



## **NATIONAL ACTIVITY REPORT SPAIN ANTI-DISCRIMINATION AND DIVERSITY TRAINING**

**Fundación Luis Vives**

**May 2008**



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This project and publication has been commissioned by the European Commission under the framework of the European Community Action Programme to combat discrimination (2001-2006). This programme was established to support the effective implementation of new EU anti-discrimination legislation. The six-year Programme targets all stakeholders who can help shape the development of appropriate and effective anti-discrimination legislation and policies, across the EU-25, EFTA and EU candidate countries.

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

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

The national activities were carried out by Fundación Luis Vives ([www.fundacionluisvives.org](http://www.fundacionluisvives.org)).

**I. Table of contents**

I. Table of contents ..... 3

II. Introduction ..... 4

III. Anti-discrimination seminars ..... 7

    a) National activities anti-discrimination seminars ..... 7

    b) Mapping exercise: NGOs/Trade Unions working to combat discrimination ..... 11

    c) National legislation in the field of anti-discrimination..... 23

    d) Funding opportunities in the field of anti-discrimination..... 33

IV. Diversity Management seminar ..... 38

Annexes ..... 42

The role of trade unions combating discrimination..... 42

General Findings and Conclusions from the anti-discrimination seminars..... 46

## II. Introduction

The Luis Vives Foundation was selected as national partner to implement this project in Spain.

During 2007 and 2008, the Foundation has organised three seminars:

- Two focussed in anti-discrimination: one in Madrid, on 27<sup>th</sup> and 28<sup>th</sup> September 2007 and the second one in Barcelona, on 27<sup>th</sup> and 28<sup>th</sup> March 2008 in partnership with Barcelona's City Council [Office for Non-Discrimination](#).
- One focussed in diversity management which took place in Madrid on 26<sup>th</sup> February 2008.

The **anti-discrimination seminars** attracted 92 participants from 80 organisations (NGOs, trade unions and public administrations) who analysed and discussed the role of NGOs and trade unions in combating discrimination.

### ANTI-DISCRIMINATION SEMINAR 1

- |  |  |
|--|--|
| • Fundación Esteban Maradona   | • Federación Progresista de Asociaciones de Mujeres y Consumidores de Castilla la Mancha |
| • ACCEM  | • Fundación Mujeres  |
| • ACOBE  | • Red2Red Consultores  |
| • ACULCO   | • Asociación Sociocultural Atamán  |
| • AICODE   | • Qualifica.Cualificación para el empleo   |
| • ANPREGIT, Asociación Nacional Presencia Gitana                           | • Confederación Estatal de Personas Sordas   |
| • CEAR, Comisión Española de Ayuda al Refugiado                            | • Fundación Atenea Grupo-GID   |
| • CONIBEROAMERICA  | • Fundación Provisa  |
| • Fundación Secretariado Gitano  | • ATTAC  |
| • Red ACOGE, Federación de Asociaciones pro Inmigrantes                    | • FESOPRAS   |
| • SOS Racismo  | • Instituto de la mujer  |
| • VOMADE, Voluntariado Madres Dominicana                                   | • FEACEM   |
| • Federación Nacional de Asociaciones de Mujeres Gitanas Kamira            | • Instituto de Cultura Gitana  |
| • Asociación FEAPS para el Empleo de Personas con Discapacidad Intelectual | • EAPN Castilla la Mancha  |
| • COCEMFE  | • UGT Castilla la Mancha   |
| • Federación Estatal de lesbianas, gays, transexuales y bisexuales         | • FEAFES   |
| • CEPAIM   | • Anímate a Estudiar (México)  |
|  | • Fundación Secretariado Gitano  |
|  | • Fundación ONCE   |
|  | • AFEM   |

### ANTI-DISCRIMINATION SEMINAR 2

- Fundación ONCE
- Fundación Pere Ardiaca de Barcelona
- Casal dels Infants del Raval
- Red Europea de Mujeres Periodistas
- Oficina de Vida Independent (OVI)
- Fundació Pere Tarrés
- Asociación Catalana de Espina Bífida e Hidrocefalia
- CCOO
- Centro Boliviano Catalán
- FEMAREC, SCCL
- Asociación Aragonesa Pro Salud Mental
- Fundació Catalana de L'esplai
- Asociación Prohabitatge
- Ajuntament de Barcelona- Oficina per la No Discriminació
- Fundación Secretariado Gitano
- Ambit Prevenció
- Red2002
- Acsar
- Generalitat de Catalunya - Departamento de Gobernación
- Asociación Creación Positiva
- Aspaym Catalunya
- Associació M3 sERVEIS Socials
- Cruz Roja
- Ayto. de Terrassa
- CCOO de Catalunya
- Fundación Koine -Aequalitas
- Asociación "Palomas, Mujeres de Hoy"
- ACCEM
- Fundación Esplai
- Federación Española de Asociaciones de Espina Bífida e Hidrocefalia (FEBHI)
- Ayto. Gavá/Drets Civils
- Fundació Els Tres Turons
- Cruz Roja Castilla y León
- GES
- Fundación Los Tres Arcángeles
- SAIER (Servei d'Atenció a Refugiats i Immigrants Creu Roja a Barcelona)
- Fundación Arede
- UGT
- Asociación de la casa de la mujer migrante
- Salut Mental Sabadell
- Barcelona Activa. Sociedad Pública Municipal de Fomento de Empleo e Integración Sociolaboral.
- Sindicato Unitario
- Mujeres solidarias de Sanlúcar



A variety of Spanish experts in anti-discrimination were selected to design, facilitate or take part in the seminar. Below we list them and indicate their area of expertise:

### **From NGOs**

- Virginia Carcedo, European Affairs Coordinator (Fundación ONCE)
- Mercè Meroño, Coordinator of the “Guiding ourselves on Civil Rights” Programme (Associació Àmbit Prevenció y Asociación Creación Positiva)
- Cristina Domínguez, Expert in anti-discrimination
- María Carrasco, Equal Treatment Officer (Fundación Secretariado Gitano)
- José Manuel Fresno, General Manager of Fundación Luis Vives
- Alia Chahin, International Affairs Coordinator (Fundación Luis Vives)

### **From trade unions**

- Josep Millán, Lawyer of UGT
- Sixte Garganté, Lawyer of CCOO

### **From public sector organisations**

- Guadalupe Pulido, Director of Oficina per la No Discriminació (Non-discrimination Office) of Barcelona’s City Council
- Glòria Martínez, Psychologist (Oficina per la No Discriminació)
- Esther Sesma, Social Worker (Oficina per la No Discriminació)
- Xavier González de Rivera Serra, Judge specialised in social matters

### **From the private sector**

- Alicia Teruel, Lawyer
- Carmen Santiago, Lawyer
- Mireia Montesinos, Lawyer

The main highlight from these seminar was that participants and experts joined knowledge and experience to draft a **statement** which summarises the main ideas debated during the seminars as well as their recommendations for the future.

The **diversity management seminar** attracted 41 participants from 28 different private organisations who analysed and discussed the concept of diversity management and what are the potential benefits of developing policies aimed at managing diversity. The seminar was designed and facilitated by the Diversity Management expert Sonsoles Morales.

- ACCEM
- OHL (Obrascon Huarte Lain)
- CEPAIM
- Empieza consultora, s.l.l.
- Fundación RAIS
- MCA-UGT
- Inveslan
- Fundación San Ezequiel Moreno
- AEDEIS
- Fundación Andaluza Fondo de Formación y Empleo
- MILENIUM3, Servicios de Gestión del Conocimiento
- Red ACoge
- Betania Legio
- Dedalo Consultores, S.L
- Tiebel Sociedad Cooperativa
- Fundación Radio ECCA
- Asociación Centro Trama
- Ayuntamiento de Paterna
- EYEE Estudios Empresariales, A.I.E.
- Asociación de Profesionales de la Interculturalidad en Red
- Oficina de Empleo del Ayuntamiento de Madrid
- Ekinbide, S.L.
- AMEI
- ESIC
- Agrupación de Desarrollo "Los Molinos"
- European Professional Women Network
- Red Europea de Mujeres Periodistas
- Fundació Deixalles

### III. Anti-discrimination seminars

#### a) National activities anti-discrimination seminars

#### Design of the training

For the design of the training (manual, target group, role international trainers, trainers, organising NGO) we followed the given guidelines but also tried to adapt as much as possible to the Spanish reality. After the experience of the first seminar we realised that the methodology needed revision as not enough time was dedicated to participation. We therefore re-design it for the second seminar, trying to encourage participants to interact from beginning to end. This was perceived by the participants as a good choice.

#### Preparation of the seminar

- The Luis Vives Foundation was selected as **host country of the Train the Trainers seminar** for Portugal, Greece and Spain which took place in Madrid on 26<sup>th</sup> and 27<sup>th</sup> April 2007. This event was perceived as a very positive experience by all participants as it encouraged mutual learning and gave them the opportunity to share experiences.
- The large attendance of NGOs and the weak attendance of trade unions showed us that the **communication channels** chosen to announce the seminar worked in the case of the NGOs but not in the case of trade unions. It is important to bear in mind that in the case of Spain, trade unions and NGOs do not have a co-operating culture. This means that more efforts and resources need to be allocated to persuade trade unions and NGOs of the importance of joining forces, of collaborating with each other and of attending forums of this type.
- **Logistical arrangements** were well evaluated by participants in both seminars. Some participants commented that there would have been more participation and discussion if we had selected a world style café layout instead of a classic seminar layout. However, this would normally increase the cost of logistics (there are not many venues that cater for this type of events and those who do are more expensive because the room needs to be larger). Nonetheless, the experience of the diversity management seminar demonstrated that this style of layout is very successful.

#### Carrying out of the seminar

*Fundación Luis Vives. Plaza de Oriente, 7. 28013, Madrid*

- **The attendance:** in total, 92 persons from 80 organisations took part in both anti-discrimination seminars, with the following profile:

- o NGOs: 84%
- o Trade unions: 8%
- o Public administrations: 8%

This ratio reveals, on one hand, the need of more awareness raising activities targeted at trade unions; on the other, the increasing interest among public institutions in being trained and acquiring more knowledge on how to combat discrimination.

- Regarding **the process during the day** we would like to highlight two ideas:

- o Participation and discussion fluctuated during the day. Sessions that started with ice-breakers were the ones where assistants were more proactive. In both seminars, the training started with an ice-breaker based on stereotypes lead by one of the national trainers. As a result, assistants started participating spontaneously very quickly. We therefore recommend making available a list of ice-breakers that trainers can use for sessions scheduled at the beginning of the programme or after breaks.
- o Basic concepts were too often repeated and not enough time was dedicated to group discussion or practical activities. For this reason, we recommend to work in the content and methodology in more depth with national trainers. In our case, coordination became a little complicated as trainers came from different regions of Spain, especially because we had not foreseen in the planning or in the budget regular meetings with the trainers.



The main findings emerging from the participant's evaluation forms highlight that:

1. Both seminars were perceived as a very positive initiative:
  - 77% of participants thought the seminar was interesting or very interesting.
  - 70% think they will be able to apply what they learnt at work
  - Participants were generally satisfied with the quality of the information presented by the experts (70% of participants have considered that all of them presented good or very good information).
2. More time could have been assigned to discuss topics in more depth. Likewise, more time needs to be allocated to discussion within small groups or practical work. Some participants felt the experts focussed too much time on theoretical presentations.

### **Main lessons learned**

- a. The anti-discrimination seminars attracted organisations working in all grounds of discrimination, especially in the second seminar which attracted a wider variety of organisations (NGOs, trade unions and public sector organisations) as a result of a partner approach: working with the Office for Non-Discrimination improved our visibility and opportunities to attract other organisations. In the future, we recommend organising this type of seminar with the support of either a grass-root organisation or a public organisation with wide and good practice experience in combating discrimination.
- b. These seminars raised awareness on the importance to join forces and work together. This is very significant for Spain as, traditionally, Spanish organisations (public or private) have chosen a vulnerable group approach to discrimination. This means that Spain has a wide variety of organisations working in this sector but focussed in a specific ground of discrimination. Taking this into consideration, these seminars have, for the first time, brought together in a forum NGOs working in all grounds of discrimination with trade unions and fostered joined analysis, discussion and debate on the current situation and needs. In the end, it highlighted the need of creating an umbrella organisation specifically aimed at fighting discrimination regardless of the ground of discrimination.
  - It was an opportunity to evaluate the interest of NGOs and trade unions with regards to discrimination. On one hand, the weak participation of trade unions demonstrated that more raising-awareness activities need to be targeted at them. Although lot of efforts were put in this direction the results were not very satisfactory. On the contrary, NGOs demonstrated throughout both seminars that they were very keen to take part in this type of seminars now and in the future.
- c. It was also a good opportunity to evaluate the knowledge of NGOs and trade unions with regards to discrimination. Both seminars highlighted that they are well aware of the legislation but require more specific training on: psychological support, communication and lobbying, good practice in other Member states, etc. In any case, these seminars gave us the possibility to provide generic training and therefore balance participants' knowledge.
- d. Participants valued very positively the great network opportunity it gave them, especially with organisations working in different grounds. Similarly, it created an ideal space to share experience and good practice.
- e. The fact that participants mentioned that not enough time was dedicated to participation highlights that more time needs to be dedicated to selecting the appropriate methodology and schedule.



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

The late implementation of a Spanish welfare state combined with the privatization of public services has highly influenced the development and creation of voluntary organisations that not only defend social and human rights but also provide services to the community.

It is important to say that policies developed by the Spanish authorities to fight against disadvantaged communities tend to include actions and plans based on social inclusion rather than anti-discrimination or equal opportunities. Proof of it is the lack of observatories, statistics, evaluation processes dedicated to the study of discrimination.

This document aims at responding to the questionnaire by presenting the perspective of the main organisations working in the field of anti-discrimination and equal opportunities as there aren't many organisations in Spain working in this field. The questionnaire was sent to a selection of those that are more representative nation-wide as they reflect the current situation.

### **I. 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?**

**Trade Unions:** CCOO (Comisiones Obreros, FOREM/CCOO (Fundación Formación y Empleo Miguel Escalera), and CONC (Confederal de Catalunya), Unión General Trabajadores and Unión Sindical Obrero.

**Associations of Gitanos:** Foundation Secretariado Gitano, Federation of Gitana Women; Kamira, Gaz Kalo;

**Ethnicity, Immigrants, Xenophobia and Human rights:** SOS RACISMO, (Madrid and Navarra) Association Rumiñahui, Association Pro Derechos Humanos APDHA of Andalusia (Cordoba and Cadiz), Movimiento por la Paz, el Desarme y la Libertad (MPDL), CEPAIM, Observatory of Barcelona and ACCEM.

**Disability:** Foundation Once

**Sexual Orientation:** Foundation Triangulo.

**Generalist, including discrimination:** Spanish Red Cross and Cáritas

**Religion:** there are no organisation specifically dedicated to this area of discrimination

**Age:** there are 2 big umbrella NGO working on age that are Unión Democrática de Pensionistas (UDP) Confederación Española de Organización de Mayores (CEOMA). These organisations mainly work with retired people but discrimination issues are not one of their priorities.

In general, there are between 12,000 and 15,000 NGOs working in different social areas. 40% of them were created after 1990, about 1,200 are working at national level and the rest are locally based. Most of these local NGOs are small or very small.

**Disability:** is the strongest sector, about 3,000. They are usually big or middle sized and are well organised between them (confederations, federations, networks).

**Roma:** there are about 300, 20 of them work at national or regional level and the rest are locally based, most of them are very small with very few activities.

Immigration: there are 3 kinds of NGOs working in this sector, the ones with a broad approach such as Cruz Roja or Cáritas, support NGOs and ethnic NGOs led by their own community. This last group is usually composed by very small NGOs.

Sexual Orientation: most of the organisation working in this ground are middle sized.

**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)?**

They are mainly focused on Employment, disability, sexual orientation, immigration and Gitanos. The tendency is to do social service and welfare work. Spanish people and other immigrants are slightly concerned about around Islamophobia, but it is not a strong consciousness. In relation to age, there are few programmes or organisations although CCOO/ FOREM have a programme particularly dedicated to this area.

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

The majority of NGOs work in areas of social inclusion and are not specialised in discrimination. However, there are some organisations such as SOS Racismo, ADPHA, Observatory de Barcelona (local service) and CEPAIM that are specialised in this field. The main area of work of trade unions is access to employment and training. Equal opportunities and diversity is only a small part of their work

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

In Spain, registering an association is very simple and inexpensive. It only requires an agreement between 3 persons, a constitution, a name and the payment of a small registration fee. Creating a foundation is more complicated as it requires a minimum of 30.000€ and the approval of public authority.

In terms of trade unions, the sector is dominated by a few nation-wide organisations. There are 2 main trade unions: CCOO and UGT and a few specialized in concrete sectors such as education. They can be created but it will be difficult that new ones will have the necessary influence to reach their objectives.

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

CCOO has over 1.200.000 members, UGT 1.000.000, and USO over 110.000. NGOs have different sizes. For example, Cáritas has 60.000 volunteers and 4.000 paid staff, the Spanish Red Cross is larger with more than 800 offices all over Spain. The Foundation Secretariado Gitano has over 550 paid workers, ACCEM has 400 workers, 300 collaborators and 350 volunteers, CEPAIM has 110 paid workers, Observatory de Barcelona has 10 paid workers and the Foundation ONCE has 90 workers, but only five are working on discrimination full-time. Foundation Triangulo has 14 paid workers and 100 volunteers.

Association Rumiñahui has about 10.000 Ecuadorian members, 2 full-time and 6 part-time workers, the Association Pro Derechos Humanos; APDHA of Andalusia has 1200 members, MDPL did not give figures of membership, SOS Racismo has 8 offices around Spain and a few paid workers and perhaps a couple of hundred volunteers, Gaz Kalo has 14 Associations of Gitanas in Navarra, and Kamira has more than 10 groups of Gitana women, but they are volunteers.

Small NGOs are generally composed by volunteers and usually they have no more than 5 paid staff.

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

Most of the large organizations are part of national networks but none of these are specialised in anti discrimination except ENAR. However, SOS Racismo, Association Rumiñahui, Association Pro Derechos Humanos; APDHA, Kamira, Observatory de Barcelona are not part of any of these networks.

In general, small NGOs are part of the federation or confederation working in their area of action.

As per the trade unions, the fact that there are not many leaves small space for networks. They tend to cooperate with NGOs but cannot be part of these as they are organisation of different nature.

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

The great majority are based all over Spain, but the Observatory de Barcelona, the ADPHA and the GAZ KALO are based in the city of Barcelona, Andalusia and Navarra, respectively. Small NGOs are generally based in local areas.

Trade Unions are based in the entire territory, at national with delegations at regional and local level.

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

The work that NGOs/trade unions develop in capitals and the rest of the country is similar, generally not focused on anti-discrimination. The intensity of their work will depend on their structure and financial capacity.

**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)**

CCOO and UGT are the main trade unions. USO has less weight around the country.

In terms of NGOs, it is important to state that the associative movement is recent which means that the voluntary sector is in process of development. The importance of some organisations will depend in their resources and in some cases in the support received by the government or the implication of the civil society. This is the case of Cruz Roja, Cáritas, the Foundation Secretariado Gitano, MDPL, Foundation ONCE, and ACCEM. In the field of discrimination, most organisations have focussed their work in the areas of gender, disability and sexual orientation as they have been on the political agenda. This is the case of the Foundation Triangulo, SOS Racismo, Association Rumiñahui, ADPH in Andalusia or the Observatory de Barcelona in Barcelona.

In general terms, these NGOs are starting to become more relevant in the political and media agenda but there social weight is still quite weak and requires further development.

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

The majority of the NGOs are participating with other NGOs; Spanish Red Cross, Cáritas, Fundación Secretariado Gitano, MDPL, Fundación ONCE, CEPAIM, ACCEM, Gaz Kalo and SOS Racismo are participating at national level, but less with Trade Unions. NGOs are sharing expertise, but do not collaborate much on casework.

CCOO and UGT Trade Unions cooperate between each other, in particular in areas of employment and legislation initiative

Generally, NGO and Trade Unions collaborate poorly although there is a tendency to be more and more collaborative.

**11. How are these NGOs funded?**

- a. Do they receive state funding?*

According to the last research, 60% of the income received by NGOs come from national, regional or local governments. The rest comes from different sources (private donors, fundraising, etc.) This is the case of the Fundación ONCE which receives the 3% of the lottery tickets sold by ONCE or the case of Cáritas with a 62% of their funds coming from private donors. There are also some organisations that receive very small funds from the government such as SOS Racismo, KAMIRA or GAZ KALO

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

Generally, there are no restrictions for NGOs as long as they comply with their legal and financial obligations although they are normally limited by the territory in which they act. If an organisation is local or regional they will have to apply to a local or regional governmental fund. The same applies to national organisations.

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

Private funding is more and more frequent amongst NGOs, especially through Savings Banks Trusts. However, this type of funding is still a minor source of funding.

- d. Do private funders impose any restrictions or conditions?*

There are no particular restrictions or conditions to apply to private funding although most of them set priorities to suit their interests or needs.

**12. How are these trade unions funded?**

- a. Do they receive state funding?*

All trade unions are mainly funded by the government and their member's fees

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

Generally they do not receive funds from political parties although some can receive certain pressures from one or two parties.

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

CCOO, UGT and the rest of trade unions are funded 70% to 80% by their members' quotas.

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

Trade Unions are able to receive private funding and generally search for funding at European or International level.

**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?**

In general, lack of funding directly influences the scope or scale of Spanish NGOs/Trade Unions. Those which size is large tend to plan their activities according to their priorities. This is the case, for example, of Cáritas, Foundation ONCE and Foundation Secretariado Gitano. On the contrary, NGOs such as Cruz Roja, MDPL, APDHA, CEPAIM, ACCEM, Association Rumiñahui, Gaz Kalo or Observatory de Barcelona and trade unions such as CCOO, UGT and USO are limited in their capacity to organise activities, particularly those orientated to fight against discrimination, as they will directly depend of the public funding available

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

*a. Neighbourhood countries?*

CCOO, UGT, USO work with neighbourhood countries. In some cases, Italy, Portugal and France trade unions. They are part of the European Trade Unions Confederation.

NGOs: Foundation Secretariado Gitano, ONCE, UNAD, Cruz Roja, CEPAIM with Belgium and Morocco, the Foundation ONCE. ACCEM works sometimes with some European partners and the Observatory de Barcelona works sometimes with European projects that combat discrimination.

*b. Other new EU Member States?*

CCOO and UGT work with other EU Member States through transnational programmes funded by the EU (Socrates, Leonardo, EQUAL). The country will depend on the project.

NGOs: Foundation Secretariado Gitano, UNAD, Cruz Roja, the Foundation ONCE

*c. Others?*

CCOO and UGT rarely work with other countries.

NGOs: Cruz Roja with the International Federation of National Societies of the Cruz Roja, Association Rumiñahui with Ecuador, APDHA works with Migreurop, the European League of Human Rights (and Red Chabaka on Morocco), MDPL works with EUMC, Cáritas, CEPAIM with Senegal, Foundation Triangulo with Latin American countries

In general, small NGOs have poor relationships with other countries and their links are very occasional, these will depend on projects that have an international or European funding source.

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

The majority of the NGOs mentioned above work at international level. Small NGOs do not have the capacity to act at international level.

**16. Can they work in English?**

Spanish NGOs and trade union do not generally have the capacity to work in English.

**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?**

CCOO and UGT are trade union that are not linked to a specific political party but they have close cooperation with left hand parties such as PSOE and IU and are sometimes influenced by them.

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

It is possible to find trade unions which regional or local delegations work on anti-discrimination even if headquarters does not. The questionnaire does not aim at immigration or only racism but the 5 grounds of discrimination of the 2 anti-discrimination directives.

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

**19. What kind of work do they do?**

CCOO's discrimination department (CCOO, FORMEN and CONC) & UGT have political action plans in the areas of employment and access to employment. USO works on discrimination in general without specialising on specific grounds and takes part in SOS Racismo and ENAR.

In the case of NGOs, there aren't many organisations that work specifically in the field of anti-discrimination. Some that do are the Foundation Secretariado Gitano, Federation of Gitana Women Kamira, Gaz Kalo, Association Rumiñahui, MDPL, ACCEM, Foundation Once and the Foundation Triangulo. SOS RACISMO, (Madrid and Navarra), CEPAIM, APDHA, and Observatory de Barcelona with a target approach rather than a general approach.

The discrimination work is a small part of the Spanish Red Cross of the social service work they do and Cáritas about poverty and excluded people.

Human Rights organisations are generally centred in the ground of immigration.

**20. Do they take up complaints of discrimination?**

In general there is poor action in this subject although CCOO, UGT, USO, Kamira and Gaz Kalo, SOS Racismo. CEPAIM, Observatory de Barcelona and APDHA take complaints of discrimination. Organisations like the Foundation Secretariado Gitano edit an annual book about the anti-discrimination.

Small NGOs rarely have the capacity to take up complaints as the process is long and complicated.

**21. Do they focus on their own community?**

In general NGOs/Trade Unions focus their work generally on their own community or members even if the impact of it tends to affect the situations of other communities.

**22. Do they work with victims directly?**

CCOO, UGT and USO work directly with victims.

The Spanish voluntary sector doesn't have many organisations working with victims of anti-discrimination. Some that do are the Foundation Secretariado Gitano, Kamira, Gaz Kalo, SOS Racismo, Association Rumiñahui, APDHA, CEPAIM, ACCEM, Foundation ONCE, Foundation Triangulo and Observatory de Barcelona help anti-discrimination victims. Other organisations like MDPL do not help victims directly but orientate them to others services.

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

Within the company, trade unions will be able to represent the rights of all workers. However they will not be able to do this in court.

**24. Do they do 'case work'?**

CCOO, UGT and USO carry out casework.

In general, small and large NGOs do not do "casework". However, there are some that do such as Foundation Secretariado Gitano, Kamira, Gaz Kalo, SOS Racismo, Association Rumiñahui, APDHA, CEPAIM, ACCEM, Observatory de Barcelona and Foundation Triangulo do case work. Cáritas sometimes does cases work. The Foundation ONCE, MDPL and Cruz Roja orient the victims to other entities.

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

In general, NGOs/trade unions do not have access to state funding for casework. Some do receive them for legal representations. This is the case of the Observatory of Barcelona, CEPAIM and ACCEM.

**26. Does this include legal representation?**

*Please refer to the answer above.*

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

NGOS/trade unions have legal standing in judicial and administrative procedures only if the victim has officially agreed on it.

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

Class actions do not exist in Spain.

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

Some NGOs do other practical work (assistance to victims, social assistance, etc). Trade Unions do practical work in the field of employment.

**30. Do they advocate changes in legislation and policies?**

Generally, trade unions advocate changes in legislation being successfully in many cases.

The situation is different for NGOs. Some try to advocate changes but many are not successful. Those that are more influential are the Foundation Secretariado Gitano, Cáritas, CEPAIM, ACCEM, Observatory de Barcelona, Foundation ONCE, Foundation Triangulo SOS Racismo, Association Rumiñahui (they have changed some laws in Ecuador and the policy around domestic servants).

Small NGOs do not have the capacity to influence changes in legislation and policies unless it is through their networks.

**31. What are their relations with the central government?**

Trade unions like CCOO, UGT and USO have good relations with the central government.

The relations between NGOs and the central government are generally good and quite collaborative.

**32. With regional governments or municipalities?**

Similarly as with the central government, NGOs/trade unions have good relations with regional governments or municipalities. They tend to cooperate between each other. The scope of this cooperation will normally depend on the political party in power.

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

The CCOO, UGT and USO Trade Unions have good and bad relations with the employers organizations, having negotiated contracts with anti-discrimination clauses, although some of employers organizations have conservative postures.

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

CCOO and UGT have good relation with the Defensor del Pueblo.

NGOs have little relations with specialised bodies/ombudsman. It is known that the Foundation Secretariado Gitano, Gaz Kalo and Association Rumiñahui have active relations with the Defensor del Pueblo.

**35. What are the qualifications of the staff?**

The qualifications of staff in the field of discrimination is insufficient. Private companies, NGOs and trade unions require a deeper and broader knowledge in all grounds of discrimination. This is important in order to be able to identify cases of discrimination and being capable to act upon them in the work place but also acquire the skills to be able to deal with them in court cases. One of the grounds that require a better understanding is age. There is also a need of an independent observatory around discrimination. It was planned to be created a couple of years ago but this has not been done. In general, the fact that there is scarce awareness of discrimination is directly related with the low qualification professionals.

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

The training available in NGOs/trade unions is normally very basic. Some organisations like UGT try to implement continuous training plans for their staff. Other organisations try to specialise their workers in social psychology and basic rights (Observatory of Barcelona). But one of the organisations better trained is the Foundation ONCE with 80% of its staff with a type of disability and with an excellent variety of training.

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

Most of the organisations offer or have access to training in writing funding proposals and reporting. However, often small and medium organisations need to improve the skills of their staff. They sometimes do not have the financial or human resources to do this.

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

#### **Trade Unions:**

**CCOO:** they evaluate their success depending on the concrete themes; **UGT:** they carry out evaluation of direct and indirect discrimination. **USO:** finds it difficult to detect discriminatory practices.

The Foundation Secretariado Gitano works on publicities campaigns. “Conócelos antes de juzgarlos”, where TV, Radio, newspapers, posters and assorted materials. This is generally very effective.

Other NGOs have a variety of evaluating systems/tools. For example, SOS Racismo did answer this question, and they made a good evaluation of the media and the politicians. The ADPHA cannot make an optimistic self evaluation because they feel that they are working hard but make little headway, but they do know that their word carries weight. MDPL and Cáritas evaluate every project. CEPAIM are satisfied with the evaluations. ACCEM evaluate the projects and they study the success or the failures. Observatory de Barcelona gives a quantitative statistics of the cases attended and their analysis and they also give a qualitative studies to the actions proposed. The Foundation ONCE has an annual evaluation that determines the management of the programs and they evaluate the success and the failures. The Foundation Triangulo evaluate with questionnaires.

### **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?**

Generally, the main problems faced by NGOs/trade unions are that:

- Often the direct and indirect discrimination in the workplace is not clear or perceived openly as a problem by the general public.
- There is a lack of well trained volunteers and paid staff capable to detect and deal with discrimination cases.
- There is a lack of financial resources to develop equal opportunities or diversity policies capable to face discrimination or manage their human resources effectively.
- The awareness, debate and mobilisation of social actors and the civil society around discrimination is poor.
- There is a lack of specific funding for anti-discrimination projects.
- Discrimination is not a priority in the political agenda.

- The involvement of public authorities in discrimination issues is weak and the initiatives taken are often mixed with initiatives to fight against social exclusion.

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

Lack of funding/staff/expertise is one of the main problem faced by NGOs.trade unions(Please see reply above)

**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?**

The lack of well trained volunteers and paid staff is perceived generally as one of the main problems faced by NGOs involved in anti-discrimination work.

This is caused by several reasons: a lack of funding and high-quality training; lack of public awareness and demand from the civil society; and the lack of a national organisation that could develop public initiatives, implement evaluating mechanisms/tools, offer training or assess statistics.

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

NGOs/trade unions require training in all grounds of discrimination but particularly in acquiring knowledge (legal, social, psychological, evaluation) enabling them to detect discrimination and act upon them.

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

Generally large NGOs and trade unions are capable to acquire the sufficient knowledge in relation to national and European anti-discrimination legislation (the Foundation Secretariado Gitano, SOS Racismo, Association Rumiñahui, MDPL, Cruz Roja, Cáritas, CEPAIM, Observatory of Barcelona and the Foundation ONCE). Small and medium sized organisations find it more difficult to have a specialised knowledge on this matter.

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

The same as for national legislation applies also for European legislation.

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

CCOO staff promote laws, makes policy proposals and advises the government. UGT staff proposes changes in formulating policy proposal and advises the government.

Generally, only the large organisations have staff trained in relation to advising governments. For example, the Foundation Secretariado Gitano staff is trained in advising the government, formulating policy proposals and legislative proposals. A few of the 8 regional offices of the SOS Racismo's staff can advise the government. Association Rumiñahui, ACCEM, the Observatory of Barcelona and MDPL train their lawyers and staff in policy proposals, laws and advice to public administrations. The Foundation ONCE has a very close relationship with the Ministry of Social Affairs as the Ministry is a founding member of this organisation.

Cruz Roja staff trains their professionals and volunteers on discrimination, research, awareness raising, advocacy & lobbying with public authorities related to anti-discrimination legislation.

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

All NGOs/trade unions working fully or partially against discrimination need to do more to promote their anti-discrimination role, in particular the ones cited above with the exception of the Foundation ONCE.

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

All NGOs/trade unions working fully or partially against discrimination need to do more with victims, clients or potential clients, members or potential members. However, they are not the only actors that need to “do more”. The person suffering discrimination needs to complain and denounce these situations with the support of public authorities.

Some organisations feel there needs to be an improvement in recognising situations of discrimination, in developing public campaigns against discrimination and in expand the common knowledge on discrimination of the general public.

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

As per NGO, their relations with the governments are generally acceptable. However, in the area of anti-discrimination their credibility and status is in need of an improvement from both sides. NGO need to initiate new spaces of dialogue and the government needs to recognise the importance of fighting against discrimination.

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

CCOO, UGT and USO have to “do more” with companies / employers organisations. Currently they are in process of negotiating anti-discrimination clauses for some contracts.

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

NGOs and trade unions need to improve their work with the public opinion and in their awareness raising actions. Trade unions struggle in their work against discrimination. CCOO states the “need of an independent observatory in this field”. UGT thinks that the media need to play an important role in this matter and more work needs to be done in this area bearing in mind that Spanish society is very hard to reach. USO comments that the main problems are around “attitudes rather than in the legal system”, in particular around the roma minority and against Islamophobia.

As per NGO, they also need to increase their awareness raising actions and publicise more strongly the work they do. They also require the help of the media and the government. Organisations like the Foundation Secretariado Gitano with its “Office of Equal Opportunities”, SOS Racismo or Kamira are doing a lot but the information and mobilisation of the civil society needs to increase, in particular amongst smaller organisations that require larger and stronger networks in order to create enough impact to attract the media.

NGOs also have to face the negative image of immigration given by the media and sometimes by the government or the police. CEPAIM is trying to develop programmes and campaigns that counteract this problem and that are progressively more effective.

What about other NGOs?

## **51. What would they need to develop?**

NGOs and Trade Unions feel that the following actions need to be developed in order to improve the current discrimination situation in Spain:

1. Develop awareness raising actions aimed at private and public organisations but also at the general public on the following areas:
  - Definition of what constitutes a discriminatory act, in particular in the work place, focussing the information in all grounds of discrimination as gender has had a lot of attention. The ethnic ground requires more attention. USO insists the government needs to ratify the International Conventions and the United Nations living rights for the immigrants and their families and to participate in campaign aimed at giving residents immigrants the right to vote.
  - Develop actions in public schools where there is a high concentration of gitanos and immigrants, in particular minorities coming from the North Africa
  - Give information on what are the current mechanisms to denounce discrimination at national, regional and local levels
2. Governments (European, national, regional and local) need to dedicate more financial resources for:
  - Training aimed at staff working in NGOs, trade unions, private companies' staff but also at volunteers.
  - Casework and litigation
3. Create an independent discrimination observatory which objectives, amongst others, could be to:
  - Analyze the current discrimination situation and its statistics
  - Offer adequate training
  - Develop awareness raising actions
  - Develop best practice guides
  - Provide financial resources
  - Develop preventive actions and strategies focussed in diversity management
  - Develop diagnosis and assessment tools
4. Build up the current networks of organisations fighting against all grounds of discrimination in order to increase their credibility and influence.

## **c) National legislation in the field of anti-discrimination**

### **1. The transposition of the Directives into national law**

The Council Directives 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation were transposed to the Spanish legal system on 30<sup>th</sup> December 2004, beyond the deadline established by the Directive.

Despite the repeated requests and demands made by NGOs and trade unions, the government, headed by the Popular Party, did not show any interest in transposing these directives on time or complying with the Directives' guidelines.

Both directives were transposed under the same legal act and procedure, that is, the "Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social." The fact that this directive was transposed by a law that every year goes together with the national budget law is crucial to understand the essence of the transposition. This law is normally foreseen to make the necessary amendments to the current legislation in order to guarantee an accurate implementation of the national budget but not to introduce new legislation or relevant changes.

As a result, the transposition carried out by the Spanish government has limitations related to its content and its approval procedure. In Spain, the normal procedure to transpose a directive would have been to approve a new law and therefore comply with all the steps established in the Spanish Constitution for this type of legal texts. This means that several bodies such as the "Consejo de Estado" (State Council), the "Consejo General del Poder Judicial" (General Judicial Council) or the "Consejo Económico y Social" (Economic and Social Council) would have had to take part in the process in order to give their recommendations. Similarly, it would have also required the participation and input of organisations and groups affected by this new legislation, in this case, NGOs and trade unions and most of all the general public. However, in spite of the continuous social demands and proposals, mostly made by NGOs, the government decided to proceed with the transposition under an unusual legal procedure that does not require public or specialised consultations. Consequently, the content of the directive was transposed without considering the opinion of NGOs, trade unions or the civil society. Moreover, the government did not promote any public debate or specific campaigns aimed at giving information on the content of this new legislation. Therefore, it went clearly unnoticed in the media.

Consequently, the government was able to avoid the control of its content and development, which was done under a principle of minimums. The text approved by the parliament contains only the basic regulation set out in the directives. It is practically an exact transposition of its content. The definitions (direct/indirect discrimination, harassment, instruction, victimisation, genuine occupational requirement, reasonable accommodation for disabled etc.) given in the legal text are almost a literal translation of both directives. This means that the Spanish legislation has not adapted the directives as it is expected when a national parliament transposes a European directive. It generally exactly complies with its text rather than developing a broad and effective regulation, with the exception of the article 13 of the directive 2000/43/EC in which Member States have the obligation to designate a "body or bodies for the promotion of equal treatment of all persons without discrimination". Its section 2 establishes that this body will provide "independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct independent surveys concerning discrimination, publish independent reports and make recommendations on any issue relating to such discrimination." In the Spanish regulation, the text has transposed this section omitting the word "independent" which means that eventually the body/bodies could operate without guaranteeing the independence of their actions. In addition, the law also foresees the development, within the following six months, of a further regulation that would establish its operating rules. However, up to date, this body has not been created and the regulation has not been developed.

In March 2004, Spain held elections that resulted in a change of government. The socialist party took power but did not review the transposition done by the previous government. They opted for accepting the regulation approved in December 2003 instead of re-transposing the directive arguing that restarting the process would delay the creation of the new body and the development of further regulations. Unfortunately, 3 years after the elections, no regulation has been approved and no body has been created despite the recurring pressures and proposals from NGOs and trade unions. The main problem faced by the government is to decide under what department this responsibility should be assigned to. Currently, the justice department does not seem to be interested in this matter and therefore, they have assigned it to the Ministry of Labour and Social Affairs, concretely to the Department of Social Services for Immigrants.

This fact proves that Spain often misunderstands the concept of discrimination. It is frequent to find situations where discrimination is viewed as an issue included in social inclusion policies rather than a human rights issue. Consequently, the responsibility is not assigned to a department that can guarantee and ensure that the law will be respected, as would be the case of the department of justice, but to a department dedicated to immigration issues. As a result, discrimination and immigration are often confused and mixed leaving other grounds of discrimination (ethnic, religion, age, sexual orientation, gender or disability) out of the equation.

This problem reflects perfectly what are the current issues around discrimination. It shows the need of more debate, training, raising awareness actions and mobilisation of social actors. NGOs and trade unions have realised the impact of the weak transposition but have not been proactive enough to develop strong networks or platforms capable to lobby against the government's attitude although there are certain initiatives from ENAR, SOS Racismo, Amnistía Internacional, ACCEM and CEPAIM that have been able to put pressure.

Currently, the government seems to be in the final phase to create a public foundation that would acquire the role and responsibilities of the body foreseen by the Directive.

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

### **The constitutional procedure**

The Spanish legal system is based on The Constitution<sup>1</sup> as supreme law. The text contains not only values to inspire the future legislation, but also concrete rights. These rights are divided in two different categories, the fundamental rights, and the general rights. The equal treatment is considered both a value<sup>2</sup> and a fundamental right<sup>3</sup>.

There is a positive obligation on the State to promote the implementation of these rights<sup>4</sup>, and it will be responsible if it fails for any malfunctioning of the services provided by the State.

The Constitution declares that the interpretation of the rights and freedoms will be in accordance with the international treaties and conventions<sup>5</sup>.

The rights and freedoms set forth in the Constitution are guaranteed by the Constitutional Court<sup>6</sup>, by the *recurso de amparo*<sup>7</sup>.

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<sup>1</sup> Constitución Española de 27 de diciembre de 1978. BOE 311/1978, de 29 diciembre 1978 Ref Boletín: 78/31229

<sup>2</sup> Spanish Constitution Art 1.1

<sup>3</sup> S.C. Art. 14

<sup>4</sup> SC Art. 9.2

<sup>5</sup> Art. 13 SC

<sup>6</sup> Organic Law 2/1979, 3 of October, about Constitutional Court. BOE 239/1979, de 5 octubre 1979 Ref Boletín: 79/23709. (LO TC)

<sup>7</sup> Art. 41-58 L.O.T.C

Any individual may file a complaint before the Constitutional Court, if considers that any of his fundamental rights has been violated by any legal disposition, juridical act, or administrative act. This complaint must be filed within 20 days after the last resolution has been issued where the violation occurred. The invocation of the violation of the equal treatment right must be connected with the enjoyment of other rights or freedoms. This remedy is just to preserve the right or freedom violated and it will not include a compensation for damages. The sentence will resolve whether there has been a violation or not, the nullity of the legal disposition or act, the re-establishment in the full enjoyment of the right violated and the measures to guarantee the enjoyment of the rights or freedom violated.

There is legal aid guarantee for the victim.

### **Criminal provisions and procedure**

The criminal legal system is based among others, in the legality principle. This will prevent any arbitrary behaviour. Every sanction and pain is fixed in the Criminal Code<sup>8</sup> and in the specific legislation for special crimes.

The violation of several constitutional rights is considered a criminal offence, but the violation of the equal treatment is an aggravating circumstance of a crime, the racist or anti-Semitic motives of the offender, as well as motive connected with ethnic, ideology, religion or believes of the victim<sup>9</sup>. These aggravating crimes will be prosecuted *ex officio*.

The incitement to discriminate or to hate against groups<sup>10</sup>, the illegal association for the promotion of discrimination or hate against persons, groups or associations<sup>11</sup> are considered criminal offences. It is considered a crime the particular that discriminate in charge of a public service<sup>12</sup>.

It is a crime to discriminate a person in the private or public labour market when has a racist, ethnic, ideology, religion or believe motivation<sup>13</sup>. The particular that discriminate in the exercise of his professional or business duties will commit a crime.

It would be desirable to reconsider the definition of harassment in the criminal legislation.

Any victim of the crimes described above, may file a criminal complaint. It may be done with or without legal assistance. Legal aid is provided for private prosecution even if the crimes are also prosecuted by the public prosecutor *ex officio*. Popular prosecution is also allowed for groups of individuals with legitimate aim. The procedure to follow is regulated under the Criminal Procedure Code<sup>14</sup>. The code of procedure is in force since 1882 amended in several occasions since then.

The criminal remedy is quite accessible, free of charge for victims, psychological assistance is provide for victims of violent crimes, but it is quite rare to get condemnatory sentences for perpetrators. Judges and prosecutors are reluctant to consider the racial motivated crimes. On the other hand, not many lawyers are aware of the legislation in force.

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<sup>8</sup> Criminal Code. Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. BOE 281/1995, de 24 November 1995 Ref Boletín: 95/25444

Set in force in 1995.

<sup>9</sup> Art 22.4 of the Criminal Code

<sup>10</sup> Art. 510 of the Criminal P. Code

<sup>11</sup> Art. 515.4 of the Criminal P. Code

<sup>12</sup> Art. 511 of the Criminal P. Code

<sup>13</sup> Art. 314 of the Criminal Penal Code.

<sup>14</sup> Ley de Enjuiciamiento Criminal, Real Decreto de 14 de septiembre de 1882. GM 283/1882, de 10 octubre 1882

## Civil, administrative and labour legal provisions

The prohibition of discrimination is present in many other laws covering different aspects of life such as employment<sup>15</sup>, education<sup>16</sup> and religion<sup>17</sup>.

**Civil remedy:** The transposition of the directives has not produced any change in the civil remedies. The Civil Code does not cover the consequences of any discriminatory practise in contracts, torts, obligations, testamentary, succession and donations. There is a reference in family law, when article 1328 declares the nullity of any obligation or disposition made against the equality of rights between spouses.

The legal action will be represented in a civil complaint for compensation for damages, but the victim will find many difficulties:

- Legal aid is provided, but not many victims are aware of their rights and lawyers are not very familiar in the subject.
- Judges are not aware of the new legislation in force; they are compelled to do so by law.
- The extreme difficulty to fix the amount of money for compensation for damages
- To prove that the amount of money is the equivalent to the violation of the right. Physical damages are valued in one scale, but there are no scales or any other reference for moral damages. The final amount of money, if so, is an arbitrary decision for judges; they will fix the amount regarding their own experience in consideration to the facts and circumstances of the case.
- Judicial Costs are high in terms of time. The final decision may take between one a three years.
- Expert's opinions are expensive and some times this cost is not cover by the legal aid system and it has to be afforded by the victims.
- There are cases that are not covered. In example, let's think in a housing case. A person of Roma origin wants to rent an available flat to a private owner. When the visit is arrange, the flat is "already rented". There is no contract; there is only an offer to rent. The case law does not give solutions to the victim and in this case, the remedy does not fulfil the expectative of the directives.

### 2.A Employment and occupation related - all grounds.

In December 2000, Spanish Parliament adopted the Organic Law 8/2000 "about rights and freedoms of aliens in Spain and their social integration", which modifies Organic Law 4/2000 "about rights and freedoms of aliens passed in January, same year. It is defined direct and indirect discrimination acts in the labour market. It establishes a judicial procedure based on the preference and summary principles. The violation is considered very serious. The main labour law is the Statute for Workers Law<sup>18</sup>.

The remedies available to a victim that suffered discrimination on the grounds of race or ethnic origin, religion or belief, disability, age or sexual orientation will depend whether a public authority or private body is accused of discrimination<sup>19</sup>.

In the case of a public authority, the victim may exhaust all the administrative proceedings at the administrative body as set forth in the Administrative Procedure Law<sup>20</sup>.

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<sup>15</sup> Ley 5/80 "Ley Básica de Empleo"; Ley 8/88 "sobre Infracciones y Sanciones de Orden Social";

<sup>16</sup> Ley 1/90 "sobre el Sistema Educativo

<sup>17</sup> Ley 7/80 "de Libertad Religiosa

<sup>18</sup> RDL 1/1995, 24 of march. BOE 75/1995, 29 of march 1995 Ref Boletín: 95/07730

<sup>19</sup> Sanctions are divide in three levels, minor, grave, or very grave.

<sup>20</sup> Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (under the ordinary proceeding).

The complaint will be always against a resolution, administrative act or fact without respect to whether the resolution comes from the local, regional, state administrative body or public institutions. The victim is entitled to appeal the resolution to the upper administrative body. In any of the appeals the administrative body has the opportunity to challenge the discriminatory practice.

But if this fails, the victim may file a complaint before the court. There is an especial procedure for the protection of fundamental rights and freedoms in the procedure are in the Law 29/1998, of 13 of July, about the Contencioso-administrative Jurisdiction:

The Law regulates two kinds of processes, the ordinary and the special one. The first process will be a jurisdictional review respect not only about the legality of the administrative action, but also the possible discussion about its constitutionality. In the special process<sup>21</sup>, the discussion will be whether the relevant facts have fallen in the violation of a Fundamental Rights which are recognized from article 14 to 30.2 of the Spanish Constitution, however, it is possible even to start both process at the same time, in relation with the same act or rule. The effects of this procedure are the same of Recurso de Amparo before the Constitutional Court. The procedure is also summary and it is expressly contemplated the reverse of the burden of prove.

But if the employer or person accused of discrimination is a private person, the Labour Procedure Law, regulate a special procedure for the protection of trade unionism fundamental right, but it is extensive to other fundamental rights and freedoms<sup>22</sup>, including the prohibition of discriminatory practices in any matter o situation competence to the labour jurisdiction. This procedure of dismissal is excluded because it has a specific regulation<sup>23</sup>.

E.G. a person may fell that has been treated in a discriminatory way if there are advertising of posts which exclude for a job one of the gender when this is not necessary a work condition. On the other hand many times is very difficult to identify discrimination because the information to compare is not available to the victim (salaries, pay, selection, issue of permits and licences, access to vocational training, including vocational training in prisons, terms and conditions...). In these cases, the success of litigation is unknown.

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

The procedure for any kind of discrimination is always the same regardless of the ground. It will depend on the field the discrimination took place in order to clarify the competent jurisdiction. It is available the written complaint before the national or regional Ombudsman. These complaints are letters to the Office of the Ombudsman, who will carry out investigation on the facts, but the resolution is of not compulsory effects, are more recommendations.

Collective actions are allowed only under the protection of consumers Law. This action is permitted in the Civil Law Procedure<sup>24</sup>, but more than one victim can litigate together in any other case.

## **2.C What avenue for an employment or non-employment complaint**

Labour market is very protective with the worker side. If the discrimination has occurred in the labour market, it is desirable to litigate under this jurisdiction. It is fast, secure and the employer has the burden of prove.

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<sup>21</sup> Art. 114-122 LJCA.

<sup>22</sup> Arts. 175-181 LPL, Cap. XI del Title II, Book II. Real Decreto Legislativo 2/1995, 7 of April. BOE 86/1995, of 11 of April 1995 Ref Boletín: 95/08758.

<sup>23</sup> Art. 181 LPL

<sup>24</sup> Art. 11, Civil Procedure Law 1/2000, 7 of January. BOE 7/2000, Ref Boletín: 00/00323

The same guarantees offer the administrative jurisdictional procedure on the protection of fundamental rights and freedoms, but the labour jurisdiction is more flexible with formalities than the administrative one. The civil avenue is not the more convenient. It is slow, unclear and more complicated in terms of evidence and procedure.

In the summary proceedings time limit is very important. The sooner, the better. Legal assistance from the very beginning is desirable. In Spain Legal aid system is present in any jurisdiction, but in order to prevent a complaint out of the limit, it is convenient that the victim apply for a date at the Legal Aid Office for legal assistance, where lawyers from the bar association and free of charge will give the first step to be taken (where to appear and what to say for interrupting the time limit until the lawyer is assigned to the case). Not in all Bar Association, but in many of them, are specialized groups of lawyers in matters such as aliens, family, labour, torts, tax, underage offenders, and human rights, that may help in the resolution of the case.

It is desirable to keep as much evidence as possible, such as documents, witness testimony with personal data attached, in order to use them in a future trial. It will work testing; hidden cameras, photos, and any other kind of technical support that could provide any prove to the case.

The best practice is to get a legal aid lawyer from the specialized groups. The lawyer will provide any legal information required by the victim.

## **2.D Technical procedural requirements of each available remedy**

The time limits applicable to the remedy:

- **Recurso de amparo**, before the Constitutional Court: 20 days
- **Criminal complaint**: ,six month for minor offences and between 1 to 5 years for serious crimes
- **Civil complaint**: One year.
- **Administrative complaint**: between 10 days ( special procedure and 20 days for the ordinary procedure)
- **Labour complaint**: it will depend on the concrete case. From 5 days to 1 month.

The documents filed on the case must be originals, unless when there is an original or protocol in a public register.

## **2.E Existing support and obstacles at national level**

Litigation on discrimination is quite often in the labour and administrative jurisdiction. When the remedy is available, is used. The lack of information and with the Directives and national anti discrimination provisions on the part of judges, lawyers and prosecutors make unusual this litigation on the grounds of race, disability, and others.

Technical support is available to victims, legal aid of the bar associations, and other NGOs, Trade Unions may defend but not represent the victim in a trial or any other administrative proceedings. Interpreters are provided for victims and offenders.

The Equality Commission is unknown between any legal operators.

## **2.F Referrals to the European Court of Justice**

If we take into account that the directives legislation is unfamiliar to legal operators, the procedure that state under Article 234 of the Treaty is very rarely used in discrimination matters.

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

This may be a highly effective procedure because:

- Requesting a referral can concentrate the mind of the presiding judge and ensure that s/he gives proper consideration to the complaint, especially to the fact that it raises issues of European rights.
- National bodies, particularly public bodies, are impressed by its high profile and may take steps to avoid the exposure of discrimination at national level to pan-European scrutiny.
- The European Court is the only body that can give a **definitive** interpretation of the terms used in the Directives.

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

## **2.G Petitions to the European Parliament**

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

## **2.H Alerting the European Commission to discriminatory administrative practices**

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

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

- Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
- This right includes:
  - o The right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - o the right of every person to have access to his or her file, while respecting the legitimate interest of confidentiality and of professional and business secrecy;
  - o The obligation of the administration to give reasons for its decisions.
- Every person has the right to have the Community made good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

## **2.I Complaints to the European Court of Human Rights**

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

This can be done under Article 14 of the Convention provided another Article is also engaged or, if the country has ratified it, under Protocol 12 to the Convention. Spain has neither signed nor ratified Protocol 12 although currently there is a parliamentary proposal aimed at ratifying this Protocol.

Collective complaints can also be made under the Council of Europe's European Social Charter.

## **2.J other international remedies**

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

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

## **2.K Professionalism**

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

## **3. Societal issues**

Spain is a plural state in which coexist a variety of historical territories that have their own language and culture and that are officially recognised by the Spanish Constitution of 1978. This territorial and multilingual plurality (there are four official languages) has been the concept traditionally associated with diversity. Only very recently, minority groups living in Spain have been included into the idea of tolerance and plurality. For example, the Roma minority has never been officially recognised even if by now they are 0.5% of Spain's population.

However, in the past few years the migration flux has highly influenced this perspective. During most part of the twentieth century, Spain was a country of emigrants. This situation changed during the last two decades, when it began to receive large waves of immigrants. Currently, they are an important part of the population and of its economy, making up 10% of its population, mainly concentrated in large cities and the Mediterranean coast.

This is mainly the reason why the debates around tolerance, diversity and plurality have only emerged recently and therefore are not mature enough to be able to give a clear picture of what are the general views or opinions shared by the society and its government. Up to date, the debate turns around two clashing ideas:

- A sector that believes that foreign citizens immigrating to Spain have to adapt to its culture, keeping their traditions and cultures within their own privacy.
- Another slowly emerging sector that defends the promotion of diversity and plurality beyond its private expression and therefore opening to the public arena.

Nevertheless it is commonly known that public services such as employment, health, social or education still have a very traditional approach. Most of them have not adapted their services to the diversity of citizens that presently live in Spain. However, as the demographic pressure grows and conflicts start to appear in schools regarding differences such as nutrition or dress codes, governments are reconsidering their policies trying to adjust them to the current needs.

Other vulnerable groups that have generally been omitted from public debate and policies are those suffering from the common grounds of discrimination: age, disability, sexual orientation, religion or gender. It is true that gender, sexual orientation and disability have recently acquired importance in the political agenda. As a result, the treatment of women, gays and lesbians, and people with disabilities have improved after new campaigns were promoted and laws approved. However, all vulnerable groups still experience difficulties accessing education, employment and housing (this last one, especially for ethnic communities).

In the area of employment, these are the principal problems suffered by vulnerable groups:

### **Ethnic communities**

These groups face:

- A limitation to the type of jobs they can apply to. Generally, there tends to be a high concentration in these type of jobs: building, housework, social and health care and catering
- Lower salaries and a higher percentage of temporary contracts
- A higher risk to be part of the black economy
- The problem of having lower qualifications or not being able to officially recognise their national qualifications.

### **Disabled**

Despite the legal obligation to recruit 3% of staff with disabilities, this is not respected by the majority of companies

### **Age**

In this area discrimination is very common and a poor awareness of this problem by the general public. It is common to find vacancy adverts that require strictly young candidates or that request application forms with the applicant's photograph.

In the area of housing and education, ethnic minorities are the ones experiencing the most difficulties. In general, the Roma community is the one that receives the worse treatment when renting properties, followed by the North African Arabs, Eastern Europeans, Latin American and Asians. Even if the law does not allow to publicly discriminate, most of the properties for rent are privately managed and therefore it is hard to control or prevent. In the area of education, generally, the services are not adapted to the differences of culture considering that 80% of immigrants are concentrated in public schools. On the other hand, the access to public childcare is very limited, which aggravates the situation.

Currently, NGOs and trade unions are taking actions and making efforts to tackle and combat the above situations. However, in some cases, they are not leading by example. Whereas one would think that NGOs and trade unions would respect all aspects of diversity and equal opportunities, this is not always the case. In general, there are few NGOs and trade unions that work in all grounds of discrimination, quite the opposite, they tend to specialise in one specific ground neglecting other grounds or competing against them. Consequently, it is common to find a lack of solidarity between different victims of discrimination.

On the other hand, it is frequent to find NGOs and trade unions that do not have evaluation processes through which they report on their own equal opportunities and diversity policies. Some do not even have developed this type of policies in their organisations.

At this moment, Spain lacks of broad campaigns and actions aimed at combating all grounds of discrimination. Quite the contrary, Spain's equal opportunities policies are unequal. Public awareness on gender, sexual orientation and disability has increased considerably while policies around age and ethnic origin or race have poorly been developed. As a result, if this approach is not modified or tackled, Spain has the growing risk of finding itself in a situation where discrimination between vulnerable groups is increasing. Proof of it is the emerging conflicts between different ethnic minorities.

#### **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](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](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](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](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](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](http://ec.europa.eu/employment_social/emplweb/esf/esf_matrix_en.cfm)

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

- 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?**

There are 2 European Commission delegations in Spain, one in Madrid and one in Barcelona. Both delegations are very sensitive to European social policies and take a proactive role in generating spaces where NGOs and Trade Unions can participate in European social issues. In Madrid, the Delegation's meeting and conference rooms can be used by NGOs and Trade Union which often use this facility.

Nevertheless, the delegations do not have specific funding programmes open to NGOs, Trade Unions or other type of organisations.

Exceptionally, some organisations, which have developed a close relationship with the Delegation, have reached bilateral agreements with the Delegation whereby they agree to directly pay a project expense thus never transferring a lump sum to the organisation. For instance, if a component of a project is to publish a handbook, the Delegation might agree to directly pay for the print costs.

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

In Spain, public administrations and NGOs have a long tradition of implementing projects focused in fighting against poverty or social exclusion. However, these organisations Do not tend to be focused on inclusion and do not have a tradition of implementing projects particularly focussed on anti-discrimination or equal opportunities.

The central government provides a variety of funding streams (employment, education, health, etc.) managed by the Ministry of Labour and Social Affairs aimed at tackling social exclusion amongst disfavoured communities and groups. Under these funding programmes, projects that combat discrimination and promote equal opportunities are eligible but NGOs and Trade Unions don't have access to funding aimed specifically at tackling discrimination. For example, under these funding streams, the Foundation Secretariado Gitano has implemented a project over the past few years to combat discrimination of Roma communities publishing annually a report on the situation of discrimination against Roma communities.

See websites:

[http://www.mtas.es/sec\\_as/es/index.htm](http://www.mtas.es/sec_as/es/index.htm)

[http://www.mtas.es/sec\\_emi/es/index.htm](http://www.mtas.es/sec_emi/es/index.htm)

[http://www.mtas.es/sec\\_igual/es/index.htm](http://www.mtas.es/sec_igual/es/index.htm)

[http://www.mtas.es/sec\\_trabajo/es/index.htm](http://www.mtas.es/sec_trabajo/es/index.htm)

For information on the European Year of Equal Opportunities see:

[http://www.mtas.es/migraciones/Integracion/anio\\_europeo\\_igualdad\\_opportunidades.htm](http://www.mtas.es/migraciones/Integracion/anio_europeo_igualdad_opportunidades.htm)

**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 central government, through the Income Tax Programme, is the primary funding source for social projects. This programme makes available the 0,52% of each year's income tax to NGOs and Trade Unions that implement projects for disfavoured communities and groups. This funding stream is mainly spent on projects that promote education, health and employment. It is within this framework where some organisations develop actions to fight against discrimination.

The Ministry of Labour and Social Affairs is the ministry responsible of managing this funding programme which is coordinated directly by several departments within the ministry: the Social Inclusion Directorate, the Integration of Immigrants Directorate and the State Department for the disabled.

Generally, this type of funding tends to take the form of core funding. However, over the past few years, the government is encouraging NGOs and Trade Unions to find other sources to encourage partnerships between different types of organisations (public and private).

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

All NGOs and Trade Unions eligible under the funding programmes managed by the Ministry of Labour and Social Affairs can apply to the different funding streams. Nevertheless, the amounts available each year don't vary. This means that the organisations that have been selected one year are likely to be successful the following year. Therefore, new or different organisations have smaller chances to receive funding from these programmes.

Furthermore, most of these funding programmes are aimed at national-wide organisations with three years of recorded experience that have the capacity to organise projects in different regions or local areas.

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

Spain has a political and administrative structure where powers are divided between the central government, the regions which are called "autonomous communities" and local governments. Under this unique structure, the "autonomous communities" governments are acquiring a wide variety of financial and political powers. This means the "autonomous communities" have the capacity to progressively dedicate economical resources to funding programmes for NGOs and Trade Unions orientated to social matters.

These types of funding programmes tend to replicate the form and objectives of the central government programmes.

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

In Spain, local governments have a variety of powers which have been transferred from the central government, in particular powers related to social policies. Nevertheless, this transfer of powers hasn't been come with a financial transfer. Therefore, there are local councils that establish funding programmes; however these will highly depend the local councils' priorities and on their capacity to dedicate financial resource to social programmes.

**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?**

Over the past few years, private funding is gradually winning importance as an income source for NGOs and Trade Unions mainly caused by a growing economy and the development of Corporate Social Responsibility policies. Private companies increasingly donate funds for programmes aimed at disfavoured communities and groups but there are rarely orientated to anti-discrimination or equal opportunities projects.

Savings banks such as “La Caixa” or “Caja Madrid” are another important source of funding as they are obliged to dedicate a percentage of their benefits to social projects. Traditionally these funds were mainly intended for cultural projects but increasingly these tend to select projects aimed at disfavoured communities and groups but, again, rarely orientated to anti-discrimination or equal opportunities projects.

In Spain, there aren't Foundations that specifically fund NGOs/trade unions working on anti-discrimination

As per Trade Unions, these are not generally grant makers, quite the opposite thus some canalise their funding sources through their Foundations. For some examples please see:

[http://www.ccoo.es/cscceo/menu.do?Conoce\\_CC.OO.:Fundaciones](http://www.ccoo.es/cscceo/menu.do?Conoce_CC.OO.:Fundaciones)

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

Excluding the European funds or those managed directly by the European Union, Spain is one of the main beneficiary countries of Structural Funds. Under this funding stream, the Operational Programme Against discrimination was assigned to Spain under the European Social Fund 2000 – 2006 framework. This multiregional programme managed by nine organisations, five of them NGOs (Red Cross, Caritas, ONCE, Fundación Secretariado Gitano and the Luis Vives Foundation), with more than two hundred million euros has developed projects aimed at finding new ways of fighting discrimination and inequality in the field of employment including campaigns to combat discrimination.

#### IV. Diversity Management seminar

##### Design of the training

For the design of the training (manual, target group, role international trainer, trainer, organising NGO) we adapted the suggested format to Spain's reality and SMEs needs:

- Diversity Management (DM) as a term is **unknown** to most people in the business community. No common definition exists yet. In general, there is confusion about what is included and what is not (ethnic origin, disability... etc).
- Local branches of multinational companies are starting to implement DM initiatives, but mostly as a result of explicit requirements from headquarters.
- According to the latest available data, women comprise only 4% of corporate boards. The Government (comprised by equal number of male and female ministries) has made clear that this is unacceptable, and is trying to enforce a law that establishes a quota system (40% of female members to be achieved in the next 8 years). This has met with strong resistance from both the business community and some women's associations.
- Spain has gone from exporting human capital (Spanish immigrants fled to Europe and Latin America in the 1960s) to being a net recipient of foreign-born citizens. The estimated number of immigrant residents went from 250,000 in 1985 to almost 5 million in 2007.
- Roma or gypsies have traditionally been the only spot of ethnic diversity in an otherwise quite homogeneous society. Unfortunately, they are still associated with poverty and marginality.
- There has not been much of a public debate around hiring practices. Some companies (mostly in agriculture and hospitality) have started to actively recruit in foreign countries, such as Morocco. But the issue of sourcing talent from underrepresented demographics has not caught up yet. Job seekers are advised to include in their CVs such personal information as their date and place of birth or their marital status.

The national trainer selected a highly interactive methodology based on role play which encouraged participants to experience the main issues arising from diversity. This encouraged participation among assistants and a better understanding of basic concepts around diversity management.



## Preparation of the seminar

- The training seminar in Köln was very well considered by the national trainer. It was an excellent experience to get to know trainers from other countries and share experiences. Perhaps a 2-day training would have allowed to discuss topics in more depth. We also recommend the attendance of the organising NGO.
- The communication channels used to announce the seminar (website, direct invitation of potential companies, employer's organisations newsletters) were well selected. Nonetheless, more time and financial resources need to be dedicated to advertise the event.
- Logistical arrangements were well evaluated by participants. The *world café* style layout (round tables of 8-10 participants) is generally a good choice as it encourages interaction between participants.



## Carrying out of the seminar

- The attendance: 41 persons from 28 organisations took part in the seminar with the following profile:

### Sector

- Public service providers: 54%
- Private sector companies: 37%
- Consultants: 7%

### Size

- 1-9 employees: 22%
- 10-49 employees: 15%
- 50 to 249 employees: 27%
- 250 to 499 employees: 17%
- 500+ employees: 17%

- Process during the day: participation and debate was the highlight of the seminar thanks to the methodology chosen by the national trainer who alternated and combine practical exercises and group discussions with concrete and short theoretical presentations.

- Three different business cases were selected for the seminar:
  - o **IBM** presented its “Diversity and Talent” programme focussing on their experience from a multinational point of view.
  - o **Europcar**, a Spanish rental car company, presented the case of an organisation with an experience of three to four years implementing different diversity management programmes and policies within the organisation.
  - o **Fundación ONCE**, a Spanish foundation whose aim is to promote employment among people with disabilities, described what are the existing resources and benefits of recruiting people with disabilities.



### **Evaluation of the seminar**

The main findings emerging from the participant’s evaluation forms highlight that:

1. The course has been able to transmit the adequate information to the participants:
  - 71% of participants thought the seminar was interesting or very interesting
  - 72% felt they had the appropriate profile to attend the course
  - 72% thought the content is relevant to their job
  - 74% found the material relevant and useful.
  - Participants were satisfied or very satisfied with the quality of the information presented by the trainer (69% of participants have considered that the trainer was well prepared and knows how to pass on her knowledge).
2. Time management could be improved. The second session exceeded the time foreseen which gave less time for the last part of the training. Some participants mentioned they would have preferred to allow more time for the business case session.

## Main lessons learned

- The inclusion of 3 different business cases (IBM, Europcar and Fundación ONCE, foundation whose mission is to promote the employment of people with disabilities) in the programme was perceived as a great added value to the seminar.
- Both the Foundation and the national trainer were very positively surprised with the good attendance of SMEs. Although they were not the majority (around 46%), they demonstrated throughout the seminar their interest in the subject and in learning more about it. Nevertheless, more awareness raising activities targeted at SMEs need to be put in place.
- This type of training aimed at SMEs needs to reduce the number of participants. Time management and active participation becomes more difficult when there are more than 20-25 participants. For future training we recommend no more than 25 participants per course and perhaps two mornings or two afternoons instead of one day.



## 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.

## General Findings and Conclusions from the anti-discrimination seminars

Within the framework of the 2007 - European Year of Equal Opportunities for All, the Luis Vives Foundation has organised two debate seminars on **"Equal treatment and fight against discrimination"**, in Madrid, September 2007 and Barcelona, March 2008 in collaboration with the Non-Discrimination Office, Barcelona City Council.

These seminars have taken place as part of a pan-European Project promoted by the European Commission in all 27 EU Member States in collaboration with the Human Resource Consultancy and the Migration Policy Group. Its aim was to **raise awareness amongst NGOs, trade unions and employers on the importance of promoting and respecting equality and diversity and to train them on what are the available tools and measures at their disposal.**

More than 90 organisations from different NGOs and trade unions had the chance to analyze and debate the following matters during the seminars in Madrid and Barcelona:

1. Non-discrimination **legislation**, in particular EU directives 2000/78 and 2000/43.
2. **Mechanisms and tools** available to NGOs or trade unions to help victims of discrimination.
3. **The role of NGO's and trade unions** in the fight against discrimination.
4. **Challenges of** NGOs and trade unions when promoting equal treatment and fighting discrimination.

Seminars were conducted by a wide variety of Spanish experts (lawyers and professionals from the public sector, trade unions and NGOs) under a framework designed by a European team of experts. The most relevant ideas and future proposals coming out of both seminars are the following:

### Policy and Approaches

- We must be aware that in order to make equal treatment a reality it is essential to work in a transversal way and in cooperation, especially when victims suffer from multiple discrimination.
- NGOs must work in coordination and join forces to fight against discrimination and lobby for equal treatment, without forgetting that trade unions can support and foster these actions.
- It is necessary to establish collaboration mechanisms between NGOs and the ombudsman, as a guarantee for Fundamental Rights.
- It is necessary that social actors encourage awareness-raising campaigns on equal treatment regulation to make it broadly known by citizens, encouraging them to report discrimination situations.
- It is essential to promote mediation as it allows, on one hand, to raise awareness and avoid behaviours of discrimination in the future and, on the other hand, to solve the problems caused by the discrimination in a satisfactory way for both parties. For this, it is essential to create specialized services of mediation in discrimination equipped with the necessary resources.

### Legal aspects and regulations

Progresses in the following fields have been proposed:

- Discrimination must be considered a gross violation of the inalienable Rights to Equal Treatment. Therefore, judges must apply appropriate sentences when these rights are infringed.
- Justice Courts must respect the inversion of the burden of proof, so that the victim is not exclusively blamed.

- Mechanisms of reporting and resolution of any discrimination situation must be established, based in urgency and integrated assistance for the victim.
- Infringement and penalties on discrimination matters must be regulated, to ensure a compensation of both the moral damages derived from breaching equality principles and from reinstating the victim to the situation previous to discrimination.
- Preferential legal treatment must be avoided when it comes to breaching equality rights, especially the case of Public Administrations that have prerogatives.
- Promote the creation of accessible and decentralized free legal advice to allow victims of discrimination to suitably be able to be advised, and if considered appropriate, take legal action. It is recommended to locate these services at local level, where they will be more accessible for victims.

### **Institutional and administrative matters**

- A coordinated work for equal treatment from a multiple discrimination approach must be demanded to public administrations.
- We must demand the creation of an independent body provided with enough resources to analyze, watch and evaluate discrimination in Spain observing principles of independence, coordination, transversality and representativity.