in cases supported by other NGOs before the NCCD or before courts. A Roma rights NGO was confronted with contradictory situations regarding the recognition of its legal standing before Romanian ordinary courts in cases of individual discrimination.

The antidiscrimination law speaks about the right of NGOs that work on human rights protection to represent individual victims. However, the NCCD jurisprudence has made clear that trade unions may also represent victims.

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

Class action is not a concept used by the Romanian legislation nor by the legal practice. On discrimination cases the law provides for the possibility to act when a discriminatory deed affected a community or a group of persons.

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

The majority of the NGOs do other practical work, especially those working with beneficiary groups and communities (social assistance, medical assistance, psychological assistance etc). The human rights NGOs do not usually offer other kind of assistance or services in their casework, except for legal assistance.

Trade unions offer some assistance only on gender aspects.

30. Do they advocate changes in legislation and policies?

The national unions of NGOs advocate for legislation and policies amendments for their communities (HIV/AIDS, disabilities, LGBT). NGOs member of the Legal Working Group for Combating Discrimination collaborated for a very important amendment in the Anti-discrimination Law in 2003-2004. The NGO working in freedom of conscience and religion issues aims to work in changing laws and policies in the public education field, and the equal treatment of religions by the State, however NGOs representing religious minorities do not get involved in general campaigns in relation to public authorities, but do advocate in concrete cases of their religion group members (e.g. Jehovah's Witnesses).

Trade unions are generally pretty active in the field of legislation that affect their members labour contract and salaries but so far have not been interested in antidiscrimination issues.

31. What are their relations with the central government?

A limited number of NGOs (disability, HIV/AIDS) receive funding from Governmental sources and they struggle to stay independent. The NGOs having a good public visibility and prestige, having a

strong expertise are vehement critics of the State. NGOs try also to collaborate with the State (Ministry of Education, Ministry of Health, Ministry of Labor and Social Security, National Authority for Handicap Persons) for changing or adopting policies taking in consideration their groups'/communities' interests and rights.

The Central Government usually is very careful in its relation with trade unions, consult them, listen to their demands and often give them credit. Therefore, if interested on antidiscrimination policies, trade unions could be very efficient.

32. With regional governments or municipalities?

Especially local NGOs are in relation with municipalities in order to ensure a proper implementation of the legislation and in order to adopt policies or to participate in programs for promoting human rights and non-discrimination (e.g. "For You" Association, ESTUAR Foundation, National Association of Persons with a Neuro-Motor Handicap, National Union of Organizations of People Living with HIV/AIDS).

Trade unions have also influence at the local level but major decision are not taken locally.

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

Trade Unions and employers organizations are together in the Economic and Social Council which has to be consulted by the Government in a number of areas. Often, when trade unions announce strikes the negotiation process takes place between them the employers organizations and the in charge governmental authorities. So far such discussion have regarded only the level of salaries and labor contracts.

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

There are two kinds of situations:

- a) NGOs member in the National Alliance Against Discrimination are supposed to have a close relation of collaboration since this network is created and managed by the NCCD. However, we have information that this network is no longer working presently,
- b) NGOs sending and sustaining complaints in cases of discrimination before the NCCD, asking for public information regarding the NCCDs' activity, drafting reports on the NCCD's activity or jurisprudence.

Unluckily, there is no effective consultation from the part of the NCCD with the civil society. With the occasion of drafting the law amendments project or the national strategy to combat discrimination, a part of NGOs (not all of them) received the drafts, they sent their comments back to the NCCD, but they were not invited to a public discussion or other type of effective consultation.

The role of the ombudsman is not really treasured by the NGOs because according to the law, its competence is strictly limited, but also because of the unlucky personal experience all of the NGOs had trying to get the ombudsman's help in several cases of discrimination.

Even though he has competences in the field of anti-discrimination as a matter of human rights, the Romanian Ombudsman declaimed its competence in favor of national courts. On the occasion of the 2003 amendments of the Romanian Constitution, the Ombudsman was given the competence to advise the cases before the Constitutional Court and to rise from its own initiative questions about the respect of the Constitution in cases of legal provisions. There are many situations of discriminatory laws, but the Ombudsman has not yet exercised its competence.

So far trade unions have not worked together with specialized bodies such as the Ombudsman.

35. What are the qualifications of the staff?

Most of the people working in NGOs have a university degree usually in humanist sciences (psychology, social assistance, political sciences, history, theology etc). In a limited number of NGOs work people with a legal background or even more people with human rights background or legal counselors or lawyers. The reason for this lack of human resources is perhaps the fact that the number of human rights experts living in Romania is quite limited because Romania faculties do not address this issue, and students who studied abroad human rights are not very opened to work in restraint conditions of remuneration in Romanian NGOs. The lack of lawyers involved in anti-discrimination activities is caused by the fact that they are not familiar with the field, and they are not aware of the great possibilities these cases might contribute to their reputation and, why not, to their capital. NGOs working in the field of anti-discrimination have the mission to gain their professional interest and their dedication to work for the victims of discrimination.

Consequently, there is a special need of training in the field of legislation, practice and philosophy of human rights with an accent on the non-discrimination principle.

Trade unions' main problem is the lack of specific qualification of their staff.

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

The general situation is that the staff did not receive any training in relation to anti-discrimination. They knowledge in the field was gained mostly through individual study of the laws or reports on anti-discrimination. Monographies on anti-discrimination lack in even the most developed NGOs, but Internet is always used to get information, especially at the EU level. Access to databases or intranets on anti-discrimination would be a great opportunity for these NGOs. Furthermore, developing a national intranet would be a very useful tool for permanent updating of the information and for collaboration. A very limited number of persons participated in trainings on anti-discrimination organized abroad or organized for their NGO for particular groups (e.g. the Roma rights monitors)

With the exception of some training related to equality between women and men trade unions have not offer to their staff training related to antidiscrimination, neither on public policy nor on specific discriminatory deeds.

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

In every organization a number of people working on projects are trained in writing funding proposals and reporting. There are some centers of resources for NGOs like the Foundation for the Development of the Civil Society, which periodically organize courses for NGOs representatives in these fields. There is also a specialized training institute Romanian Training Institute which organizes these kind of seminars for a certain fee.

There is staff in trade union federations who was trained to write funding proposals, but not for antidiscrimination projects.

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

Surprisingly, the majority of NGOs auto evaluated their activity in the field of discrimination as being a success. This was generally analyzed taking into consideration the NGOs objectives in the field and the resources at their disposal. However, everybody agrees that there is much to be done the activities they carried on must diversify and they must dedicate more resources in this area.

Because they do not work an antidiscrimination, trade unions have not develop any evaluation policy in this regard.

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?

In unanimity, NGOs agreed that funding is the main problem faced by the civil society working in anti-discrimination.

Trade unions' main problem is their lack of understanding what discrimination is and their lack of interest to combat it.

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

It is very linked with the problem of lack of funding and it is one of the main problems.

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?

NGOs identified indeed a need for additional training in the field of Anti-discrimination for their staff or even for their traditional collaborators (lawyers, legal counselors, members of the association involved in its activity, volunteers).

Some of the NGOs, which have more expertise in the field of discrimination, also expressed the idea that at least a basic training on legal issues and concepts of discrimination would be very useful for their colleagues from other NGOs. This would simplify the work of collaborating in assisting cases of discrimination, and perhaps will give them the possibility to focus on strategic cases of discrimination or complicated cases, without the effect of neglecting also damaging, but more ordinary cases of discrimination. This would significantly contribute to the creation of jurisprudence in the field of discrimination at the NCCD's level but also in courts.

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

The NGOs representatives need training at several levels because their knowledge is at different levels. What is common is the need of training on the special concepts in the field of anti-discrimination like: the content of indirect discrimination, harassment, victimization, "other status", shift of the burden of proof, the EU philosophy in the field of combating discrimination, but also information related to how you conduct an investigation in a case of discrimination, the steps that must be done to represent a victim, to file a complaint, legal actions against the NCCD's decisions. A higher level of information required by some more experimented NGOs, especially those having legal counselors, is represented by information on the European Court of Justice and European Court of Human Rights procedures and jurisprudence.

Another need of training which might also be useful for developing a successful activity in combating discrimination would be in the field of persuading a victim to react and protecting it from victimization and skills and examples of campaigning, advocacy procedures and lobbying.

What trade unions need is specific training to understand what discrimination is. This applies not only to their members but mainly to their leaders who have the possibility to decide on what kind of topics to focus in their future activity.

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

We are talking about individual study of the national legislation. So additional information regarding the content of special legal provisions, the way of systematically interpreting the legislation applicable or the way of applying it in practice will be most welcomed.

The trade unions' staff has very little knowledge on domestic antidiscrimination legislation.

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

They are aware of its existence and its content but do not really know the background of adopting this legislation and the way it is put into practice at the EU level and at the Member States' level. However, NGOs representatives do not really realize the importance of this information for their work at the national level.

The trade unions' staff has very little knowledge on European antidiscrimination legislation.

45. Is their staff trained in relation to advising government: formulating policy proposals? Legislative proposals?

They do not have training in these areas, but they have practical experience and skills; additional theoretical information with examples would be good. An important part of NGOs do not have knowledge or skills in making legislative proposals (legal writing). The same applies to trade unions on antidiscrimination areas.

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

They need to do more to promote their anti-discrimination role from the point of view of diversifying their work. Their role must be however accepted by the State authorities competent in the field of discrimination and the efforts of collaboration must come also from the initiative of these authorities.

Trade unions need first of all to understand what discrimination is and become aware of the role they could play on combating it.

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

This was not perceived as a need by the NGOs interviewed (except for LGBT).

For the moment trade unions do not see themselves nor are perceived by the others as representing potential or actual victims or clients, therefore are not approached in such cases. Specific training on pro-active approach would be welcome.

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

They thought they are credible enough, but sometimes even though they make all the efforts, the Government simply does not consider their opinion. However, some NGOs mentioned their success with the Parliament's members with the occasion of promoting certain legal amendments in the field of anti-discrimination and in other connected fields. Other NGOs had success with their advocacy campaign within local authorities.

Trade unions would improve their status if addressing sensitive issues such as antidiscrimination.

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

Once they would become aware of their own role on combating discrimination they could be very efficient influencing also the employers.

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

The issue of lack of public awareness campaigns in the field of combating discrimination was stressed out by NGOs. They all agreed that there is a lot to be done in this field.

Once they would become aware of their own role and combating discrimination they could influence also the public opinion.

Trade unions themselves need to be targeted by such a campaign and understand the importance of combating discrimination.

51. What would they need to develop?

Generally, aspects that both NGOs and trade unions need to develop are raising awareness on anti-discrimination capacity, expertise and capacity of acquiring resources.

c) National legislation in the field of anti-discrimination

1. The transposition of the Directives into national law

Civil society organizations played an important role in advocating for the adoption and implementation of Anti-discrimination legislation in Romania. According to reports,³ drafting special regulations to combat all forms of discrimination in Romania had been the concern of the Department for the Protection of National Minorities (DPNM) since 1999. A joint commission, comprised of both DPNM representatives and leaders of nongovernmental organizations (NGOs) was then set up to draft a proposal, which one year later was passed as Government Ordinance 137/2000 for preventing and sanctioning all forms of discrimination. It was the first Anti-discrimination Law adopted in Central and Eastern Europe. It came well in advance having the obligation to transpose the two European Directives.

The parliamentary process of adopting the law for the Ordinance's approval coincided with the process of decriminalization of homosexual relations (the so-called "Article 200"), which received great opposition within the Romanian Parliament. Between November 2000 and January 2002, in Romania there was a rather paradox situation where discrimination based on sexual orientation in all areas of the social life was forbidden and sanctioned by the law, but homosexual voluntary relations between two adults taking place in private were criminalized. In March 2001, the Senate adopted the law for the Ordinance's approval. The same month, as a result of large international pressure, especially from the EU institutions, Hildegard Puwak (Minister for European Integration) asked the Parliament to "eliminate any discrimination", including that based on sexual orientation, in order to align Romania's legislation with EU standards.⁴ However, in May 2001, within a common meeting the Human Rights Commission and the Judicial Commission of the Chamber of Deputies approved the text with the amendment consisting in the elimination of "sexual orientation" from the grounds of discrimination. The amendment was proposed by a deputy from the government party (Social Democrat Party), M. Cornel Bădoiu, arguing that: „There is nothing bad in not hiring someone because he is homosexual.”⁵ Consequently, the Chamber of Deputies adopted this amended version of the law. Since the texts adopted by the two chambers differed, a mediation commission was established within the Parliament. It reintroduced sexual orientation on the list. This final text was finally adopted by the Parliament and came into force in January 2002.

During this legislative process, the public opinion did not play a role in the adoption of Anti-discrimination legislation. As many legislative initiatives in Romania, especially in the field of human rights, the public was generally not involved and consulted. The adoption of new legislation, particularly during the E.U. accession process, did not come as the result of an existing pressing social need that people are aware of, but because of international pressure, especially from the part of E.U. institutions.^{6 7}

³ See *Concept Paper on Combating Discrimination in Romania. An inventory of problems on legislation and institutional mechanisms of combating discrimination*, Renate Weber, 2003, within Nondiscrimination Review project of the Council of Europe.

⁴ Minister for European Integration in the 14 March 2001 hearing with the Economic Committee of the Romanian Senate, in "Puwak, Against Article 200", *Evenimentul Zilei*, March 15, 2001.

⁵ See *Adevărul*, May 31, 2001.

⁶ See Joint EU-Romanian Parliamentary Committee Recommendation 13, February 27, 2001. It "calls on Romania's Senate to abolish Article 200 of the Penal Code in order to put an end to this discriminatory regulation."

⁷ See European Commission's answer to Written Question of MEP Louseweis van der Laan, E-4142/00EN, March 12, 2001.

The Government Ordinance 137/2000 for preventing and sanctioning all forms of discrimination adopted by the Law 48/2002 is the general legal provision in the field of combating discrimination. The law contains two categories of provisions: general principles and definitions together with the mechanism for combating discrimination, and several sections of special provisions with the aim of giving examples of discrimination in various fields; for example those of economic activity, employment, career, access to public administration, legal and health services and other areas of access to goods and facilities, access to education, free movement, free choice of residence, free access to public places and personal dignity. The statute is a general multi-ground non-discrimination law, containing a non-exhaustive list of grounds of discrimination – it includes the “other ground” specification. The general definition of discrimination covers all fields of public life, sanctioning discrimination conducted against an individual or against a group or a community. The law applies to individuals and legal persons, and either public or private persons.

The definition of discrimination is inspired by the UN system. According to the law, discrimination is *“any distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, handicap, chronic illness not transmittable, HIV infection or belonging to a disadvantaged category of people or any other ground which has as its aim or effect the partial or complete restriction regarding the recognition, use or exercise of human rights and fundamental freedoms or rights recognized by laws in equal conditions, in the political, economic, social, cultural or any other field of the public life.”*⁸

This first form of the law was far from being in harmony with the European acquis in the field of anti-discrimination. According to the *Priority Action Plan for EU Accession (November 2002 - December 2003)*, until 30 August 2003, Romania had the obligation to realize the perfect transposition into the national legislation of the acquis communautaire in the field of combating discrimination – “Modifying the law on fighting all forms of discrimination to comply with Article 13 of the EC Treaty (RCE)”.⁹ From that point, the option of implementing an effective anti-discrimination mechanism was no longer an option for the Government or a request from the human rights activists, but an obligation within the EU integration programme of Romania. After the criticism from the EU Commission and Romanian civil society, the Government became interested in amending the legislation according to the EU Directives. In July 2003, they made the first proposal in this sense. It was followed by an advocacy campaign by a group of NGOs and activists,¹⁰ in order to ensure a good transposition of the Directives. Thus, concepts such as indirect discrimination, harassment, victimization, and the order to discriminate were introduced in an accurate manner with respect to the EU legal provisions.

Even after the amendments of 2003, the Romanian Anti-discrimination legislation still needed further adjustments for a complete transposition of the two Directives. One adjustment was the revising of the statute of the National Council for Combating Discrimination (on issues including: legally ensuring its independence from the Government, attributions, conflict of competence with other authorities in the field, procedures before the NCCD, departmental structure in order to exercise independently and effectively the great number of attributions). Another one was the introduction of the concept of shift of the burden of proof, essential for the effectiveness of the law in respect of the victims of discrimination, also the introduction of the concept of reasonable accommodation. These amendments of the Anti-discrimination legislation (except for the concept of reasonable accommodation) passed in July 2006,¹¹ this time as a result of a common advocacy effort of the national equality body and the civil society. They were adopted both under the impact of the two EU directives, and under the ratification by Romania¹² of the Protocol No.12 of the European Convention on Human Rights.

⁸ Art.2 of the Ordinance 137/2000.

⁹ See www.mie.ro/documente/engleza/dialog_ro_ue/priority_action_plan_for_eu_acce.htm.

¹⁰ Centre for Legal Resources, Open Society Foundation, ACCEPT, APADOR – Romanian Helsinki Committee, Romani CRISS, Partnership for Equality Centre, Pro Europe League, Institute for Public Policies.

¹¹ See Romania/ Law 324/2006 (20.07.2006).

¹² Protocol no.12 of the European Convention on Human Rights was ratified by Romania in 2006.

The concept of shift of the burden of proof and audio-video and statistics as means of proof¹³ met strong opposition within the Parliament debates.¹⁴ However, the European Union accession argument¹⁵ and the transposition of the two EU directives were essential for the vote.¹⁶ This is in the context of the conservative Romanian civil procedure when only written documents and witnesses are allowed and the proof is incumbent on the applicant. Both the national equality body and the courts are at the beginning in applying these new regulations. Judges participating in training sessions on combating discrimination within the National Institute for Magistrates declared that they will have difficulties in applying them to practical cases with respect to *prima facie evidens*.¹⁷

In February 2007, the Anti-discrimination Law was updated and republished with all amendments up to date, being modified four times in 2002, 2003, 2004 and 2006.¹⁸ Presently, the two directives are fully transposed except for the concept of reasonable accommodation for persons with disabilities. As described above, the Romanian legislative frame of protection against discrimination goes beyond the two Directives covering an open ended list of grounds of discrimination, manifested in all areas of the social life, not only in employment, social welfare, access to goods and services.

This whole legislative process of adopting Anti-discrimination legislation, including the transposition of the European Directives did not appear on empty ground. The Romanian Constitution and other statutes and legislation contain provisions forbidding discrimination, but they are only of declaratory nature, the Anti-discrimination Law detailed the existing principles and provided for the framework to sanction discriminatory acts.

In the field of employment discrimination, the anti-discrimination provisions of the Labour Code and other employment law acts come in addition to the provisions of the special anti-discrimination statute. Since 2003, the Romanian Labour Code¹⁹ contains requirements in the field of combating discrimination.²⁰ This law was the first to regulate indirect discrimination, compared to the Anti-discrimination Law that introduced the definition of indirect discrimination only in August 2003.²¹ The Labour Collective Agreement, a secondary law act, established at the national level every year prohibits discrimination, too.²² The Non-Employment Insurances and Employment Encouragement Law (Law 76/2002) provides for non-discriminatory enforcement of the law in its field of interest and for special measures focusing on disadvantaged groups (Art.4).

¹³ See Article 19-5 para. (6) and Article 21 para.4 of the Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006).

¹⁴ The main argument used against it refers to the presumption of innocence from the Romanian Constitution.

¹⁵ Present in Bucharest on the 25th of May 2006, European Commissioner for Social Affairs, Vladimir Spidla, showed content about legal and institutional instruments created by Romania in the fight against discrimination. However, he underlined the need to change the system of collecting proofs in cases of discrimination in employment in order to comply with the European directives in the field (Directives 43 and 78), available at: http://www.adevarulonline.ro/2006-06-26/Europa/discriminarea-la-locul-de-munca-in-atentia-ce_189313.html

¹⁶ See http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=7317 , <http://www.curierulnational.ro/?page=articol&editie=1193&art=77485> , <http://www.romacenter.ro/monitorizare/photos/28iu2.jpg> (16.10.2006) (ACT/RO/0243).

¹⁷ These statements were made within four sessions of training on the issue of combating discrimination organized within the National Institute for Magistrates, in cooperation with the NGO Center for Legal Resources, during the year 2006 (February, July, October).

¹⁸ Government Ordinance No.137 of 31 August 2000 (republished) regarding the prevention and the sanctioning of all forms of discrimination, Official Gazette No.99 of 8 February 2000.

¹⁹ Law 53/2003.

²⁰ Art. 5 of the Law 53/2003.

²¹ Government Ordinance 77/2003.

²² Art. 2 para.3 Labour Collective Contract Established at the National Level 1285/2002, as well as the same contracts from years 2003 and 2005.

Recent amendments of special laws or recent statutes of several professions contain non-discrimination provisions in employment relations, but also in the fulfillment of one's activity or profession: the Public Officers' Statute,²³ the Social Assistants' Statute,²⁴ Magistrates' code of ethics and professional practice. Since 2005, the law on ministerial responsibility incriminates any act of a Government member for the drafting and adopting of any norms, regulations or instructions having a discriminatory nature or violating human rights.²⁵ Even though, at the moment, this trend of adopting anti-discrimination provisions in several professions' statutes has more a theoretical-symbolical value, in that the more these provisions are invoked in cases of discrimination as binding for all members of a certain profession, the more it will raise the awareness and the interest for adopting detailed codes of non-discriminatory conduct.

Similar declaratory anti-discrimination provisions are included in other pieces of legislation regulating other areas than employment: the Law 705/2001 regarding the National Social Welfare System, the Audiovisual Law (Law 504/2002), the Patient's Rights Law (Law 46/2003), and the Rights of Persons in Detention Law (OUG 56/2003).

With regard to the establishment of the institution/s for the promotion of equal treatment according to the Directives, the Romanian experience is very much marked by the transposition of both directives in one piece of legislation²⁶ and the establishment of one common national equality body²⁷ to deal with all forms of discrimination on every ground, including race or ethnic origin, in all areas – the National Council for Combating Discrimination (NCCD). Apart from sanctioning discrimination, on which the NCCD focused more since its inception, the body has also attributions of: preventing discrimination, mediation in discrimination cases, monitoring the cases of discrimination, providing special assistance to victims of discrimination.²⁸ At the moment the NCCD does not have the institutional capacity to ensure the fulfilment of all these attributions, not to mention that at least with respect to the same case they are to some extent contradictory in nature.

Generally the concluding observations and reports from UN treaty monitoring bodies as the Committees of CEDAW, CERD, ICCPR and CRC are not visible on the public agenda. Furthermore, the authorities and the civil society did not very much use them recently, being focused more on the use of EU monitoring reports and recommendations.

Starting with 2004, the NCCD is ordering opinion polls²⁹ to identify the extent of the impediment which public opinion will prove to be, to the effective implementation of the Directives, the level of intolerance towards groups protected from discrimination in Romania. A similar poll is conducted by the NGO Institute for Public Policies.³⁰ According to these reports the groups mostly exposed to discrimination are homosexuals, Roma and women.

²³ Art. 25 para.2 of the Law 188/1999 regarding the Public Officers' Statute as amended in 2005.

²⁴ Art. 21 para.2 of the Law 466/2004 regarding the Social Assistants' Statute.

²⁵ Art. 8 para. 2b of the Law 115/1999 regarding the ministerial responsibility as amended in 2005.

²⁶ See Romania/ Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.01.2002); see also Romania/ Government Ordinance 77/2003 for the modification and adjustment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (30.08.2003); see also Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the modification and adjustment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004); see also Romania/ Law 324/2006 for the modification and adjustment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

²⁷ See Romania/ National Council for Combating Discrimination (NCCD) - The official website of the institution is available at: <http://www.cncd.org.ro> (14.10.2006).

²⁸ Art. 19 of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, republished in February 2007.

²⁹ The first sociological report in a series was *Opinion Poll on Discrimination in Romania*, October 2004, Metro Media Transilvania.

³⁰ The first sociological report in a series was *Intolerance, Discrimination, Autoritarianism in Romania 2003*, Institute for Public Policies.

In October 2007, the NCCD published its National Strategy for the Implementation of Measures for Preventing and Combating Discrimination spelling out the main principles, the priorities and the directions of intervention for 2007-2013.³¹ According to the text of the strategy, it is based on these opinion polls and on the NCCD's activity.

The national academic institutions are not concerned about discrimination; consequently, they did not cover this topic so far.

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

The Antidiscrimination law added to the already existing civil remedies general system, before civil courts, applicable also in cases of discrimination, a second optional and alternative legal system for sanctioning discrimination: the administrative fines system – decided and applied by the National Council for Combating Discrimination. The national equality body has the power to give a verbal or written warning or even an administrative fine. The level of administrative fines differs: when the victim is only one individual then the amount varies from 400 RON to 4,000 RON,³² while in cases where the victims are a group or a community, than the levels are higher: from 600 RON to 8,000 RON.³³

2.A Employment and occupation related - all grounds

In cases of discrimination in employment relations and occupation apart from the complaint to the national equality body – administrative procedure, and the civil suite against the perpetrator of discrimination for compensation, the Labour Code and labour related legislation provides for the administrative complaint to the labour inspectorate. The Labour Inspection deals with the respect of all labour legislation by the employers. As mentioned above, the principle of discrimination is included in this legislation, consequently the Labour Inspection is competent to seal with cases of discrimination in the area of: advertising of posts, recruitment procedures, selection, terms and conditions of working, pay, discrimination in the workplace, dress codes, working hours, suspect groups e.g. part time workers, workplace disciplinary procedures, promotion, allowances and bonus payments, dismissal (procedural and substantive), social security payments (in as much as they are classified in EU law as “pay”). However, according to the responses given by the Labour Inspection to the National NGO to several requests of public information, this institution is not aware of the competences that it has in this area. The only field of discrimination that it considers itself responsible of is the discrimination based on sex.³⁴ The sanctions that the Labour Inspection may provide are administrative sanctions to the employer – administrative fines.

Informal resolution, particularly mediation is possible according to the Anti-discrimination Law. According to Article 19 of the Ordinance 137/2000, the NCCD is competent to get involved in a mediation process.

Furthermore, NGO projects promoted the idea of introducing anti-discrimination internal regulation at the level of employers, together with disciplinary procedures to investigate and sanction acts of discrimination at the level of the employer. Courts have started to order companies found guilty of discrimination to adopt anti-discrimination provisions and procedures when the complainants ask for such a remedy. However, there is no express legal obligation in this sense.

³¹ National Council on Combating Discrimination (NCCD), *National Strategy for the Implementation of Measures for Preventing and Combating Discrimination (2007-2013)*.

³² The approximate equivalent in euros is: 114 euros to 1140 euros.

³³ The approximate equivalent in euros is: 170 euros to 2285 euros.

³⁴ The Labour Inspection responses are on file with the National NGO.

Article 247 of the Criminal Code provides for public criminal prosecution sanctioning the discriminatory behaviour of the civil servants: *Abuse in the exercise of authority against the rights of the person* consisting in a limitation of the use or exercise of the citizen's rights or the creation of an inferiority situation on the ground of nationality, race, sex, religion, sexual orientation, and other grounds protected by the Anti-discrimination Law, conducted by a public officer, and it is punished with imprisonment from 6 months up to 5 years. This remedy is available only in the case when the perpetrator is part of a public authority, there is no similar provision for private perpetrators. However, all the other remedies may be accessed in a equivalent way, irrespective whether a public authority or private body is accused of discrimination, or the situation in which discrimination has occurred.

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

For all the other situations than employment discrimination, the civil remedies and the administrative complaint to the national equality body (NCCD) are available to victims of discrimination irrespective of the area where discrimination occurred: social protection including social security and health care, social advantages, education, housing, access to and provision of goods and services provided to the public, including welfare services, banking, insurance etc, access to premises open to the public, e.g. restaurants, hotels, leisure facilities, etc, irrespective whether a public authority or private body is accused of discrimination. In addition, the complaint to the national equality body is facultative and does not prohibit access to civil court.

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

The NGO or the trade union involved in helping the person exposed to discrimination must identify together with this last one the purpose of making a complaint. Some criteria that would be useful to be taken into account are: the outcome sought by the complainant, the possible consequences that might be suffered by the complainant, the objective of the complaint which needs to be harmonised between the individual's objective and the NGO/ trade union's objective – whether it is justice for the individual or raising awareness of discrimination. The time element must be also taken into account, whether it refers to the availability of the victim or the persons involved in helping the victim – since the procedures usually take time, but also the time limits applicable to different procedures and whether the complainant can comply with them. This aspect is often connected to availability of resources, especially financial resources from both the victim and the organization. The NGO must also take into account the existence or not of possible legal channels of quashing a discriminatory act, of obtaining a legally binding solution. The question of remedies is also important for both the victim and the NGO, also for advocacy reasons (financial compensation for victim, re-installment or re-engagement, quashing a decision, obtaining a court order to refrain from future discrimination, to adopt measures and regulations). It is important to conduct an assessment of available remedies and of facts - matching facts to requirements of remedies, looking for available evidence – assessing the appropriateness and sufficiency of evidence for mechanism to be used. For advocacy purposes using a particular legal channel could have a more intense impact on the general public although it might be more risky for obtaining a positive solution. For the advocacy reasons, it might be of a larger impact to have a group of victims introducing complaints than only one person. Apart from costs with legal assistance – in Romania there is no legal aid available for cases of discrimination, there are also costs with the documentation of the case, expertise, witnesses, etc. Fortunately, according to the Romanian Anti-discrimination Law, civil cases are exempted from judicial taxes.

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

a) Complaint to the national equality body:

A complaint needs to be introduced with the national equality body in a one year term from the moment the discriminatory acts took place or the person found out about them. The complaint must be signed by the victim or by the person representing the interests of the victim including an NGO for groups of victims or even for individual victims with the written permission of the individual victim. This permission may be only signed in original by the victim and it does not have to be a notarised declaration. The complaint should contain a detailed description of the facts, reference to the person/persons responsible of the acts of discrimination (perpetrators), including their contact details for being contacted by the national equality body, any reference to the evidentiary substantiation of the facts is very useful to be included in the complaint from the very beginning. Written declarations signed by witnesses, documents issued by authorities or private entities, photos, including audio-video material may be annexed as evidence to the complaint. Also “soft” specific or general evidence may be enclosed in the complaint to the NCCD – for example newspaper articles, or NGO reports, as long as they are relevant to the case under review. There are guides written by national NGOs on how to write a complaint to the NCCD available for persons exposed to discrimination. A format of the complaint with the basic information that needs to be included is available online, on the NCCD’s website. Online complaints are also possible, according to the NCCD.

National equality body contact details:

Consiliul Național pentru Combaterea Discriminării, Piața Valter Mărăcineanu, nr.1-3, București, 010155 sector 1, tel.: 021 312 65 79, fax: 021 312 65 78, website: www.cncd.org.ro, e-mail: cncd@cncd.org.ro

b) Civil cases for compensation

The time limit for introducing such an action to court is three years from the moment the discriminatory acts took place or the person found out about them. The introductory action to court needs to respect some precise requirements according to the Civil Code, including information identifying the perpetrator or the person responsible. This is why legal assistance from a lawyer or at least assistance from a person familiar with the reading of legislation is important. During the civil file the complainant himself/herself will have the responsibility of gathering and presenting all evidences before the judge in order to prove the defendant responsible of the acts committed and to prove also the harm and the causality link between the discriminatory acts and the harm produced. The shift of the burden of proof and audio, video evidence is also allowed. There are some provisions in the Civil Procedure Code that can be invoked by the complainant in order to get the courts participation in ordering proofs that are in the custody of the defendant or other persons. The action is exempted from judicial taxes, which makes the access to court a lot easier.

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

There are defiantly some impediments at the national level for accessing the different procedures, like lack of legal aid, lack of pro bono assistance, lack of familiarity with the Directives and/or national anti discrimination provisions on the part of lawyers and judges. However, there are a number of NGOs working with groups exposed to discrimination that have developed some knowledge and capacity of providing assistance, including legal assistance in cases of discrimination, though they have limited resources for this type of activity. Also the number of cases of judges giving good decisions in the area has started to grow, as more and more complaints were brought to courts. In addition, the NCCD has developed quite an extended jurisprudence on anti-discrimination in some areas and some grounds, though improvements in their procedural standards are necessary. The positive aspect with regard to access to courts is that complaints are exempted from all judicial taxes. However, there is still a risk of costs if the case is lost.

One impediment for accessing the national equality body procedure is the physical access since the institution only has headquarters in Bucharest, the capital city.

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.

There is little knowledge from the lawyers, the NGOs and the judges of these procedures. It was never used so far in cases of discrimination based on the two Directives.

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.

There is little knowledge from the lawyers, the NGOs and individuals of these procedures. It was never used so far in cases of discrimination based on the two Directives.

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.

There is little knowledge from the lawyers, the NGOs and individuals of these procedures. It was never used so far in cases of discrimination based on the two Directives.

2.I Complaints to the European Court of Human Rights

Several cases of discrimination based on Roma origin have been decided recently by the ECHR against Romania. In April 2006, Romania ratified Protocol 12 of the European Convention on Human Rights. Romania did not ratify the Optional Protocol to the European Social Charter, consequently we cannot introduce collective complaints under this convention.

2.J Other international remedies

Romania is a party to all international human rights protection documents like the 1st Optional Protocol to the International Covenant on Civil and Political Rights, has accepted the right of individual petition under the Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Elimination of Discrimination Against Women. However no complaints have been brought to those Committees so far.

Only a few of the NGOs send periodic shadow report under ICCPR, CERD, CEDAW and the Convention on the Rights of the Child to instances of discrimination. Trade unions do not use these provisions at all since they have not been very much involved in employer's human right so far.

2.K Professionalism

According to the Mapping exercise performed in Romania, we found out that it is relatively difficult to find a large number of NGOs working on anti-discrimination in Romania. There is a small number of mainstreaming human rights NGOs which dedicate part of their work combating discrimination, and there is a number of NGOs focusing on the situation of certain categories of people exposed to discrimination (Roma origin, other ethnic origin, mental or physical disabilities, religion or belief, sexual orientation).

Anti-discrimination is not in itself an area of particular interest for many NGOs in Romania. This is because anti-discrimination involves many times providing legal assistance or even representation and because there is little funding available for these kind of activities. NGOs generally do not have access to expertise in the field of discrimination (within their staff or from external sources). There are not many experts in the field of anti-discrimination within the civil society and even within the legal profession. Another obstacle in developing casework on anti-discrimination is that people exposed to discrimination refrain themselves from reacting to discrimination. The stigma regarding certain vulnerable categories is so profound and so extended that they prefer to keep silence or to step back from action. Another aspect that contributes to the present situation in the Romanian civil society is that most of the NGOs do not perceive discrimination in its substance, with its consequences upon people's lives. For example, NGOs providing social services to vulnerable groups do not realize that the origin of the lack/difficulty of access to services is frequently discrimination. However, we managed to address some of these NGOs through the capacity building trainings organized within this project and we think we changed some of the attitudes, although the matter of resources remained an issue.

As for the trade unions the situation is much more worrisome because none of the existing trade unions displays any interest on antidiscrimination policy or activity. Local trade unions are pretty weak while nation wide federations although have some interest on gender aspects lack understanding and expertise on discrimination based on other grounds. We could only approach an insignificant number of trade unions through the activities organized within this project.

3. Societal issues

Tolerance and plurality are not concepts that the Romanian society has a tradition of cherishing and working with, due to our very short history as a democracy.

Vulnerable groups and areas in which they are at risk of suffering discrimination are:

- The existence of persons with mental disabilities in the society is totally ignored and they are subjected to all sorts of human rights infringements in large part because they have mental disabilities and are thought to not being in the position to defend themselves and that nobody would be concerned about their condition. They are denied all types of basic human rights from the right to life and not to be subjected to torture, inhuman and degrading treatment, the liberty of the person, to the right to a private life, the right to health, the right to education, the right to employment etc.
- LGBT group bears a lot of stigma in the Romanian society. The right to dignity is very much infringed based on the sexual orientation. There are cases of discrimination in employment, even conducted by public authorities as employers or potential employers.
- People of Roma origin are discriminated in access to education, to housing, to employment, to health services.
- Persons with physical impairments do not have access to the large majority of public institutions; consequently they do not have access to the public services provided by these institutions. The public institutions that tried to fulfil their legal obligation to create accessibility and they built ramps, did not build them to be in fact accessible, but they are rather endangering the persons' with disabilities lives.

Because of the lack of physical access, these people are also discriminated in access to employment.

- People living with HIV/AIDS face a lot of stigma and as a consequence they are discriminated in all areas of the social life from access to basic health care to access to education, confidentiality, access to employment.
- Women in their forties or fifties are discriminated in employment. Opinion polls show that in general women do not have equal opportunities in the society, including in employment, compared to men.

There is no report researching on the intersection of discrimination from one group that is itself subjected to discrimination towards another group subjected to discrimination, so we cannot assess on this aspect.

d) Funding opportunities in the field of anti-discrimination

I. 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

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

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?

During this post-accession year, the Delegation of the European Commission has invited NGOs and other social actors (including trade unions) to submit project proposals on human rights protection in Romania. Minority rights issues and anti-discrimination activities are covered by this framework.

European Commission's financing agreement on 2006 Phare National Programme will be available for contracting until 30 November 2008 (deadline for grants execution is 30 November 2009). The objectives and priorities of the 2006 Phare National Programme do not specifically include under the components available for NGOs the objective of anti-discrimination (Political Criteria, Sub-programme 1 - A. Development of democracy, HR and respect for minorities and B. Civil Society).

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

Government does not provide at central level specific funds for NGOs and trade unions working on anti-discrimination. The exception is represented by the national budget representing the contribution of the Romanian Government to the initiative of 2007 - Year of Equal Opportunities. The Government contribution is 301.000 EURO for the implementation of the National Strategy of the Year of Equal Opportunities, including grant schemes for NGOs in the field of anti-discrimination. Managing Authority of the initiative is the National Agency on Equal Opportunities for Women and Men.

<http://www.anes.ro/>

Some other funds offered by the central government focus on social issues (targeting mainly Roma population, people with HIV, etc), and are not consistent with the objectives of National Antidiscrimination Plan initiated and coordinated by NCCD.

<http://www.anph.ro/>

<http://www.mmssf.ro/website/ro/anunturi.jsp>

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?)

The program mentioned above has not clear rules yet. Theoretically, the NGOs and labour unions may access that fund for specific projects aiming at raising awareness on anti-discrimination issues on several grounds.

The only call for proposal that has been launched by the National Agency on Equal Opportunities is on an “ethnographic research on multiple discrimination” (including age, gender, sexual orientation, ethnicity, etc) for which some 51,000 Euros have been made available.

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

Generally, still unknown because no guidelines have not made public yet.

Regarding the research mentioned above, the deadline is April 3, 2007 and the conditions are pretty demanding on the need for partnerships, the expertise of the applicant and what is expected to be produced (reports in Romanian and English with recommendations, a CD with a documentary), particularly having in view the amount of money allocated and the duration of the project which is maximum 4 months. It is pretty obvious that only one project will be considered. At the same the notion of an “ethnographic research” is misleading. In fact, the guidelines indicate that the realization of the project has to rely on discussions with persons that have been victims of multiple discrimination (gender plus others), on their experiences.

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

Non applicable.

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

The conclusion drawn from the available public information sources available (governmental newsletters, websites, etc.) is that there are no specific governmental funding possibilities at regional and/or municipality level for NGOs and trade unions working on anti-discrimination.

Very rarely, when such initiatives exist, they depend very much on the understanding and willingness of local governmental authorities. In principle is difficult to deeply investigate and document such funding because they are not the result of a public policy pursued by the governmental authorities, but rather ad-hoc local initiatives. A few such initiatives that happened had in view small support for round tables initiated by local NGOs. Bu the truth is that in Romania de-centralization is rather on paper, and local authorities do not have much initiative unless they have clear guidelines from central government.

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?

Private funding does not really exist in Romania. In recent years companies have started to develop some Corporate Social Responsibility initiatives, but these are still rare and usually dedicated to child issues or environmental protection. Anti-discrimination is not at all an issue for private funding, one reason being that antidiscrimination policies are generally perceived as a part of the “political correctness” ideology without any real connections with the concrete development and management of the employment field. The only good news is that a number of multinationals and some trade unions have started to work on internal anti-discrimination policies at the work level but only on gender.

The number of other private donors interested on and providing funds for antidiscrimination projects is limited (the Open Society Institute, the Central and Eastern European Trust, the Balkan Trust) and their funds are of a small scale.

8. Are there any other source of funding?

A few Bucharest based embassies provide very modest funds for projects that target aspects of anti-discrimination (particularly on ground such as sexual orientation, disability, gender and Roma belonging), but not the phenomenon as such, namely aiming at developing antidiscrimination public policies.

At the same time some UN agencies (UNDP, UNICEF) still develop and implement in partnership with local NGOs programs targeting various forms of discrimination, but their initiatives are very much reduced, as these structures are close to an exist strategy from Romania.

IV. Diversity Management seminar

Design of the training

The training was organized on January 24th, 2008, between 9:30 a.m. and 4:30 p.m. and the 58 participants had the occasion to lecture presentations made by Dr. Kazuma Matoba and the representatives of Coca Cola HBC and ABN AMRO Bank, but there were also time allocated to interaction.

The main subjects discussed and presented were: the diversity management, European realities, Romanian realities, good practice and models of diversity management, case studies, understanding the competencies of diversity, the image of a company who succeed in efficiently managing diversity, future plans.

Preparation of the seminar

Significant differences were definitely recorded regarding the general understanding of the Diversity Management according to the subject analyzed in Romania.

Generally speaking four categories of subjects could be identified:

- the corporate environment,
- government,
- non-governmental organizations,
- civil society.

Each of the groups seems to perceive the concept of Diversity Management in a different way.

*A) The **Corporate environment** is also split in several categories:*

- 1) Multinational companies
- 2) Large Romanian private companies and State owned companies
- 3) SMEs – Small and Medium Enterprises

*A1) **Multinational companies:***

The employees are generally aware of the increased importance of the diversity in their corporate agenda – the main challenges that they are facing are:

- Integrating different national groups into a multinational corporation
- Balancing the role and the presence of the women and men in the management of the company

Any clear corporate agenda is usually coming from the headquarters of the multinational company affecting the Romanian office – being clearly stated in the performance score-card of the Country Manager and HR Director.

*A2) **Large Romanian private companies and State owned companies***

There is a general lack of awareness regarding the Diversity Management, as most of the times the management of the company never heard about it. The employees of these companies are in the same situation.

A3) SMEs – Small and Medium Enterprises

The management of these companies is struggling on a daily basis with business issues – even if the self-educated individuals in the top management of these companies are aware of the DM, they are focused eventually on respecting the minimum standards and legal requirements so that their company is not legally offended, but the main focus of the business is financial sustainability and business growth.

B) The Government

There are specific Governmental organizations in charge with antidiscrimination as “Consiliul National pentru Combaterea Discriminarii” [The National Council against Discrimination]. Such governmental organisms were created in order to ensure the implementation of the general directives of the European Union regarding Human Rights. Except for these special bodies, the rest of the authorities do not know about Diversity Management and they would re-direct you back to these organizations.

C) Non-governmental organizations

There is more and more awareness of the anti-discrimination concept, thanks to some NGOs which actively educated others non-profit organizations with regards to anti-discrimination. Since these NGOs were struggling for protecting the rights of the civil society, of the employees all over the country, there is a common misunderstanding between anti-discrimination and diversity management. The NGO’ representatives almost never worked in a company, and therefore, they sometimes perceive the corporate world as being an “evil, non-human, profit-oriented machines that wouldn’t give a dime about human life as long as there is profit and money”. This false perception is directing the NGO sector more in educating other NGOs and the civil society on how to legally deal with cases of discrimination, but not on educating the corporations on how to use diversity in their advantage. It seems to be a large gap between NGOs and corporations.

D) Civil society

The big majority of the employees never heard of the diversity management concept, maybe some of them heard about anti-discrimination concept. Few people are standing up for their rights, and only few people would complain about abuses or discrimination cases. There is a general lack of knowledge on how to identify such situations and what to do to solve such a situation. There is an enormous gap to be filled with regards to education of the civil society.

The DM concept is rarely present on the discussions agenda. However, the most commonly discussed subject in the media is: Roma integration. The general public opinion seems to be against the efforts of the State and government of allocating money and efforts in integrating Roma population (“they would never take advantage of these opportunities, and they will never be able to integrate into a normal society”). Generally speaking it seems that discrimination is commonly accepted by the majority of Romanians (it is normal for the young people to have more employment opportunities, it is normal for men to receive better payment, it is normal that the ethnic minorities should struggle with the integration and the majority shouldn’t pay any effort in integrating them, even the non-practicing orthodox (majority) are complaining about the other religious cults attracting more believers, and the EU regulations are perceived as defending a “normal” way of life for a “normal” country as the Western ones, but it will take a long time until we will be able to live by these standards.

The good practices on the Diversity Management in Romania are implemented by multinational companies. For instance, Procter & Gamble and Coca-Cola HBC are companies with some promoted cases of Diversity Management.

Procter & Gamble has implemented in the performance of the management score-cards a clear set of objectives about increasing the quotas of women in the middle and top management positions, about the quotas of newly hired females, about the ratios of Romanians, Bulgarians, Serbians, Bosnians, Macedonians and Albanians working in the Bucharest office. Beside these practices, the access to the new P&G office was especially designed to facilitate the access of disabled people, and strong efforts were concentrated around the plan of benefits which should allow young and career-oriented mothers to be able to work at the office while P&G organised a special Day-Care Centre for their kids.

Coca-Cola HBC (Hellenic Bottler Company) has promoted many times its recruitment plans covering many geographical areas of Romania (they have several bottling facilities all around Romania) – and which is aiming at hiring diverse groups of people (education wise, ethnic wise).

Companies are strongly divided into distinct clusters:

For the multinational companies with culturally diverse workforce (especially the ones organized on a country hub structure with the regional headquarters in Romania) – being able to combine the talent of different ethnical groups who speak the local language has proved many times to save time, money and efforts in ridiculous plans of implementing standardized marketing plans (for example) which would not work in a particular country for some specific cultural reasons.

For the rest of the companies (SMEs and large Romanian private companies) their main concern is taking advantage of the economical growth and opportunities of the country while ensuring that the legislation is respected. The strong focus is on the market and on the competition. The only reason for them to take up the issues of DM, would be to have a strong need to start tackling this subject. A raising issue for many employers in Romania is the labour force which is becoming scarce and extremely demanding. If until recently, all the companies could afford to hire exceptional young graduates with remarkable abilities, now some of the companies are looking for employees outside Romania (because of the lower costs and better specialized labour supply).

Carrying out the seminar

Two companies were invited and made presentations during the DM seminar: ABN AMRO Bank (Head of Sustainable Development ABN AMRO Romania) and the Coca Cola HBC.

The ABN AMRO made a presentation on “*ABN AMRO approach to diversity and inclusion*”

The Head of Sustainable Development at the ABN AMRO suggested that “Diversity is important to ABN AMRO because:

- We need to recruit, engage and retain talented people. This means attracting people from the widest possible pool, and ensuring we have a supportive environment for all.
- We need to reflect the diverse nature of our customer base to enrich client engagement.
- Diversity enables us to harness a wide variety of different talents and multi-dimensional perspectives, helping us to become more innovative and creative.
- We believe it is the right thing to do, in line with our company values of respect, integrity, teamwork and professionalism. “

Their presentation included also:

- 1) *The D+I learning toolkit* – provided an insight on how to make these trainings more diverse and inclusive for specialists and employees,
- 2) *Increased Communication and Awareness* – presented the following case studies:
 - *Ramadan dinner at ABN AMRO*: two employees in Amsterdam arranged the Ramadan dinner in collaboration with the D+I team at the company headquarters on the 2nd of October 2007. As they were detached from the religious connotations, the practicing and non-practicing attendees from neighboring companies, representatives of the city administration and colleagues enjoyed a pleasant atmosphere and exchanged thoughts on the importance of fostering cultural openness.
 - *Amsterdam Gay Pride Parade*: for the second consecutive year, ABN AMRO joined the parade with its own boat. Next to the ABN AMRO logo this year's theme was "ABN AMRO stays colourful". The weather was excellent and the parade itself was a colourful and joyful event including statements against (increased) discrimination.
 - *Launching D+I in Business Unit Asia* - ABN AMRO Taiwan, for instance, distributed toy pigs and red hearts to its staff. In Taiwanese, 'pig' is pronounced as the English letter 'D', and 'heart' is pronounced as the English letter 'I'.
- 3) Work life balance in the UK
- 4) Bringing diversity to the business
- 5) Diversity + Inclusion and YOU Award – recognizing employees
- 6) Royal Bank of Scotland

Main lessons learned

Almost all the respondents declared that the examples provided by the ABN AMRO Romania were very useful for their future work. An important percentage of the respondents agreed on the quality of interaction between them and with the speakers.

All the respondents declared that they will apply the acquired information in their work and they will share it within their companies. Some of them even gave actual references to situations when they will disseminate the information to their colleagues. More than half of the respondents mentioned that they will be more oriented to the young segment of the population, rights of the patients (mentioned by one of the respondents from Roche that the information will be used also in the field of the rights of the patients: "[...] support to the Association of patients for receiving knowledge on the Human/Patients' Rights."), developing networking, recruiting and inviting persons with disabilities in their teams.

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.