

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
POLAND**

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Introduction

Poland has begun the process of integrating EU legislation on counteracting discrimination based on race, ethnic origin, religion, age, disability or sexual orientation into its legal system. The prospect of Polish EU membership brings with it the need to adopt and implement the *acquis communautaire*. As Directives 2000/43/EC and 2000/78/EC are a part of the EU legal *acquis*, Poland is obliged to include their provisions into national law. Thus, the immediate background for Poland's adoption of these anti-discrimination regulations is its accession to the EU, and not a sense of the imperfection of existing law or social pressure.¹

Until now, the Polish experience in countering discrimination was not of a systemic or holistic nature. The most frequently adopted solution was the addition of anti-discrimination clauses to legal acts. Unfortunately, such attempts frequently lacked a systematic approach. There were cases where closed or open-ended clauses were used without any apparent basis on objective criteria. Aside from this, Polish law did not contain effective instruments to prohibit discrimination. Because of this, it was extremely rare for discrimination cases to come before the courts or the National Labour Inspectorate, despite their existence in practice. Information on such situations was collected only by non-governmental organisations. This was partly the result of a low level of legal awareness amongst Poles. The conviction that bringing a case to court will not bring the desired results in any case is very common, because court trials are exceedingly long and ineffective, and court fees are significant.

The low levels of legal awareness in Polish society, as well as its passive attitude in asserting their rights were circumstances which made the preparation of this report difficult. On the one hand it is difficult to assess the real scale of discrimination in Poland, and on the other, it is difficult to draw correct conclusions from the small number of court rulings on the practical application of the law in this respect.

Raising the legal awareness of society and improving access to justice in Poland requires systemic activities on a large scale. An observation of Polish reality indicates that the burden of these activities currently rests with NGOs. However, lessening the gap between legal regulations and reality requires the greater involvement of government authorities. The inclusion of specific resolutions into Polish law will not solve the crux of the problem.

Thanks to the planned amendments to the Labour Code and the Law on Employment and Countering Unemployment, legislative definitions of direct and indirect discrimination, harassment and instructions to discriminate have been included in Polish law for the first time. The clear ban on discrimination based on sexual orientation is a novelty, and another important novelty in Polish anti-discrimination law will be the construction of the shift in the burden of proof: the person making the accusation that he/she was discriminated, following the establishment of the basic facts, will not have to prove this fact. Instead, the subject accused of discrimination will have to prove that he/she did not discriminate the given person. Protection against victimisation will be of great significance in practice, aiming to eliminate situations in which the person who dared to enforce his/her rights is subjected to repeated discrimination. The question of sanctions will play a decisive role – if they are not effective, proportionate and dissuasive, the system of countering discrimination will not be functional *de facto*. Are these criteria met by the proposed provision on compensation? It seems that this question requires more careful thought, in order not to condemn the anti-discrimination system to a mere legal fiction from the very outset.

A challenge for the government as well as for the *General Inspectorate for Counteracting Discrimination* will be raising the level of legal knowledge and awareness in Polish society. In the field of disseminating information there remains much to be done, so new and relevant (from the point of view of discriminated persons) actions to affirm and promote respect for equality are essential. A

¹ The research represents Polish legislation and developments up to 15th February 2003

helpful instrument in this context might be the social and civic dialogue that is developing in Poland, if NGOs are treated as partners by the authorities and receive full support for their activities.

Despite many positive aspects, it must be noted that the legal changes proposed by the government are not free from vagueness, clumsiness, and question marks. Nonetheless, there is still time to consider these weak points, consult social partners and NGOs, and make the necessary changes.

In undertaking these actions Poland has undoubtedly made a step in the right direction. This is nonetheless only the beginning of a long road to building a system to counter discrimination in Poland.

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Chapter 1 The legal framework, definitions and scope

a. The legal framework

Article 1 (Racial Equality Directive and Employment Equality Directive)

Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)? Where there is no anti-discrimination law, the reports should make note of any relevant public or academic discussion, policy debate or legislative proposals at the national level. In particular, the reports should explain what any proposed legislation entails.

Polish anti-discrimination law consists of the provisions of the 1997 Constitution of the Republic of Poland, as well as the resolutions contained in international conventions ratified by Poland, and domestic legislative acts and ordinances. These legal instruments form the bases of universally binding law in the Republic of Poland.² All legal regulations must conform to the Constitution, which is applied directly, unless the Constitution states otherwise.³ Ratified international agreements form part of the country's legal framework and are also applied directly.⁴ If a law expressly mentions a previously ratified convention, the convention takes precedence over this law if they are found to be inconsistent.⁵

The general principle of equality before the law, of the right to equal treatment by public authorities, and of the prohibition of discrimination in political, social, and economic life for any reason, is enshrined in art. 32 sec. 1 and 2 of the 1997 Constitution of the Republic of Poland. This principle does not specify the criteria for the prohibited forms of discrimination.⁶

Aside from the general anti-discrimination clause, the Constitution contains specific provisions which stipulate an additional protection of the interests of selected social groups, including introducing the principles of: the equal rights of religious associations,⁷ equal rights for men and women,⁸ and also protection of veterans of independence struggles, especially war invalids,⁹ national and ethnic minorities,¹⁰ children,¹¹ and consumers.¹² The Constitution does not mention sexual minorities among

² Art. 87. 1 of the Constitution.

³ Art. 8.1 and 2 of the Constitution. The content of art. 8.2 of the Constitution distinguishes between two types of Constitutional provisions: a) directly applicable ones, and b) others. This distinction is related to that known in international law, which differentiates between self-executing conventions and non-self-executing ones. The content of a given provision is the criterion based on which it is included in one group or the other. (A. Mączkowski – “Bezpośrednie stosowanie Konstytucji przez sądy” (“The Direct Application of the Constitution by the Courts”), *Państwo i Prawo* 5/2000, pp. 6–7). In practice, the common courts avoid making judgements on the direct basis of constitutional provisions [author's note].

⁴ Art. 91 sec. 1 of the Constitution.

⁵ Art. 91 sec. 2 of the Constitution.

⁶ “This means that the creators of the Constitution gave the principle of equality a universal dimension, referring to all forms of differentiation which may arise in political, social or economic life, regardless of the characteristic (criterion) according to which differentiation may occur” – from the judgement of the Constitutional Tribunal of 16 December 1997 K. 8/97.

⁷ Art. 25 of the Constitution.

⁸ Art. 33 of the Constitution.

⁹ Art. 19 of the Constitution.

¹⁰ Art. 27 and 35 of the Constitution.

¹¹ Art. 72 of the Constitution.

¹² Art. 76 of the Constitution.

the protected groups.¹³ Persons unable to work due to illness or disability, and people who have reached the age of retirement are guaranteed the right to social security by the Constitution.¹⁴

The broad catalogue of personal, political, economic, social and cultural rights and freedoms¹⁵ is completed by a prohibition on the existence of political parties and other organisations which appeal in their programmes to the totalitarian methods and practices of Nazism, fascism and communism, and also *inter alia* those whose programmes or activities promote or condone racial or national hatred.¹⁶

The anti-discrimination clauses contained in the international conventions ratified by Poland indicate clearly only some of the criteria mentioned in art. 13 of the EC, such as: sex, race, national (ethnic) origin, religion or convictions. Moreover, these clauses make direct mention of skin colour, language, social origin, membership of a national minority, property, birth and union membership. Disability is only mentioned expressly in the 1989 Convention on the Rights of the Child. None of the international conventions ratified by Poland mention the criteria of age, sexual orientation or nationality/citizenship.¹⁷ Clauses dedicated to the protection of national minorities have also been included in the bilateral friendship treaties which regulate neighbourly relations with the countries bordering Poland.¹⁸

At the level of ordinary legislation, it has not been possible so far to create a law entirely devoted to the issue of discrimination. The method accepted by legislators is to include anti-discrimination clauses within the scope of other laws. However, these clauses have not been standardised, and moreover there are cases in which a single law contains differences in wording with no apparent justification.¹⁹ A mistake made by legislators is to include clauses in some laws with a closed catalogue of the grounds on which discrimination is prohibited.

The draft bill establishing the institution of a *General Inspectorate for Counteracting Discrimination* is an attempt at an integrated approach to confronting the phenomenon of discrimination.²⁰ However, the discrimination of disabled persons has been excluded from the scope of the Inspector's competences, and his/her future field of activity has also been defined vaguely.²¹ The initial draft bill also contains significant gaps from the perspective of both Directives.²²

The adaptation of Polish labour law to the requirements of both directives is to be achieved in part by the passing of a law amending the Labour Code Act, as well as modifying several other laws,²³ which will supplement the principle of equal rights in the treatment of employees, in particular men and women as well as the prohibition of direct and indirect discrimination as codified in art. 11(2) and art. 11(3) of the 1974 Labour Code.²⁴ The proposed changes to the anti-discrimination clauses in the bill refer directly to all the grounds indicated in both directives. In addition, Chapter II(a) of the Labour Code, currently devoted to the principle of equal treatment of men and women in employment, will be broadened.

¹³ According to sexual minority rights organisations, the rejection of a version of a founding draft bill that clearly contained a prohibition on discrimination based on sexual orientation indicates that there is a strong tendency in Poland to deny the principle of equality for homosexuals before the law (*Report on Discrimination Based on Sexual Orientation in Poland*, Stowarzyszenie Lambda, Warsaw 2001, p. 32).

¹⁴ Art. 67.1 of the Constitution.

¹⁵ These include, among others, a guarantee of the freedom of conscience and religion (art. 53), freedom of association in trade unions and employers' unions (art. 59), the right of access for Polish citizens to public service on equal terms (art. 60).

¹⁶ Art. 13 of the Constitution.

¹⁷ A list of the most important international agreements relevant to Polish anti-discrimination law is annexed to this report.

¹⁸ A list of bilateral treaties is annexed to this report.

¹⁹ See for example the 1994 Law on Employment and Countering Unemployment.

²⁰ The Draft bill was publicly presented by the *General Inspectorate for Counteracting Discrimination* at a December meeting with NGO representatives.

²¹ The draft bill uses the phrase 'the public and private spheres of social life' without defining these concepts.

²² Details shall be discussed later in this report.

²³ Hereafter referred to as the "Draft Labour Code." The first hearing of the bill took place in the *Sejm* in January 2003.

²⁴ Art. 11(3) of the 1974 Labour Code.

The 1994 Law on Employment and Countering Unemployment also contains anti-discrimination clauses. Their content, however, has not been fully adapted to the requirements of the two directives. This law provides for the following anti-discrimination measures:

- Job placement services are based on the principle of equality, which means that national labour offices have an obligation to assist all job seekers in their search for employment.²⁵ The open-ended anti-discrimination clause (allowing for “other grounds”) does not directly mention racial origin, age, disability and sexual orientation.
- Vacancy information (on available jobs or pre-employment training positions) placed by the employer cannot contain any requirements that discriminate candidates on the grounds of gender, age, disability, race, nationality (ethnic origin), sexual orientation, opinions (beliefs), especially political or religious convictions, or trade union membership.²⁶
- During the recruitment of candidates for training, one cannot apply any requirements which discriminate candidates on the grounds of gender, age, disability, race, nationality (ethnic origin), opinions (beliefs), especially political or religious convictions, or trade union membership.²⁷ The closed anti-discrimination clause omits the grounds of sexual orientation.
- Vocational guidance is based on the principle of equality applied to users of this services irrespective of their nationality (ethnic origin), affiliations with political or voluntary organisations, gender, religion or other grounds.²⁸ The anti-discrimination clause is open-ended, but does not directly mention racial origin, age, disability, belief and sexual orientation,
- A ban on discrimination, on the grounds mentioned inter alia in both Directives, by employment agencies of persons who are seeking employment or other types of work for remuneration.²⁹
- The criteria for issuing job offers and work permits for aliens who do not have permission to settle or have refugee status in the Republic of Poland cannot contain requirements which discriminate on the grounds of gender, age, disability, race, nationality/ethnic origin, opinions (beliefs), especially political or religious convictions, or trade union membership.³⁰ The closed anti-discrimination clause omits the grounds of sexual orientation.

In the field of education, schools must ensure that each pupil has the conditions necessary for his/her development, and prepare him/her to fulfil family and civic responsibilities based on the principles of solidarity, democracy, tolerance, justice and freedom. According to art. 13 of the Education Act, the duties of schools and public facilities include enabling pupils to uphold a sense of national, ethnic, linguistic and religious identity, especially learning their own language, history and culture. In their didactic and pastoral work, schools are also obliged to uphold regional culture and tradition.³¹ The education system must ensure that disabled or socially maladjusted children and young people have the possibility of receiving an education in all types of schools, in accordance with their individual developmental and educational needs and predispositions, as well as care for pupils with significant or complex disorders through the possibility of creating an individually-tailored learning process, methods and programmes of teaching, and rehabilitation activities.³²

The anti-discrimination clause contained in art. 2a(1) of the 1998 Law on the Social Security System limits the principle of equal treatment of all those socially insured to the criteria of sex, marital status, and family status. However, in the assessment of the Ministry of Labour and Social Policy, the anti-discrimination clause ought to be broadly interpreted, but the listing of these three criteria is due to the fact that they may play an important role in the ambit of social security.

²⁵ Art. 12.2 point 3.

²⁶ Art. 12.3.

²⁷ Art. 15. 1a. This provision enters into force on the day of Poland’s accession to the European Union.

²⁸ Art. 17.2 point 3.

²⁹ Art. 37.3.

³⁰ Art. 15. 1a. This provision enters into force on the day of Poland’s accession to the European Union.

³¹ The circumstances and manner of realising these goals were described in the Ordinance of the Minister of National Education of 24 March 1992 as relating to the organisation of education in a way which enables the upholding the national, ethnic and linguistic identity of pupils belonging to national minorities.

³² Art. 1 of the 1991 Education Act.

Regulations on personal data protection contain a prohibition on the processing, without the consent of the person, of data revealing racial or ethnic origin, political opinions, religious or philosophical convictions, membership of a religion, party or union, as well as data about health status, DNA, addictions, and sexual life.³³ In the event of unlawful processing of such data, the criminal responsibility of the perpetrator increases.³⁴ Personal data protection also includes the possibility of obtaining an injunction to destroy the data held on persons accused of committing crimes under public prosecution, who have not been convicted for these charges.³⁵ In the case of statistical research with the participation of physical persons, no information can be collected without consent regarding race, religion, personal life or philosophical or political opinion.³⁶

Under the law on public media, programmes or other transmissions cannot contain discriminatory content with regard to race, gender or nationality, and should respect the religious convictions of the audience, especially the Christian value system.³⁷ In addition, public radio and television programmes should take into account the needs of national minorities and ethnic groups.³⁸ Advertisements cannot infringe upon human dignity, include discriminatory content with regard to race, gender or nationality, or offend religious or political convictions.³⁹

A general prohibition on discrimination or granting of privileges on the basis of religion or convictions in religious matters is contained in art. 6.1 of the 1989 law guaranteeing freedom of conscience and faith.

The provisions of criminal, civil and administrative law do not contain special anti-discrimination resolutions. The provisions of Polish criminal law do not establish “discrimination” as a specific type of crime.

The provisions of Polish law do not define the concepts of national/ethnic minorities.⁴⁰ Beginning in 1989, successive *Sejms* have worked on a Bill on National and Ethnic Minorities containing a suitable definition. Bearing in mind the history of work on successive versions of the bill, it is difficult to assess its realistic chances of being passed in the current parliamentary term.

The problem of defining a national minority has appeared in the judgements of the common courts in relation to the refusal to register an Association with the name “Silesian National People’s Association.” Despite the successful registration of the association in the first instance, following an appeal of the decision and an appeal in cassation, the attempt at registration of an association representing the “Silesian nation” was rejected, based on the argument that the freedom to choose a nationality may be applied only to objectively existing nations, i.e. those formed through a historical process.⁴¹ In its verdict of 20 December 2001, the European Court of Human Rights in Strasbourg unanimously affirmed that the denial of registration of the Association did not violate art. 11 of the Convention.⁴²

A definition of a “disability” is contained in art. 2 point 10 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons. In the understanding of this act, this concept is defined as a permanent or temporary incapacity to fulfil social roles due to a permanent or long-term injury to the mind or body, especially one which causes an inability to work.

³³ Art. 27 sec. 1 of the 1997 Personal Data Protection Act.

³⁴ Art. 49 sec. 2 of the 1997 Personal Data Protection Act.

³⁵ Art. 18.3 point 18 of the 1990 Police Act.

³⁶ Art. 8 of the 1995 Public Statistics Act.

³⁷ Art. 18 sec. 1 and 2 of the 1992 Radio and Television Act.

³⁸ Art. 21. 2 point 9 of the 1992 Radio and Television Act.

³⁹ Art. 16b point 3 of the 1992 Radio and Television Act.

⁴⁰ In its Declaration to the Framework Convention on the Protection of Minorities, Poland declared that, in its understanding, the concept of national minorities applies to national minorities residing on the territory of the Republic of Poland, whose members are Polish citizens.

⁴¹ Judgement of the Katowice Court of Appeals of 24 September 1997, I ACa 493/97 and judgement of the Supreme Court – Chamber of Administration, Labour and Social Security of 18 March 1998, I PKN 4/98.

⁴² Case of Gorzelik & others v. Poland (Application no. 44158/98).

Every person, from the moment of birth, has legal capacity (art. 8 of the Civil Code), and a person's age is counted from this moment. Polish law and case law do not define the concepts of race, religion, or sexual orientation.

Aliens in Poland benefit from the freedoms and rights enshrined in the Constitution. Exceptions to this rule must be defined by law (e.g. the 1997 Aliens Act). Restrictions depend above all on the basis of the alien's stay on the territory of the Republic of Poland. Aliens residing in Poland on the basis of a settlement permit have practically the same rights as Polish citizens, with the exception of political rights and rights related to the holding of public office. Furthermore, they face restrictions in the acquisition of real estate,⁴³ and they are not subjected to a military service obligation.⁴⁴

Acts regulating the status of professional self-government councils include the requirement of Polish citizenship among the conditions for obtaining the right to carry out a profession. Aliens, even when residing permanently in Poland and having graduated from a Polish university, are subject to special measures in order to obtain this right. A citizen of an Arab country recently had to wait over a year for the decision of the National Medical and Veterinary Council. Finally, the intervention of the national Ombudsman and a complaint to the High Administrative Court ensured that the alien obtained the right to carry out his profession.⁴⁵

NGOs regularly receive complaints about the treatment of aliens by Polish government offices. They relate to the attitude of officials to the persons they are serving, and also to the lack of complete and precise information.⁴⁶ The incompetence of officials is also manifested when they infringe the principle of proportionality (adequacy), when the burden of the measures applied against the alien exceeds the requirement of their application.⁴⁷

b. The definition of discrimination

Article 2 (Racial Equality Directive and Employment Equality Directive)

Direct and indirect discrimination

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives? Please make precise reference to the relevant legal provisions and case law.

Although the Constitution does not define the concept of "discrimination," the principle of equal treatment and the prohibition of discrimination have been permanently incorporated into the Polish legal tradition,⁴⁸ especially due to the work of the Constitutional Tribunal which aims to achieve the greatest possible precision in its reasoning and interpretation.⁴⁹

According to the established case law of the Constitutional Tribunal, the principle of equality depends on the premise that all legal subjects having a particular essential trait to an equal extent should be treated equally; that is, without any differentiation, either favouring or discriminating. At the same

⁴³ Art. 1.1 of the 1920 Law on the Acquisition of Real Estate by Aliens.

⁴⁴ Art. 4.1 of the 1967 Law on the Universal Obligation of Defence of the Republic of Poland.

⁴⁵ RPO/363816/001/XV, ruling of the High Administrative Court NSA, I SAB/365/01.

⁴⁶ For example, a brochure on the rules of applying for, among others, a residence permit for a specified time period does not include information on the possibility of applying for such a permit by a person whose deportation would violate the provisions of the 1950 European Convention on Human Rights.

⁴⁷ See for example the rulings of the High Administrative Court of 8 November 2000, VSA 940/00, and of 13 September 2000 VSA 2410/99.

⁴⁸ According to the ruling of the Constitutional Tribunal of December 16 1997, K 8/97, "the fundamental reasoning of judgements until now (that is, on the basis of the repealed 1952 Constitution) pertaining to the principle of equality, retains its applicability in the new constitutional order".

⁴⁹ The very first ruling of the Tribunal (May 28 1986, U 1/86) pertained to the principle of equality.

time, the principle of equality assumes the different treatment of those legal subjects which do not share a common essential trait. In examining the consistency of a legal regulation with the constitutional principle of equality, it is necessary to determine if there is a likeness of the defined subjects, and thus whether it is possible to indicate a common essential or actual trait to justify the equal treatment of these subjects. Such determination requires an analysis of the object and purpose of the normative act containing the legal norm in question. If an employer differentiates among legal subjects who share an essential trait, he is deviating from the principle of equality. Such deviation is permitted under three conditions: first, the differentiations introduced by the employer must be rationally justified, and they must be connected to the object and purpose of the regulations containing the norm in question; second, the weight of interests which are served by the differentiation of like subjects must remain in appropriate proportion to the weight of interests which are derogated by the differential treatment of like subjects; and third, the differentiation of like subjects must find a basis in constitutional values, principles or norms.⁵⁰

The definition of the concept of “discrimination” appears in several international conventions ratified by Poland.⁵¹

A definition of discrimination for the purposes of employment relationships was contained in a Supreme Court ruling dated 10 September 1997.⁵² According to this ruling, “discrimination, within the meaning of Article 11 (3) of the Labour Code, is an illicit deprivation or limitation of rights arising from the employment relationship, or unequal treatment of employees for reasons of their gender, age, disability, nationality, race, beliefs or opinions, especially religious or political, and trade union memberships, as well as granting some employees less rights than other employees in the same situation, *de iure and de facto*”.⁵³ A justified termination of an employment contract is not discrimination.⁵⁴

The difference between “direct and indirect discrimination” is introduced in the Labour Code,⁵⁵ but this defines both concepts only in the context of the principle of equal rights of men and women in employment.⁵⁶ Definitions of “direct and indirect discrimination”, replicating those contained in both Directives, are introduced by the Draft Labour Code⁵⁷ and Art. 2 of the draft bill on the *General Inspectorate for Counteracting Discrimination*.

Harassment

Does national law define harassment, as defined in the Directives? Are there any existing or forthcoming Codes of Practice on harassment? Please make precise reference to the relevant legal provisions and case law.

The provisions of Polish criminal law do not contain a separate type of crime which could be described as “harassment” as understood in the two Directives; they cover only the most serious

⁵⁰ Ruling of the Constitutional Tribunal of 19 February 2001r. Other examples of Constitutional Tribunal rulings: (codes: K. 3/994 OTK 1994/II item 42; K 4/95 OTK 1995/II item 11; K 17/95 OTK ZU 1995/3 item 18; K. 10/96 OTK ZU 1996/4 item 33; K. 22/97 OTK ZU 1997/3 – 4 item 41; K. 7/98 OTK ZU 1998/6 item 996; K 5/2000 OTK ZU 2001/1 item 2; SK 9/2000, OTK ZU 2000/8 item 297).

⁵¹ i. e. the ILO Convention No 111 relating to discrimination in employment and carrying out a profession of 1958 (Art. 1.1 and 1.2); UNESCO Convention on Combating Discrimination in the field of education of 1960 (Art. 1 and 2); the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Art. 1.1).

⁵² IPKN 246/997, OSNAPiUS 1998/12/360, similarly Supreme Court ruling of 19 January 1998, I PKN 484/97, OSNAPiUS 1998/24/710.

⁵³ Supreme Court ruling of 19 January 1998, I PKN 484/97, OSNAPiUS 1998/24/710.

⁵⁴ Supreme Court ruling of 19 January 1998, I PKN 484/97, OSNAPiUS 1998/24/710; similarly Supreme Court ruling of 26 June 1998, I PKN 213/98 OSNAPiUS 1999/14/459, Supreme Court ruling of 13 April 1999, I PKN 2/99 OSNAPiUS 2000/12/459.

⁵⁵ Art. 11(3) of the Labour Code.

⁵⁶ Art. 18(3)a § 2 and 3 of the Labour Code.

⁵⁷ Art. 18(3)a § 2, 3 and 4 of the Draft Labour Code.

actions conveyed by this concept. Such crimes, in particular, are for example hate crime and hate speech, such as:

- The crime of genocide and its preparation.⁵⁸
- The use of violence or unlawful threats towards a group of people or an individual person owing to his membership of a national, ethnic, racial, political or religious group, or owing to his lack of a religion, as well as public incitement to commit such a crime.⁵⁹
- Public propagation of a fascist or other totalitarian political system or incitement to hatred based on national, ethnic, racial, or religious differences or on the lack of a religion.⁶⁰
- For the same reasons, public defamation of a group of people or an individual person or violation of the bodily integrity of a person.⁶¹
- Restricting a person's rights due to his membership of a religious group or his lack of association with a religion.⁶²

Existing crimes belonging to the category of hate speech and hate crime do not cover the grounds of "sexual orientation". Sexual minority rights organisations are campaigning for the broadening of the scope of these crimes.

Aside from crimes belonging to the category of "hate crime" and "hate speech", additional note must be made of the following crimes:

- Malicious or persistent violation of an employee's rights resulting from an employment relationships or from social security claims by a person or refusal to re-employ a person whose reinstatement was ruled by the appropriate organ,⁶³
- Abuse of a dependent relationship or exploitation of a critical situation to induce a person to have sexual intercourse or to submit to another sexual act or to perform such an act.⁶⁴

The catalogue of violations of a worker's rights does not directly mention actions motivated by discriminatory intentions.⁶⁵ This kind of violation is also not anticipated by the Draft Labour Code.⁶⁶ However, it is an offence to refuse to employ a candidate for a vacant position or a pre-employment training programme for discriminatory reasons indicated *inter alia* in both directives,⁶⁷ as well as non-compliance with the ban on discrimination for these reasons when running an employment agency.⁶⁸ The draft bill on the General Inspectorate for Counteracting Discrimination does not contain the concept and definition of harassment.

According to civil law, a person whose personal welfare, which includes *inter alia* health, freedom and dignity, has been threatened, may demand that such actions be desisted from. He can also demand that the person who committed such a violation undertake the actions necessary to remove its effects, in particular to make a declaration of appropriate form and content. If, as a result of a violation of personal welfare, property damage has occurred, the victim may demand its repair.⁶⁹

Existing "codes of conduct" apply mainly to corporations and international organisations, such as the United Nations. The obligation to behave in a particular manner is included also in the provisions of contracts entered into between the latter and Polish NGOs.⁷⁰ The code of professional ethics of the

⁵⁸ Art. 118 of the Penal Code.

⁵⁹ Art. 119 of the Penal Code.

⁶⁰ Art. 256 of the Penal Code.

⁶¹ Art. 257 of the Penal Code.

⁶² Art. 194 of the Penal Code.

⁶³ Art. 218 of the Penal Code.

⁶⁴ Art. 199 of the Penal Code.

⁶⁵ Art. 281-283 of the Labour Code.

⁶⁶ The Draft Labour Code introduces a definition of "harassment" as a form of discrimination, encompassing all the prohibited forms of differentiation mentioned in both directives, using this term to describe "actions whose effect or intent is the violation of the dignity, or the humiliation or degradation, of an employee" (Art. 18(3) a § 6).

⁶⁷ Art. 66 point 3 of the 1994 Law on Employment and Countering Unemployment.

⁶⁸ Art. 66 point 4 of the 1994 Law on Employment and Countering Unemployment.

⁶⁹ Art. 23, 24 and 415 of the Civil Code.

⁷⁰ From interviews carried out for purposes of this project, carried out in November 2002.

nationwide newspaper Rzeczpospolita contains the recommendation that information on a person's age, race, skin colour, disability, or sexual orientation should be printed only when it has significance for the story.⁷¹

Instruction to discriminate

Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives? Please make precise reference to the relevant legal provisions and case law.

In the context of conducting employment services, the ban on discrimination for the reasons mentioned, among others, in the two directives encompasses both public employment services and private agencies.⁷² Vacancy information (on available jobs or pre-employment training positions) placed by the employer cannot contain any requirements that discriminate candidates on the grounds of gender, age, disability, race, nationality (ethnic origin), sexual orientation, opinions (beliefs), especially political or religious convictions, or trade union membership.⁷³ Due to the planned amendments to the labour law, the term discrimination will also cover actions which encourage another person to violate the principle of equal treatment in employment.⁷⁴ The draft bill on the General Inspectorate for Counteracting Discrimination does not mention "instructions to discriminate".

If instructions to discriminate lead a person to commit a crime, the person who issued such instructions is held responsible for directing or instructing to perpetrate, or aiding or instigating the crime.⁷⁵ A person publicly inciting to commit a crime is held responsible for its perpetration.⁷⁶ On the basis of civil law a person who has incurred damages due to instructions to discriminate can seek compensation according to general principles.⁷⁷

c. Scope

Fields of application

Article 3.1 (Racial Equality Directive and Employment Equality Directive)

Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive? Please make precise reference to the relevant legal provisions and case law.

The prohibition on discrimination enshrined in art. 32 sec. 1 and 2 of the 1997 Constitution of the Republic of Poland goes beyond the sphere indicated in art. 3.1 of the Racial and Employment

⁷¹ Code of Professional Ethics of *Rzeczpospolita*, p. 1.

⁷² Art. 37.13 of the 1994 Law on Employment and Countering Unemployment.

⁷³ Art. 12.3 of the 1994 Law on Employment and Countering Unemployment.

⁷⁴ Art. 18 (3a) § 6 Draft Labour Code.

⁷⁵ Art. 18 § 1, 2 and 3 of the Penal Code.

⁷⁶ Art. 18 § 1 in relation to art. 280 of the Penal Code.

⁷⁷ Art. 415 of the Civil Code.

Equality Directives, encompassing political, social, and economic life in their entirety, both in the public and the private sector.

According to art. 65 of the Constitution, everyone is guaranteed the freedom to choose and carry out an occupation and to choose a workplace. In labour law, the principle of equal rights in the treatment of employees, especially men and women, as well as a prohibition on direct and indirect discrimination have been codified in art. 11 (2) and art. 11 (3) of the 1974 Labour Code. The prohibition of discrimination refers to employment relationships in both the public and private sector. Employees, regardless of sex, have the right to equal remuneration for equal work, or for work of equal value.⁷⁸ This provision also defines the components of remuneration, as well as “work of equal value”.⁷⁹ The Draft Labour Code also broadens the scope of art. 18 (3) c to include the criteria mentioned in the Racial and Employment Equality Directives.

The Draft Labour Code introduces a general clause on equal treatment, encompassing all the prohibited criteria of differentiation in the context of forming and dissolving employment relationships, conditions of employment, promotion, and access to training for the purpose of upgrading professional qualifications.⁸⁰ The projected change to the Labour Code, will directly oblige the employer to aim to create an environment free from discrimination in the workplace, especially with respect to gender, age, disability, racial or ethnic origin, religion, belief, and sexual orientation.⁸¹ The currently existing provision, which is limited to establishing an employer’s obligation to ensure safe and hygienic work conditions,⁸² must be recognised as entirely insufficient.

Employees belonging to a church or other religious communities whose religious holy days are not designated public holidays by law, may apply to their employers for a day off from work on the terms described in the ordinance of the Ministers of Labour and Social Policy and National Education.⁸³ This ordinance also regulates the manner of releasing schoolchildren and students from study on their holy days.

Public authorities have the obligation to implement policies leading to full, productive employment through running programmes to combat unemployment, including organising and supporting vocational guidance and training as well as public works and interventions. Conditions of access to employment, job placement services, and vocational guidance are regulated by the 1994 Law on Employment and Countering Unemployment. The employer has the obligation to facilitate the upgrading of employees’ professional qualifications.⁸⁴ The general anti-discrimination clause of art. 11 of the Labour Code is applicable with respect to this.

The undertaking and carrying out of economic activity is free to everyone on an equal basis, under the conditions defined by legal regulations.⁸⁵ The provisions of Polish law also do not anticipate restrictions in the carrying out of a profession (aside from the general qualifications required) which would be inconsistent with the scope of the Racial and Employment Equality Directives, including the

⁷⁸ Art. 18 (3) c § 1 of Labour Code

⁷⁹ Art. 18 (3) c § 2 and 3 of the Labour Code

⁸⁰ Art. 18(3) a § 1 of the Draft Labour Code.

⁸¹ Art. 94 point 2b of the Draft Labour Code.

⁸² Art. 15 (1) in relation to art. 201 (1) of the Labour Code.

⁸³ Ordinance of the Ministers of Labour and Social Policy and National Education of 1999 relating to release from work or study of persons belonging to churches or other religious communities for the purpose of celebrating religious holy days not designated public holidays by law. The application should be lodged not later than 7 days before a day off from work.

⁸⁴ Art. 17 and Art. 103 of the Labour Code and the Ordinance of the Minister of National Education and the Minister of Labour and Social Policy of 1993 on the principles and conditions of upgrading the professional qualifications and general education of adults.

⁸⁵ Art. 5 of the Economic Activity Act of 1999.

benefits provided for by professional organisations.⁸⁶ Moreover, Polish citizens benefiting from full public rights have the right of access to the civil service on an equal basis.⁸⁷

The freedom of association in trade unions, social-professional organisations of farmers and in employers' organisations is constitutionally guaranteed.⁸⁸ The right to create and join trade unions is granted to all workers regardless of the basis of their employment relationships, to members of farming cooperatives, and to persons carrying out work on the basis of agency contracts, as long as they are not employers. Collecting old-age or disability pensions does not deprive them of the right of membership in or to join trade unions.⁸⁹ Employees have the right to create, without previously obtaining permission, unions at their discretion, as well as to join such organisations, on the condition that they abide by their statutes.⁹⁰

In this area, it must be acknowledged that existing provisions along with the planned changes meet the requirements outlined in art. 3.1 (a) – (d) of the Racial Equality Directive and Employment Equality Directive.

With a generally high level of unemployment,⁹¹ disabled persons find themselves in a particularly difficult situation on the labour market. Research indicates that the majority of disabled persons are professionally inactive. The rate of professional activity amongst disabled persons of a productive age (2.499 million people, amounting to over 60% of the total number of 4.139 million disabled people), at 26.9%, is over 2.5 times lower than that of the productive-age population at large. The situation of disabled people and their status in the labour market did not change significantly in the years 1995-2000.⁹²

The situation of Polish citizens of Roma nationality has been particularly difficult, especially those belonging to the "Bergitka Roma" group, inhabiting the Malopolskie and Podkarpackie *voievodships* (provinces). Their low level of education and lack of vocational qualifications makes their effective competitiveness in the labour market impossible.⁹³ In recent years NGOs have received a few individual complaints that employment was refused on the basis of belonging to a national minority or a particular religion.⁹⁴

Every citizen has the right to social security in the event of incapacity to work due to illness or disability, as well as after reaching the age of retirement. A citizen remaining without employment against his/her will and without other means of support has the right to social security.⁹⁵ The scope and forms of social security are defined by law, including the 1990 Social Assistance Act, the 1998 Law on Retirement and Disability Pensions from the Social Insurance Fund, and the 1998 Social Security System Act.

The right of everyone to health care is a constitutional right. Public authorities are additionally obliged to ensure particular health care for children, pregnant women, disabled persons and the elderly.⁹⁶ Public authorities ensure that citizens, regardless of their material situation, have equal access to health care services financed by public funds. In principle, persons holding Polish citizenship and residing on the territory of the Republic of Poland are insured, as well as aliens legally residing on the territory of

⁸⁶ See for example art. 2 of the 1996 Medical Profession Act, art. 8 of the 2001 Psychological Profession and Professional Self-Government of Psychologists Act, art. 65 of the 1982 Legal Profession Act, and art. 24 of the 1982 Legal Advisers Act.

⁸⁷ Art. 60 of the Constitution and art. 4 and 5 of the 1998 Civil Service Act.

⁸⁸ Art. 59 of the Constitution.

⁸⁹ Art. 2 of the 1991 Trade Unions Act.

⁹⁰ Art. 1 of the 1991 Employers' Unions Act.

⁹¹ According to the information of the Ministry of Labour and Social Policy at the end of November 2002 the unemployment rate was 17.8%.

⁹² Integration Report "The Disabled: a Normal Issue", 2001, p. 27 onwards.

⁹³ Information from the Ombudsman for 2001, p. 349.

⁹⁴ The wronged parties decided not to take their claims to court.

⁹⁵ Art 67 sec. 1 of the Constitution.

⁹⁶ Art. 68 of the Constitution. The conditions and scope of providing services were defined in the 1997 Universal Health Insurance Act.

the Republic of Poland, if they submit to the obligation of health insurance or insure themselves voluntarily. Insurance covers the members of a family.⁹⁷ It is also the obligation of the state to protect mental health, in particular to ensure that people with mental disorders have multifaceted and universal health care and other forms of care and assistance essential to their social and family life, as well as to promote appropriate social attitudes towards people with mental disorders, especially understanding, tolerance, and goodwill, and to counteract their discrimination.⁹⁸

The right of every citizen of the Republic of Poland to an education is a constitutional right.⁹⁹ Education until the age of 18 is obligatory, and free in public schools (this qualification does not apply to the provision of some educational services by public tertiary schools).¹⁰⁰ Parents have the freedom to choose schools other than public schools for their children. Citizens and institutions have the right to establish primary, secondary and tertiary schools and educational establishments.¹⁰¹ Public authorities have the obligation to ensure that all citizens have a universal and equal access to education. For this purpose, they are obliged to create and support systems of individual financial and organisational aid for schoolchildren and students.¹⁰² Furthermore, Polish citizens belonging to national and ethnic minorities are assured the freedom to retain and develop their own language, retain their customs and traditions, and develop their own culture, and also the right to create their own educational and cultural institutions and institutions protecting religious identity, as well as to participate in decision-making in matters related to their cultural identity.¹⁰³ According to art. 13 of the 1991 Education Act, schools and public institutions have the obligation to enable schoolchildren to maintain their sense of national, ethnic, linguistic and religious identity, and in particular the study of their language and their own history and culture. Upon a motion from the parents, language tuition may take place in separate groups, sections, or schools; in groups, sections, or schools with additional lessons in a particular language and on their own history and culture; or in inter-school teaching groups.¹⁰⁴

Polish domestic law relating to the education of persons belonging to national minorities should be recognised as consistent with international standards. An assessment of the state of education of national and ethnic minorities is made difficult by the lack of precise data on this issue. The problems most frequently mentioned by national minorities are: lack of curricula, textbooks, teachers, and funds. The situation of individual national minority groups in the field of education varies widely. The best organised is Lithuanian education, largely thanks to the activities of the members of this minority, covering all the levels of teaching. The Lithuanians have also developed the largest number of textbooks. In the case of the Roma minority, a teaching system according to art. 13 of the 1991 Education Act has not been created, but there is a need to stress that the obligation of the authorities to establish such system depends on the national minority group (they need to lodge the individual application). The problems in the education of Roma children are connected with the economic situation of Roma families and the lack of importance which some Roma families attach to the education,¹⁰⁵ and also with the low level of activity on the part of the state in terms of ensuring

⁹⁷ Art. 2 of the 1997 Universal Health Insurance Act.

⁹⁸ Art. 2 of the 1994 Protection of Mental Health Act.

⁹⁹ Art. 70 of the Constitution.

¹⁰⁰ The manner of fulfilling the scholastic obligation is defined by the 1991 Education Act. The regulations for the functioning of higher institutions were defined by the 1990 Act on Higher Education.

¹⁰¹ Ordinance of the Minister of National Education of 1997 relating to specific regulations and conditions of providing and withdrawing permission to establish a public school by a legal or physical person; Ordinance of the Minister of National Education of 2001 relating to outline statutes for public pre-schools and public schools.

¹⁰² Ordinance of the Council of Ministers of 1993 relating to the conditions, form, and mode of granting and dispensing, as well as the amount of, material assistance to schoolchildren; Ordinance of the Minister of National Education and Sport of 2001 relating to regulations for the division of the general education subsidy for units of local government in 2002.

¹⁰³ Art. 35 of the Constitution.

¹⁰⁴ The conditions and manner of carrying out these tasks were defined in an Ordinance of the Minister of National Education of 1992 relating to the organisation of education enabling the sustenance of national, ethnic, and linguistic identity of schoolchildren belonging to national minorities.

¹⁰⁵ Report: The Roma on the Education of their Children (based on the example of the Carpathian Roma) (Raport – Romowie o edukacji swoich dzieci (na przykładzie Cyganów Karpackich), Oświęcim 1997, pp. 11, 17 and ff. Report published by the Association of Roma in Poland, commissioned by the Minister for National Education.

suitable conditions for the education of Roma in schools.¹⁰⁶ On the one hand, the state undertakes too few actions to encourage and facilitate education for Roma children, and on the other hand it tolerates the non-respecting of the scholastic obligation by parents, and as a result many Roma children do not attend school at all.¹⁰⁷ A serious problem for the education of Roma children remains their inadequate knowledge of the Polish language, as well as “civilisational” or cultural barriers leading to learning problems from the very beginning.¹⁰⁸

According to art. 75.1 of the Constitution, public authorities are obliged to create policies enabling them to meet the housing needs of citizens, and in particular to counter homelessness, support the development of social building projects, and support the efforts of citizens to secure their own housing. Access to housing is regulated by the following acts of law: the 2001 Law on Housing Allowances and the Law on Protections of Tenants’ Rights, Municipal Housing Resources and Amendments to the Civil Code of 2001. They do not contain provisions of a discriminatory nature. In this area it must be acknowledged that existing provisions along with the planned changes meet the requirements outlined in art. 3.1 (e) – (h) of the Racial Equality Directive.

Given the exceptionally difficult housing situation in Poland, the critical situation of the “Bergitka Roma” must also be mentioned in this respect. The deep poverty of this group and their housing conditions, which are an outrage to human dignity, require the undertaking of additional measures, including ensuring that they have access to dignified living conditions.¹⁰⁹

Exceptions and exemptions

- Occupational requirements

Article 4 (Racial Equality Directive and Employment Equality Directive)

Do such exemptions exist on the national level? Does national law define ‘genuine and determining occupational requirements’ and, if so, how?

Please note that the Employment Equality Directive includes particular provisions with regard to organisations the ethos of which is based on religion or belief.

Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?

Please make precise reference to the relevant legal provisions and case law.

According to art. 65 of the Constitution, everyone is guaranteed the freedom to choose and carry out an occupation and to choose a workplace. Exceptions to this principle in terms of the employment of women and minors are introduced by the Labour Code.¹¹⁰ The regular employment of children below the age of 16 is prohibited.¹¹¹ There is an additional prohibition on the employment of juveniles (minors between the ages of 16 and 18)¹¹² in work described in the list of prohibited jobs.¹¹³ The goal of such regulations is the protection of the health and proper physical development of the juvenile.

Labour law does not define the concept of “genuine and determining occupational requirements”. The existing provisions relate to the requirements which are needed to perform specific occupations.

Art. 3 and 4 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons, defined three degrees of disability: significant, moderate and mild. Including a person in the categories of significant or moderate disability does not preclude the possibility of his/her employment

¹⁰⁶ Ombudsman’s Information for the Year 2001 (Informacja Rzecznika Praw Obywatelskich za 2001 r.), p. 349 and ff.

¹⁰⁷ But there are some visible effects of the Pilot Government Programme for the Roma Community in the Malopolska Province for the Years 2001 – 2003.

¹⁰⁸ Ombudsman’s Information for the Year 2001 (Informacja Rzecznika Praw Obywatelskich za 2001 r.), p. 349 and ff.

¹⁰⁹ Ombudsman’s Information for the Year 2001 (Informacja Rzecznika Praw Obywatelskich za 2001 r.), p. 348.

¹¹⁰ Art. 176 and 204 of the Labour Code.

¹¹¹ Art. 65 of the Constitution.

¹¹² As defined in Art. 190 of the Labour Code.

¹¹³ Ordinance of the Council of Ministers of 1990 containing the list of prohibited jobs for juveniles.

by an employer who does not meet the requirements of the “protected work” category, so long as the employer has adapted the position to the needs of a disabled person, and this has been positively confirmed by the National Labour Inspectorate.¹¹⁴

District and *voievodship* disability certifying teams adjudicate on the degree of disability (for adults) or the fact of a disability (for children).¹¹⁵ Moreover, on an equal footing with this is the certification on the degree of disability by the certifying doctor of the Social Insurance Agency (Zakład Ubezpieczeń Społecznych), issued on the basis of the 1998 Law on Retirement and Disability Pensions from the Social Insurance Fund.¹¹⁶ The Government Plenipotentiary for Disabled Persons’ Affairs supervises such certification.¹¹⁷

The Draft Labour Code states that the principle of equal treatment in employment is not violated by the refusal to employ a worker on one or more of the grounds mentioned in both Directives, if in the carrying out of the specified job this is justified by its type or conditions of carrying it out, the use of measures which differentiate the legal situation in favour of the worker due to the protection of parenthood, age or disability of the worker as well as the establishment of the conditions of employing and dismissing workers, the terms of remuneration and promotion, and access to training with the aim of raising professional qualifications – taking into account the length of employment history.¹¹⁸ These conditions do not contradict the provisions of both directives.

The introduction of sexual orientation into anti-discrimination legislation has not given rise to a debate involving employers with a religious ethos. This is due to the fact that the position of the Catholic church and other religious communities is guaranteed in the Constitution and legislation, giving them specific rights and privileges, for example relating to their selection for employment of teachers of religion. In addition, the Catholic church and other religious communities have the right to run their own educational activities, which are granted autonomy by law.

Reasonable accommodation

Article 5 (Employment Equality Directive)

Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a ‘reasonable accommodation’?

Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives? How do courts determine whether accommodation is “reasonable” or whether it imposes a “disproportionate burden”? What type of criteria is used (medical, occupational, educational, grants etc.)?

How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

¹¹⁴ Art. 4.5 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹¹⁵ Art. 6 and 6 (a) – (c) of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹¹⁶ Art. 5 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹¹⁷ Art. 6 (c). 1. of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹¹⁸ Art. 18 (3) b § 2 of the Draft Labour Code.

The provisions of labour law do not create a duty to provide reasonable accommodation in order to employ a specific disabled individual.

According to art. 229 § 1 of the Labour Code, all persons accepted to work must undergo initial medical tests, regardless of whether they have the results of tests done for the previous employer. Initial medical tests are also mandatory for juveniles transferred to new positions, and other employees being transferred to new positions which involve factors harmful to health or with burdensome conditions.¹¹⁹ Medical tests serve not only the purpose of protecting the health of employees,¹²⁰ they also insure the interests of the employer by disclosing the poor health of candidates and employees, thus preventing their employment. An employer who does not know in advance whether a candidate is in a suitable condition to undertake the job, can enter into a conditional contract with him/her, which may contain a clause conditioning employment on the presentation of medical certification declaring that the employee is able to work in a particular position. This is often seen by employees as contrary to their right to work, especially since the event of an unfavourable test result forces them to change their position, and may even lead to the dissolution of the employment relationship.¹²¹

In the provisions of labour law there is no direct written connection between initial medical tests and the duty to provide “reasonable accommodation”. The provisions of labour law also do not define the kinds of questions which an employer can ask a disabled person. In order to avoid the pre-selection of candidates by the employer on the basis of their state of health, which has nothing to do with the nature of the job position, the provisions changing the Labour Code propose the addition of art. 22.1, which creates a closed list of personal data which an employer can ask a prospective employee. This list does not include questions on the person’s disability. Access to such data can only take place in the form of a declaration by the person they concern. The employer can demand their documentation. The employer can demand other personal data only in cases where other regulations call for their disclosure.

The requirement of presenting current test results is of an absolute nature. The employer cannot employ a prospective employee without a valid medical certificate declaring that the employee is able to work in the specified position.¹²² The employer is obliged to keep copies of medical certificates based on these tests in the personal files of the employer. Failure to fulfil this obligation means that the employer is held responsible for a misdemeanour.¹²³ Medical tests are conducted at the cost of the employer. The employer also bears the costs of preventive health care necessary for employees in particular work conditions.¹²⁴

The scope of preventive testing, the manner of carrying it out, and the manner of issuing and filing medical certificates is prescribed by an ordinance of the Minister of Health and Social Care of 30 May 1996 concerning the conducting of medical examinations of employees, the scope of preventive health care of employees, and medical certificates issued for the purposes envisaged by the Labour Code. The ordinance also defines the additional qualifications required of doctors carrying out preventive testing and responsible for the necessary preventive health care of employees arising from their work conditions. Preventive testing is carried out on the basis of a referral issued by the employer. The referral should contain a description of the type of preventive testing which is to be carried out and, in the case of persons hired for jobs or employees transferred to new positions, a description of the position in which the person is to be employed. In this case the employer may indicate in the referral two or more possible positions, in the order in which they best satisfy the needs of the firm.

¹¹⁹ Art. 229 of the Labour Code, aside from initial tests, also envisages other mandatory medical tests, such as inspections or periodic checkups.

¹²⁰ Medical tests verify, among others things, if a particular person can carry out work in a given position without (known) injury to his/her health.

¹²¹ K. Walczak: “The Labour Code: A Commentary”, Warsaw 2001, p. 996 and ff.

¹²² Art. 229 § 4 of the Labour Code.

¹²³ Art. 281 point 6 of the Labour Code.

¹²⁴ Art. 229 § 4 of the Labour Code. In the case of formulating a contract based on civil law, the terms of payment for these tests can be included in the contract itself and the commissionee be made to bear them.

The scope and frequency of preventive testing is defined by a set of methodical guidelines on the preventive testing of employees, which form an annex to the ordinance. A doctor carrying out preventive testing may expand its scope to include additional specialist consultations or examinations. He/she may also indicate that the period of time after which new examinations must be held is to be shorter than specified in the methodical guidelines, if he/she decides that this is essential to the proper assessment of the health of the person being hired or the transferred employee.¹²⁵ Preventive testing concludes with the issuance of a medical certificate declaring that the employee is able, or unable, to work in the specified position for health reasons. The doctor carrying out preventive testing includes a description of the examination and the subsequent decision in the medical records of the employee. The decisions are issued in the form of certificates. An employee or employer who does not agree with the content of the certificate issued can request, within 7 days of the date of issue of the certificate and with the issuing doctor as an intermediary, a repeat examination in order to get a second opinion. This is carried out in the *voievodship* health centre appropriate to the workplace.

In this situation, , by virtue of their specifically-delineated scope, manner of being carried out, and also the manner of issuing and filing medical certificates, the law relating to medical examinations does not contradict the principle of equal treatment/prohibition of disability-based discrimination.

The provisions of Polish law do not oblige the employer to provide reasonable accommodation in order to employ a specific disabled individual. Improving the employment rate of disabled persons is promoted through economic incentives under the so-called system of Quotas and Penalties contained in the law the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.¹²⁶ An incentive for employers to employ disabled persons who are unemployed or job searching while not holding a job, directed to work by a district labour office, was, until 31 January 2003, the possibility of financial support from the National Disabled Persons Rehabilitation Fund (Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych – hereafter PFRON). This supported employers' efforts in, among others, the organising new positions for disabled persons capable of working or adapting existing positions to the needs of disabled persons.¹²⁷ Following legislative changes, as of 1 February 2003, these resources may be used to adapt, but not organise, existing positions or positions being created to accommodate the needs of disabled persons meeting the conditions defined in the law. The amendment of 20 December 2002 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons introduced the definition of a “job position adapted to the work needs of a disabled person.” This is a position which is suitably equipped and adapted to the needs arising from the type and degree of disability of the person.¹²⁸

The projected change to the Labour Code directly obliges the employer to aim to create in the workplace an environment free from discrimination, especially on the grounds of gender, age, disability, racial or ethnic origin, religion, creed, and sexual orientation.¹²⁹

Minimum requirements and positive action

- Minimum requirements

Article 6 (Employment Equality Directive)

When is differentiation on grounds of age ‘objectively and reasonably’ justified under national law? How is this test being applied? Are any specific arrangements made in national law regarding age

¹²⁵ § 2. 1 and 2 of the ordinance.

¹²⁶ On the divergence of opinions between advocates of the system of economic incentives and those of the human rights approach, see the World Bank report *Disability and Employment in Poland (Niepełnosprawność a praca w Polsce)*, December 2000, p. 36 and ff. This report recommends a harmonious combination of both systems.

¹²⁷ Art. 26 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹²⁸ Art. 2 point 8 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹²⁹ Art. 94 point 2b of the Draft Labour Code.

discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Directive). Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions? Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension?)? Are rights to protection from unfair dismissal lost upon reaching this retirement age? Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages? Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)? Is selection for redundancy widely decided on age grounds? Is there obvious evidence of age discrimination in access to training opportunities? Please, do not undertake far-reaching socio-economic research here, but just mention points that are well-known already to the national experts or easily accessible (for example, existing research, national reports, reports of international organisations etc...).

Persons who have lost their jobs after a long period of employment are entitled to pre-retirement welfare benefits.¹³⁰ This does not carry the connotation of early retirement (it is not calculated like a retirement pension), but is a defence mechanism of the state with the intention of easing the effects of unemployment, and is deducted from the Labour Fund (a unit of the state budget). While in 2001 it amounted to 90% of the retirement pension and there was no upper limit on its amount, from January 2002 the amount was limited to 80% of the retirement pension, but not less than 120% and no more than 200% of the unemployment benefit. Such retirement schemes are not promoted by the state, because this would involve increasing budgetary expenditures, which is impossible given the current condition of public finances. On the other hand, their amount is not particularly attractive, so attempts at promotion would not be very effective. It is more likely that persons in a difficult economic situation and meeting the criteria apply for this benefit, since it is their only chance to obtain a means of support, and eventually the right to a retirement pension.

Employers make decisions on the dismissal of these employees. These decisions are autonomous and the state or the Ministry of Labour and Social Policy has no influence on them. Because of this, they do not have at their disposal statistics or even estimates in this respect.¹³¹

Based on observations of the socio-political situation in Poland it seems that in practice employers frequently use the grounds of age as a basis for dismissing a given person. According to the provisions of the 1994 Law on Employment and Countering Unemployment, persons may retire not earlier than upon reaching the age of 60 in the case of women and 65 in the case of men, but they are not obliged to do so. It confirms a ruling of the Supreme Court of 4 October 2000 that “a claim for admittance to work cannot be seen as contrary to the principles of community life or to its socio-economic purpose simply because of the fact that an employer reached the age of retirement seven years ago, since this would be a violation of the prohibition on discrimination on the grounds of age” (art. 11(3) of the Labour Code).¹³² In practice, however, such persons are frequently forced to leave work.¹³³

In its ruling of 21 April 1999, the Supreme Court agreed with the position of the *Voievodship* (Provincial) Court – the Labour and Social Insurance Court in Kielce, expressed in its verdict of 23 September 1998¹³⁴ and declared that the termination of a work contract due to the reaching of the age

¹³⁰ The conditions are stipulated in the 1994 Law on Employment and Countering Unemployment (Art. 37 k).

¹³¹ During the preparation of this report, the authors did not find any statistics or reports of independent experts which might suggest a reliable answer to this question and provide concrete evidence for age-based discrimination or in a discrimination in access to training, because such analyses most probably do not exist in Poland.

¹³² The judgment of the Supreme Court of 4 October 2000, I PKN 65/2000, OSNAPiUS 2002/9/212.

¹³³ From an interview with the leaders of the National Retirees' and Pensioners' Party.

¹³⁴ In this ruling the *Voievodship* Court referred to earlier, written declarations of the plaintiff indicating her intention of retiring and agreed with the argument of the employer that he was carrying out a health care employment policy that aimed to facilitate the employment in the medical profession also of young doctors.

of retirement by a woman (60 years) and her becoming entitled to a retirement pension is justified (art. 45 § 1 in relation to art. 39 of the Labour Code) and cannot be interpreted as discrimination of the employee due to age or sex – art. 11 (3) of the Labour Code.¹³⁵

This judgement illustrates the dilemma facing employers when making decisions about firing employees. In a situation of necessary redundancies, persons entitled to pre-retirement welfare benefits or pensions come first in line, since the only cushion for younger people is the right to receive unemployment benefits for one year. Middle-aged people are in relatively the worst situation, since in case of redundancy they do not have the right to receive a pre-retirement benefit, after a year they lose the right to receive state support in the form of unemployment benefits, and if they live in a region heavily affected by structural unemployment, they have practically no chances of finding new employment.

There are no legal restrictions on access to training programmes according to age; even persons receiving pre-retirement benefits have the right to participate in them. However, in practice it is not implausible that young persons are treated preferentially.

- *Positive action*

Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures? Are there comparable specific measures in relation to gender discrimination? Please make precise reference to the relevant legal provisions and case law. Please avoid describing social policies and policies aimed at the integration of certain groups.

The only example of a horizontal programme, i.e. one that deals simultaneously with several kinds of discrimination, was the second issue of the grants competition for “NGO initiatives promoting and realising anti-discrimination measures for sex, race, national and ethnic origin, age, and sexual orientation” organised in November 2002 by the *General Inspectorate for Counteracting Discrimination*. Grants were given to NGOs which were to be used to prepare informational programmes on anti-discrimination policy and equalising the opportunities of groups vulnerable to discrimination of the kinds listed above, in Poland and in the EU. Such programmes included organising local information centres providing information on the above subjects, as well as social dialogue and the promotion of the equal status of men and women. Subsidies are to be used for research projects, the preparation of material promoting the subject, the purchase of publications on the subject for libraries, and the supplying of equipment to local centres as well as small modifications to centre premises to meet the needs of disabled persons.¹³⁶

1. In terms of discrimination based on race and ethnic origin, the Polish legal system has a series of instruments directed towards national minorities. Bearing in mind that the issue of national minorities does not fully cover the thematic scope of Directive 2000/43/EC, the following instruments must be mentioned:
 - Electoral law: electoral committees formed by national minorities are exempted from the need to exceed the 5% threshold of votes in order to secure seats in the *Sejm* or Senate, while in the case of coalitions, they are exempted from the 8% threshold. Although this facilitation is of a permanent nature, in the event of parliamentary elections it significantly increases national minorities’ ability to participate in public life.¹³⁷
 - Education and culture:

¹³⁵ The judgment of the Supreme Court of 21 April 1999, I PKN 31/99, OSNAPiUS 2000/12/505.

¹³⁶ Advertisement, *Gazeta Wyborcza*, 19 November 2002, p. 8.

¹³⁷ Art. 134 of the 2001 Electoral Law for the *Sejm* and Senate of the Republic of Poland.

- Schools conducting lessons in national minorities' languages receive 20% greater subsidies compared to other schools, with the aim of compensating them for higher operational costs.¹³⁸
 - The Ministry of Education and Sport covers the higher costs of publishing school textbooks for minorities.¹³⁹
 - The Ministry of Culture provides financial support to minority publishing houses (for low-circulation periodicals and other publications), as well as financing certain cultural events.¹⁴⁰
 - Roma: The implementation of the Pilot Government Programme for the Roma Community in the Malopolska Province for the Years 2001-2003. Despite its comprehensive nature (it consists of educational activities, countering unemployment, health care, improvement of social conditions security, culture, raising awareness of the Roma in Polish society and awareness about the changes occurring among the Roma in Poland),¹⁴¹ it was not implemented in this form due to the difficult budgetary situation of the country.¹⁴² Its implementation did not go according to plan also because local governments were given the power to decide on its implementation, and as a result some localities practically suspended its realisation.¹⁴³
2. Religion: there are no examples of positive action.¹⁴⁴
 3. Age: In 2002 the „First Job” programme was launched, with the goal of facilitating the employment of graduates. To increase graduates' chances of gaining their first work experience, simplifications in employment and independent economic activity and preferential interest rates on loans to graduates were introduced, and favourable legal solutions and a system of economic incentives for employers were created.¹⁴⁵ Additional funds were provided to support NGOs activity aiming at facilitating the employment of graduates.
 4. Disability:
 - 4.1 The Law on Vocational and Social Rehabilitation and Employment of Disabled Persons contains a system of incentives for employers who aim to support the employment of disabled persons. For example, an employer who employs disabled persons who are unemployed or job searching while not holding a job and directed to work by a district labour office, over a period of no less than 54 months, may receive from National Disabled Persons Rehabilitation Fund (PFRON) a partial reimbursement of the costs associated with employing a disabled person and adapting the position to his/her needs.¹⁴⁶ Meanwhile, an employer employing the equivalent of up to 24 full-time employees and meeting the specified requirements, may receive from PFRON a partial reimbursement of the cost of salaries paid to disabled persons, and/or social insurance contributions required of employers.¹⁴⁷
 - 4.2 The financing of programmes for disabled persons from the PFRON¹⁴⁸ is dedicated to promoting the employment of disabled persons, raising their qualifications to improve their

¹³⁸ In 2002 there were expenditure plans for 5,756,000 PLN (1,439,000 EUR), eventually they were higher and amounted to 6,500,000 PLN (1,625,000 EUR). The amount of subsidies planned for 2003 for supporting minority activities and cultural events reaches 504,000 PLN, which is 12% lower in comparison to expenditures in the previous year. Report for the Secretary General of the Council of Europe on the Realisation of the Council's Framework Convention on the Protection of National Minorities, Warsaw 2002, p. 57.

¹³⁹ Report for the Secretary General of the Council of Europe on the Realisation of the Council's Framework Convention on the Protection of National Minorities, Warsaw 2002, p. 52; and www.mk.gov.pl.

¹⁴⁰ Report for the Secretary General of the Council of Europe on the realisation of the Council's Framework Convention on the Protection of National Minorities, Warsaw 2002, pp. 12-22.

¹⁴¹ www.mswia.gov.pl.

¹⁴² In 2001 the earmarked budget reserve was not drawn upon and in practice only tasks that were educational in nature and funded by the Ministry of Education and Sport and the Know-How Foundation were implemented. In 2002 it was expected that PLN 6 million from State Budget funds would be deployed to fund the implementation of this objective but at the end of the day actual spending reached only PLN 2 million, as indicated by interviews conducted for the purposes of the project.

¹⁴³ The most well-known case was that of Limanowa *gmina* – from interviews carried out in November 2002 for the purposes of the project.

¹⁴⁴ The lack of any cases of positive action whatsoever was confirmed in the interviews carried out for the purposes of this project.

¹⁴⁵ www.lpraca.gov.pl and the Annual Report of the Ministry of Labour and Social Policy, p.5, www.mpips.gov.pl

¹⁴⁶ Art. 26 pkt. 1 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹⁴⁷ Art. 27 pkt. 1 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons.

¹⁴⁸ PFRON – according to art. 21 pt. 1 and 2 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons, every entrepreneur should employ a specified minimum number of disabled persons (6% of all employees). If he/she does not employ this required number, he/she must pay a fine to the PFRON. PFRON in turn dedicates

chances on the job market, and supporting disabled persons who have undertaken economic activity (Merkury, Hefajstos).¹⁴⁹

- 4.3 The „Junior” programme – under the aegis of the „First Job” programme launched in 2002 included a programme to introduce disabled graduates into professional posts. It aims to do this by directing young disabled persons¹⁵⁰ to carry out 6-18 month internships. Employers receive economic incentives in the form of a bonus for accepting a disabled graduate for an internship or employing him/her. Funds for this are derived from PFRON.¹⁵¹
- 4.4 Supporting the education of disabled persons:
- 4.5 Disabled children have the right to individual tailoring of the content, methods and organisation of teaching to their mental and physical capabilities. Such teaching may occur in various forms: in general attendance schools, in integration-oriented schools or departments, in special schools or departments or special centres.¹⁵²
- 4.6 The „Student” Programme, which aims to support disabled persons in gaining higher education so that they may compete in the open job market. It provides financial aid for study at university level.¹⁵³
- 4.7 While disabled students have access to student loans on general terms, after graduation they may apply for a complete remission of the loan, if they have documentation of a persistent incapacity to work.¹⁵⁴
5. Sexual orientation: currently there are no examples of positive action, however they may be expected in future horizontal programmes.

Apart from this it is worth mentioning that the Ministry of Labour and Social Policy is preparing the Polish version of the EU’s “Equal” programme. This will focus, among others, on improving employment capacity by facilitating entry into, and return to, the labour market. In this way the idea of a labour market open to all will be promoted, with particular attention paid to the problems of racism and xenophobia in the workplace.¹⁵⁵

The issue of equality of the sexes has an important position in the government programme of the SLD-UP-PSL coalition,¹⁵⁶ which was reflected in the creation of the institution of the *General Inspectorate for Countering Discrimination*.¹⁵⁷ The Inspectorate implementing the government’s policy in this area, organised the first issue of a bids for government funds in 2002. The programme was entitled “Equal Rights – Equal Opportunities,” and was aimed at NGOs dealing with women’s rights issues and various forms of assistance to women.¹⁵⁸

Independently of this, the Parliamentary Women’s Group following the earlier attempts of women’s NGOs in this area, works towards the creation of systemic solutions, supporting gender parity in

these funds to supporting the employment of disabled persons by implementing various programmes whose purposes are described in art. 47 pt. 1 and 2 of the 1997 Law on Vocational and Social Rehabilitation and Employment of Disabled Persons

¹⁴⁹ From interviews carried out in November 2002 for the purposes of this project.

¹⁵⁰ This applies to disabled persons with a certified significant, moderate or mild degree of disability who, in the course of 12 months after the date specified in their diploma or school leaving certificate, certificate of completing a course or other document conferring eligibility to carry out a profession, have not taken up further study or have not found employment. www.mpips.gov.pl

¹⁵¹ Annual Report of the Ministry of Labour and Social Policy, www.mpips.gov.pl, p. 15.

¹⁵² www.mpips.gov.pl/_osobyniepelnos...php?dzial=386&poddzial=428dokument=425

¹⁵³ www.pfron.org.pl/4/4_3.htm

¹⁵⁴ www.mpips.gov.pl/_osobyniepelnos...php?dzial=386&poddzial=428dokument=422

¹⁵⁵ This programme will also aim to allow for the equality of opportunities available to men and women, and provide integration assistance to asylum seekers.

www.mpips.gov.pl/wiadomosci_szczegoly.php?nr=1270

¹⁵⁶ SLD - Social Left Democratic Alliance, UP- Labour Union, PSL – Polish Peasants’ Party

¹⁵⁷ Although similar institutions existed previously in the Polish political system, the institution of the *General Inspectorate for Counteracting Discrimination* was a significant shift compared to the policies of the AWS-UW government, which concentrated on family issues rather than equality of the sexes. U. Nowakowska, *Polish Women in the 90s: Report of the Women’s Rights Centre*.

¹⁵⁸ From an interview carried out for the purposes of the project.

power structures. In Spring 2002, the Group prepared a draft bill on the equal status of women and men,¹⁵⁹ in which it proposed that in decision-making bodies, e.g. the government or electoral lists, half the places should be reserved for women. Following a heated discussion in the media, the Group proposed the phasing in of this solution, introducing a 30% reservation for women by 2003, up to 40% by 2010, and 50% by 2011, in keeping with the EU *acquis*.¹⁶⁰

Currently 20% of seats in the *Sejm* are held by women, which is the best result since 1991, but nonetheless lower than the EU average. For this reason, some parties have introduced quotas in their electoral lists (some of the parties of the current government coalition: SLD and UP, as well as a party currently absent from Parliament – Unia Wolności (Freedom Union)).¹⁶¹

Chapter 2 Remedies and enforcement

Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)

a. Judicial and/or administrative procedures

What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively? Please make precise reference to the relevant legal provisions and case law.

A person whose rights and freedoms have been violated by discrimination can benefit from the legal possibilities inherent in general procedures.

In cases where the discriminatory act has taken on the gravity of a crime, the prosecuting organ is obliged to initiate and conduct a preparatory procedure, and the public prosecutor is obliged to bring charges against and support the charge – prosecuted *ex officio*.¹⁶² In case of a repeated issuance of a refusal to initiate proceedings or of discontinuance of the case, the wronged party can independently lay charges in court. The charge sheet lodged by the wronged party must be prepared and signed by a lawyer.¹⁶³

The initiation of civil proceedings can occur e.g. on the basis of damages incurred due to an illegal action¹⁶⁴ or due to a demand to cease and desist from actions threatening the personal welfare of a person.¹⁶⁵ There is also the possibility of initiating compensation proceedings in the case of an infringement of personal welfare, the principle of equal rights of an employee, or the prohibition of discrimination in employment.¹⁶⁶ Moreover an employee has the possibility of resorting to legal recourse in the form of labour courts which resolve disputes arising from individual claims related to

¹⁵⁹ The draft bill was sent to the Marshall of the Senate, www.senat.gov.pl

¹⁶⁰ A. Kublik, 'Women's Europarity', *Gazeta Wyborcza*, 19.11.2002, p. 9.

¹⁶¹ Ibid.

¹⁶² Art. 10 § 1 of the Criminal Procedural Code.

¹⁶³ art. 55 § 1 and 2 of the Criminal Procedural Code.

¹⁶⁴ art. 415 and following of the Civil Code.

¹⁶⁵ art. 24 of the Civil Code.

¹⁶⁶ Art. 11 (1 – 3) of the Labour Code. See also Supreme Court ruling of 24 March 2000, IPKN 3114/99.

the employment relationship, e.g. in connection with a discriminatory termination of an employment contract. The employer and the employee should aim towards an amicable resolution of the dispute on the employment relationship. The conciliation commissions can be instituted to resolve disputes over employees' claims relating to the employment relationship. Proceedings in cases concerning an employees' claims relating to the employment relationship are free from court fees.¹⁶⁷

In administrative proceedings, a person has the right to appeal against a decision made by the first instance organ to a higher level organ of public administration,¹⁶⁸ and finally to lodge a complaint with the High Administrative Court.¹⁶⁹

A person who feels that the principle of equal treatment was not applied to him/her has the right to claim damages from social security sources in court.¹⁷⁰

In light of the above, one may conclude that even though criminal, civil and administrative law do not envisage special procedures connected to the violation of the principle of equal rights and the prohibition on discrimination, the existing procedural solutions in Polish law meet the requirements set out in Articles 7.1 and 9.1 of the Directives.

The question of access to court procedures is tightly bound to the need to provide an effective system of legal aid to disadvantaged people,¹⁷¹ and also the continued reform of the judiciary.¹⁷²

b. Associations

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results? Please make precise references to the relevant legal provisions and case law.

In penal court proceedings participation is open to representatives of social organisations in the event of a need to protect social interests or material interests of individuals when they are relevant to tasks spelled out in the Charter of such organisation(s), and in particular when such interests relate to protection of freedom and rights of the individual. The Court permits an appearance of a representative delegated by a social organisation if such an appearance is in the interests of the judiciary. The role of this representative is limited and ends when the trial begins.¹⁷³

In proceedings before civil courts the participation of social organisations (whose tasks do not involve the conduct of economic activity) is allowed in some selected types of cases only, *inter alia* child/spouse support payments and consumer protection disputes¹⁷⁴. In order to fulfil the obligations under Article 7.2 of the Racial Equality Directive and Article 9.2 of the Employment Equality Directive an amendment to the Code of Civil Proceedings was enacted whereby Art. 61 § was added to the Code. The Article gives the right to some organisations (those whose Charters stipulate tasks including protection of equality and preventing discrimination caused by ungrounded direct or indirect differentiation in cases falling within this scope, filing complaints and claims on behalf of citizens (with their consent) and engage (also with the consent of claimant) in any stage of the ensuing proceedings. The list of such organisations shall be specified, by way ordinance, by the Minister of Justice.

¹⁶⁷ Art. 242 and ff. of the Labour Code.

¹⁶⁸ Art. 127 of the Administrative Proceedings Code.

¹⁶⁹ Art. 16 sec. 1 point 1 of the 1995 Law on the High Administrative Court.

¹⁷⁰ Art. 2a of the 1998 Social Security System Act.

¹⁷¹ The current system is, in the opinion of the Human Rights Commission of the Supreme Council of Advocates, inconsistent and inefficient.

¹⁷² Recommendations in this respect were formulated in the report: "EU Accession Monitoring Programme. The effectiveness of the judiciary. Country Reports – Poland", Budapest 2002.

¹⁷³ Art. 90 § 1 and 3 of the Penal Proceedings Code

¹⁷⁴ Art. 61 § 1 of the Civil Proceedings Code.

With regard to organisations acting as plaintiffs on behalf of citizens and their participation in proceedings aimed at protecting the rights of citizens, the provisions on the Office of the Prosecuting Attorney shall apply, *mutatis mutandis*. Organisations that are not party to proceedings may advise the Court of their viewpoints as expressed in the resolution or statement adopted by their duly authorised bodies¹⁷⁵, provided that such testimonials are material for the case in question.

According to Art. 31.1 of the Administrative Procedural Code, a social organisation may, in a case concerning another person, institute proceedings or be admitted to the proceedings, if this is justified by the statutory objectives of the organisation if such an intervention is in the public interest.

There is no information available on the extent of involvement of NGOs in discrimination related cases, nor is there any data on the outcomes of such involvement, if any.

c. Time limits

What is the situation concerning time limits? Please make precise references to the relevant legal provisions and case law.

In Polish criminal law, the time limit after which prosecution of crimes expires depends on their severity as expressed in the punishments, varying from 3 to 30 years.¹⁷⁶ These limits may be extended by a further 5 years in case charges brought against the person.¹⁷⁷ The provisions on limitations are not applied to crimes against peace, crimes against humanity, and war crimes,¹⁷⁸ nor to specifically enumerated crimes committed deliberately by public officials¹⁷⁹ in connection with the performance of their service duties.¹⁸⁰

The perpetrator of a misdemeanour may not be punished if a year has passed since it was committed; if during this time charges are brought against the person, the possibility of punishment ceases 2 years after it was committed.¹⁸¹

In civil law, the time limit of property claims, including compensation claims, is 10 years.¹⁸² Claims based on employment relationships as a matter of principle expire after 3 years.¹⁸³ A claim recognised by a legally binding judgement of the organ called upon to resolve the dispute, as well as a claim recognised through an agreement reached in the mode described by the Code before such an organ, expires after 10 years from the date of the coming into force of the judgement or of the agreement.¹⁸⁴

Time limits in the context of civil law and labour law cannot be decreased or increased by legal action.¹⁸⁵

d. The burden of proof

Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)
Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)? AH: as mentioned before, if included in penal law, this would be contrary to international human rights law

¹⁷⁵ Art. 62 i 63 of the Civil Proceedings Code.

¹⁷⁶ Art. 101 of the Penal Code.

¹⁷⁷ Art. 102 of the Penal Code.

¹⁷⁸ Art. 105 § 1 of the Penal Code. This provision is based on the 1968 Convention on the non-applicability of time limits to war crimes and crimes against humanity, as well as art. 43 of the Constitution.

¹⁷⁹ The definition of a “public functionary” is contained in art. 115 § 13 of the Penal Code.

¹⁸⁰ Art. 105 § 2 of the Penal Code.

¹⁸¹ Art. 45 § 1 of the Code of Misdemeanors.

¹⁸² Art. 118 of the Civil Code.

¹⁸³ Art. 291 § 1 of the Labour Code.

¹⁸⁴ Art. 291 § 5 of the Labour Code.

¹⁸⁵ Art. 119 of the Civil Code, art. 291 § 4 of the Labour Code.

Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex)? Please make precise references to the relevant legal provisions and case law.

Existing legal provisions do not provide the possibility of shifting or easing the burden of proof in connection with discrimination.

The allocation of the burden of proof in Polish criminal proceedings is borne upon by the constitutional principle of the presumption of innocence, confirmed by international agreements ratified by Poland as well as the provisions of the Criminal Proceedings Code.¹⁸⁶ The legal obligation to prove the facts determined during proceedings rests with the trial bodies (the prosecution, the court), it does not however rest with the accused. This means that the accused has the right, but not the obligation, to a defence. This is confirmed by the rule *nemo se ipse accusare tenetur*,¹⁸⁷ according to which the accused does not have the obligation to prove his innocence nor provide any evidence to his disadvantage.¹⁸⁸

The allocation of the material burden of proof in civil proceeding is laid out by the rule that “the burden of proving a fact rests with the person who draws legal effects from this fact.”¹⁸⁹ Civil law operates with a series of legal presumptions which facilitate the determination of legally significant facts, however no such presumptions have been formulated within the context encompassed by this report.

In labour law, a shift in the allocation of the burden of proof takes place in the case of gender-based discrimination.¹⁹⁰ Such a shift in the context of equal treatment in employment for the reasons mentioned in the Racial and Employment Equality Directives is also planned in the Draft Labour Code.¹⁹¹ The obligation of proving that no violation of the principle of equal treatment has occurred, for example in forming or breaking a labour contract,¹⁹² would rest with the employer.

A shift in the distribution of the burden of proof is also envisaged in the Draft bill on the General Inspectorate for Counteracting Discrimination.¹⁹³

e. Victimisation

Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)
Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?

Please make precise references to the relevant legal provisions and case law.

Polish law does not contain special resolutions related to protection against victimisation. Victims of violations occurring as a consequence of a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment may claim their rights or damages under general rules.

¹⁸⁶ Art. 42 sec. 2 of the Constitution, art. 6 sec. 2 ECHR, art. 5 § 1 of the Criminal Proceedings Code.

¹⁸⁷ Art. 74 § 1 of the Criminal Proceedings Code.

¹⁸⁸ It is necessary to distinguish from the formal burden of proof, the burden of proof in a material sense, according to which during legal proceedings the burden of proof rests entirely with the prosecutor (public, private, auxiliary) and with the plaintiff.

¹⁸⁹ Art. 6 of the Civil Code, art. 300 of the Labour Code.

¹⁹⁰ Art. 18 (3) b of the Labour Code. The formulation and scope of application are limited and do not cover situations provided for in the relevant Directives.

¹⁹¹ Art. 18 (3)b of the Draft Labour Code.

¹⁹² Other circumstances, by way of example, include: unfavourable setting of remuneration for work or other conditions of employment, passing over for promotion or receiving other job benefits, passing over during selection for participation in training to upgrade professional qualifications.

¹⁹³ Art. 3 of the Draft Bill on the General Inspectorate for Counteracting Discrimination.

An exception to this rule in labour law is the rule directly declaring that benefiting from the rights an employee is entitled to after an employer's violation of the *principle of equal treatment of men and women* cannot be the basis for giving notice on a labour contract by the employer or of terminating this contract without notice.¹⁹⁴

Under the proposed change to the Labour Code Act, the scope of protection against victimisation, until now limited to the *principle of equal treatment of men and women*, will extend also to the remaining criteria of discrimination.¹⁹⁵

f. Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)
What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?

Polish legislation does not contain an integrated formulation of a system of sanctions, penalties and remedies which, in accordance with art. 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive could have an effective, proportional and dissuasive effect to combat discriminatory practices. The most important sanction, aside from punishments and punitive measures for crimes such as hate crime or hate speech is the possibility of seeking compensation by way of civil proceedings,¹⁹⁶ or a demand to cease and desist from actions violating the personal welfare of a person.¹⁹⁷

Under the provisions of the Labour Code, an employee whose contract was terminated without notice in violation of the regulations for dissolving labour contracts, has the right to seek reinstatement on the same terms as before, or compensation. The choice of solutions lies with the employee, but the labour court rules on the advisability or possibility of returning to work.¹⁹⁸ In cases where the employer has seriously violated his basic obligations towards the employee, including the prohibition of discrimination, the employer can dissolve the contract without notice. In such cases, the employee is entitled to compensation equal to his/her salary for the period of notice.¹⁹⁹

An amendment to the Labour Code of 24 August 2001²⁰⁰ introduced a direct provision according to which a person for whom an employer has violated the *principle of equal treatment of men and women* has the right to compensation.²⁰¹ This regulation – limited to only one of the criteria of prohibited differentiation – introduced a lower and upper threshold of compensation: no lower than the lowest work remuneration and no higher than six times this amount.²⁰² In other cases according a Supreme Court ruling, a job candidate who answers to an employer's specification which is discriminatory (art. 11 (3) of the Labour Code), and who is not hired, may seek compensation within the bounds of so-called unfavourable interest (*culpa in contrahendo*) on the basis of regulations against prohibited actions (art. 415 of the Civil Code).²⁰³

¹⁹⁴ Art. 18 (3) e of the Labour Code.

¹⁹⁵ Art. 18 (3) e of the Draft Labour Code.

¹⁹⁶ Art. 415 of the Civil Code.

¹⁹⁷ Art. 24 of the Civil Code.

¹⁹⁸ Art. 56 I 45 § 2 of the Labour Code. See also the Supreme Court ruling of 9 February 1999, I PKN 565/98, OSNAPiUS 2000/6/225, which stated that: "The necessity of hiring new employees with appropriate qualifications, which the plaintiff does not hold, speaks to the inadvisability of returning him to his job (art. 45 § 2 of the Labour Code)."

¹⁹⁹ Art. 55 § 1 (1) of the Labour Code.

²⁰⁰ Came into force on 1 January 2002.

²⁰¹ This applies also to formulating a labour contract.

²⁰² Art. 18 (3d) of the Labour Code.

²⁰³ Supreme Court ruling of 24 March 2000, IPKN 3114/99.

In accordance with the proposal in the Draft Labour Code, every person for whom an employer has violated the principle of equal treatment in employment will have the right to compensation at a level no lower than the minimum work remuneration.²⁰⁴ This regulation does not anticipate an upper limit on such compensation.

The Draft Labour Code does not include discrimination in the catalogue of misdemeanours against the rights of employees contained in Part XIII chapter I of the Labour Code. In the opinion of the General Inspectorate for Counteracting Discrimination and the representative of the Office of the European Integration Committee, the obligation of creating the system of sanctions mentioned in art. 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive is already fulfilled by the fact that victims of discrimination have the possibility of seeking compensation.²⁰⁵

The amendments to the Labour Code do not envisage any sanctions for violations of the employer's obligation to create an environment free from discrimination in the workplace, especially with respect to gender, age, disability, racial or ethnic origin, religion, belief, and sexual orientation.²⁰⁶ In light of this, this provision takes on the character of a mere declaration.

An additional sanction for the refusal to hire a candidate for a vacant position or a position in a pre-employment training programme on the grounds of his/her gender, age, disability, race, nationality, convictions, especially political or religious, or membership of a trade union is a fine.²⁰⁷ There is no sanction, however, for discrimination on the grounds of sexual orientation. The planned amendment to the Employment and Countering Unemployment Act broadens the scope of this misdemeanour to include the grounds of sexual orientation. In addition, there are plans to add to Art. 66 point 4 of this act a misdemeanour which would impose the penalty of a fine on a person who, in running an employment agency, does not adhere to the ban on discrimination on the grounds, among others, which are mentioned in both directives.

The draft bill on the General Inspectorate for Counteracting Discrimination also does not envisage a separate system of sanctions.

If an act of discrimination is a crime, "multiple discrimination" can be an aggravating circumstance, due to the greater degree of culpability of the perpetrator, and the social harmfulness of the action.²⁰⁸

g. Dissemination of information

Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)

What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions? The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.

Currently Poland is in the process of developing anti-discrimination law. Knowledge of the issue is scant and in practice does not extend beyond the bodies responsible for preparing the appropriate laws. This lack of awareness is reflected for example in press articles on discrimination that were published at the time of the first reading of the Draft Labour Code Act, and contained many errors and imprecise

²⁰⁴ Art. 18 (3d) of the Draft Labour Code.

²⁰⁵ This opinion was expressed during a meeting of the Inspector with NGOs in December 2002 at which the draft bill on the General Inspectorate for Counteracting Discrimination was presented.

²⁰⁶ Art. 94 point 2b of the Draft Labour Code.

²⁰⁷ Art. 66 point 3 of the 1994 Law on Employment and Countering Unemployment.

²⁰⁸ Art. 115 § 2 of the Criminal Code.

statements. A similar accusation may be levelled at some MPs based on accounts of the parliamentary debate contained in these articles.²⁰⁹

Because several questions of crucial significance for the future system of combating discrimination remain unresolved, the entire information campaign on legal changes aiming to counter discrimination within the terms of both directives has so far not been carried out by the Ministry of Labour and Social Policy, or the General Inspectorate. Based on information given by government employees, there are currently no plans for an information campaign on the subject.

It may be assumed that in future, sources of information in this field will be:

1. Information presented by employers – according to art. 94 of the Labour Code,²¹⁰ the employer is obliged to inform employees of changes to the Labour Code. According to the Draft Labour Code, the employer will be obliged to disseminate written information on the provisions related to the principle of equal treatment²¹¹.
2. The *General Inspectorate for Counteracting Discrimination* – disseminating knowledge about discrimination and its manifestations, as well as methods and strategies for combating it, are among the functions of the Inspector.²¹² Her activities in this respect have included:
 - i. The aforementioned second issue of the grants for „NGO initiatives promoting and realising anti-discrimination measures for sex, race, national and ethnic origin, age, and sexual orientation” organised by the General Inspectorate.²¹³ Thanks to these grants, NGOs will undertake various activities to prepare informational programmes concerning policies to combat discrimination and promote equality of opportunity for groups which are vulnerable to discrimination, as well as organising local information centres.²¹⁴
 - ii. A conference entitled „Equality and Tolerance in School Curricula and Textbooks” held on 08.10.2002 was organized on the General Inspectorate’s initiative. Analyses of textbooks and curricula currently used by schools were presented, bringing to light the values and attitudes they contained, especially with regard to respect for the principles of equality and tolerance.²¹⁵
 - iii. Regardless of the abovementioned functions, largely assigned to NGOs, there is a need for activities in this area from the government’s part. It is currently difficult to find information on these issues, e.g. the General Inspectorate’s office does not have a website.²¹⁶
3. At the time of writing of this report, it was also difficult to find direct mentions of discrimination-related problems on the website of the Ministry of Labour and Social Policy, and the same is true of the texts of the Directives.²¹⁷ Nonetheless, it must be added that the Ministry published a brochure in 2001 containing the text of directive 2000/78/EC, with an introduction by the Government Plenipotentiary for Disabled Persons’ Affairs (600 copies). The most recent information from the Ministry indicates that this brochure will be made available on its webpage.²¹⁸
4. The National Labour Inspectorate (Polish acronym: PIP),²¹⁹ whose functions include control and supervision, prevention, diagnosis and monitoring of the conditions in which work is carried out, the adherence to labour law and safety and hygiene standards, does not currently have information on combating discrimination on the grounds of race, national and ethnic origin, age

²⁰⁹ K. Sadłowska, ‘The Code, European Style’, *Rzeczpospolita* 10.01.2003 and RAV, ‘The Code, European Style’, *Gazeta Wyborcza*, of 10 January 2003.

²¹⁰ Art. 94 of the Labour Code.

²¹¹ Art. 94 (1) of the Labour Code.

²¹² Art. 4 point 2 sec. 1, Ordinance of the Council of Ministers of 25 June 2002 relating to the Inspector. The Inspector possesses these competences from the date of coming into force of the Ordinance, that is of 1 July 2002.

²¹² Art. 4 points 1 and 2 of the Ordinance of the Council of Ministers of 25 June 2002 relating to the Inspector.

²¹³ For more details on the competition, see the section on Positive Action.

²¹⁴ Advertisement, *Gazeta Wyborcza*, 19 of November 2002, p. 8.

²¹⁵ Based on “Information on the methods of combating discrimination of national and ethnic minorities by the General Inspectorate for Counteracting Discrimination, state as of 29 September 2002.

²¹⁶ In the meantime the website was created (www.rownystatus.gov.pl).

²¹⁷ www.mpips.gov.pl.

²¹⁸ Information from the Office of the Government Plenipotentiary for Disabled Persons’ Affairs.

²¹⁹ www.pip.gov.pl.

and sexual orientation. It also has no plans for a broad information campaign on the subject in 2003. The Inspectorate does, however, undertake actions relating to the equal treatment of disabled persons.²²⁰ The lack of an integrated information campaign cannot be entirely attributed to neglect, however, since the PIP as an organ of public administration is obliged undertake actions within the scope of existing law, and the requirements of the Directives concerning discrimination on the grounds of race, national and ethnic origin, disability, age and sexual orientation have not formally been integrated into Polish law. In 2003, the PIP plans a campaign dealing with the problem of equal treatment of men and women.

5. The Office of Civil Service, whose responsibilities include creating the civil service corps in Poland, places a great emphasis on instilling civil servants with an appropriate ethic. In the Office's understanding, this is a long-term process, requiring a series of specific steps of a systemic nature. The following are a few examples of these:²²¹
 - i. The development of the Civil Service Code of Ethics,²²² which outlines the general principles of work in the civil service: "carrying out duties while respecting the dignity of others",²²³ "abiding by the principles of proper behaviour",²²⁴ and "eliminating political influences on recruiting and promotions in the civil service".²²⁵ The Code was sent and transmitted to civil service employees through a central training programme, and through accessible technologies (post, Internet, Intranet, videotapes, notice boards). In order to reach the greatest number of people, there are plans to use distance learning methods such as mailing the training video together with a textbook.
 - ii. The development of a practical guide, "Management in the Civil Service – a Practical Guide" containing a chapter devoted to equality. In this chapter the texts of Directives were quoted and the policy and competencies of various ministries were described. This guide was created as a result of a PHARE programme in 1999 entitled "Strategies of Human Resource Management". The project included a survey about compliance with the principle of equality in the civil service. Moreover, other training programmes are being implemented through PHARE, aiming to strengthen administration and human resources in preparation for EU membership, which suggests that models for appropriate conduct are being promoted.²²⁶
 - iii. The mandatory Preparatory Service programme for work in the civil service now includes a unit on "Ethics in the Civil Service", which addresses problems related to equal treatment.
 - iv. The Civil Service Office provides training input for members of the civil service corps which is delivered in accordance with the preset schedule for a specific year. In 2002 the syllabuses for centrally organised and general training sessions covered ethical issues in the civil service environment and equality related subjects but no direct reference was made to the issue of preventing discrimination. Since the training schedule for 2003 is still subject to consultations the authors of the present report failed to learn whether those issues would be incorporated into the training syllabuses for 2003.

The Head of the Civil Service, on the basis of the rights granted to him by Art. 110 of the Civil Service Act, created in 2001 eight disciplinary commissions for several government offices. As of 31 December 2001, there were 51 commissions of this kind. In 2001 the Head of the Civil Service instituted, from among civil service officers, a Disciplinary Ombudsman for the Secretary of the Council of Ministers and the directors-general of government offices. He then directed to this

²²⁰ Based on an interview conducted for the purposes of the project.

²²¹ This information is based on an interview carried out for the purposes of the project, as well as the website www.usc.gov.pl.

²²² Disposition No. 114 of the President of the Council of Ministers of 11 October 2002 in the matter of creating a Civil Service Code of Ethics with the Civil Service Code of Ethics annexed.

²²³ Art. 1 point 2 of the Civil Service Code of Ethics.

²²⁴ Art. 3 point 7 of the Civil Service Code of Ethics.

²²⁵ Art. 5 point 7 of the Civil Service Code of Ethics.

²²⁶ Such training takes place in 13 government offices chosen to participate in this pilot programme; they include Province offices.

Ombudsman a motion to initiate explanatory proceedings in the case of violations of the duties of a member of the civil service corps by the former director-general of a government office.²²⁷

As provided under the Civil Service Act, in the event of breach of professional responsibilities²²⁸ members of the civil service corps may be liable to the following disciplinary penalties²²⁹:

- Admonishment, reprimand, reprimand accompanied by a formal warning, reprimand coming with a ban on any promotion to a more senior salary grade (remains in force for 2 years), transfer of the employee to a lower salary grade and finally summary termination of the employment relationship with the office.

In the case of nominated Civil Servants, any of the following disciplinary measures may be applied:

- Admonishment, reprimand, reprimand accompanied by a formal warning, reprimand coming with a ban on any promotion to a more senior official grade (remains in force for 2 years), downgrading of an official grade, ban on joining competitive inward promotion/recruitment schemes (remains in force for 2 years), ban on holding senior positions with the Civil Service (may last from 2 to 5 years), summary termination of employment with the Service. In the event that a legally binding decision on the termination of employment is issued, a 5 year ban on seeking employment with the Civil Servant applies to the individual(s) affected by such a decision.

Under Article 67 a civil servant shall abide by the Constitution of the Republic of Poland and other applicable laws, protect the interests of the State as well as guard civic and human rights, exercise sound practices in managing public funds; be impartial, reliable, efficient and timely in fulfilling the tasks he/she is made responsible for, protect secrets protected under statutes, develop professional knowledge and exercise appropriate conduct whilst in service and when off-duty. Since the list of responsibilities binding on civil servants does not contain any direct reference to discrimination prevention issues any duties in this regard accrue under general rules. Civil Servants are obliged to abide by the Constitution of the Republic of Poland and other applicable laws and in the event of any breach thereof their liability is governed by Law.

The *Sejm* has an MPs' Ethical Commission. Its functions include investigating cases of MPs whose behaviour is inappropriate to the dignity of a Member of Parliament. The Commission can call upon an MP to provide explanations, informs him/her of the content of complaints against him/her, and fix the date of a hearing.²³⁰ The Commission has created a set of "Ethical Principles for MPs." In case an MP violates the law on fulfilling the mandate of an MP or Senator, the Commission on Regulations and MPs' Affairs can, by way of a resolution and following investigation: issue a warning, a rebuke, or a reprimand to the MP.²³¹ This Commission can, by way of a resolution, issue a similar range of reprimands to an MP in the case of non-fulfillment of his/her duties.²³²

h. Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

²²⁷ Report of the Office's activities in 2001, ww.usc.gov.pl/pl/archiw/urzed/sprawozdanie2001/00a.html.

²²⁸ The duties are set out in Articles 68-69 of the Civil Service Act of 18 December 1998. Under Article 67 a civil servant shall "...abide by the Constitution of the Republic of Poland and other applicable laws, protect the interests of the State as well as guard civic and human rights, exercise sound practices in managing public funds; be impartial, reliable, efficient and timely in fulfilling the tasks he/she is made responsible for, protect secrets protected under statutes, develop professional knowledge and exercise appropriate conduct whilst in service and when off-duty..."

²²⁹ Art. 106-124 of the Civil Service Act of 18 December 1998

²³⁰ Art. 3 point 4 of the Resolution on the MPs' Ethical Commission of 2001 with later changes the Regulations of the MPs' Ethical Commission, www.sejm.gov.pl.

²³¹ Art. 21 of the Resolution of the Sejm of the Republic of Poland of 1992, the Regulations of the Sejm of the Republic of Poland,

www.sejm.gov.pl/prawo/regulamin/kon7.htm.

²³² Art. 22 of the Resolution of the Sejm of the Republic of Poland of 30 July 1992, the Regulations of the Sejm of the Republic of Poland,

www.sejm.gov.pl/prawo/regulamin/kon7.htm.

Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

Poland's current government (a coalition of the social democratic SLD-UP and the PSL, the Peasants' Party) has resurrected the social dialogue which was broken off during the term of the previous coalition.²³³ Social dialogue is understood both as a dialogue between the government and employers' organisations and trade unions (the traditional formula), and as a civic dialogue, entailing collaboration with NGOs.

The following are among the effects of the government's work in this respect:

- Defining the terms of social dialogue, especially the rights and responsibilities of each party,²³⁴
- Defining the object and subjects of social dialogue, as was done for example in the process of amending the Law on the Tripartite Commission for Socio-Economic Affairs and the *Voievodship* Social Dialogue Commissions. The amendments broaden the competences of *voievodship* institutions for dialogue and changes the rules of representation for members of the Commission.²³⁵
- Supporting the functioning of institutions for social dialogue and the development of new institutions. The government (the Ministry of Labour and Social Policy) supports the work of the *voievodship* social dialogue commissions, which aim to conciliate and overcome tensions on a regional level. In the face of nearing EU accession, a Round Table on Social Dialogue for European Integration was created in August 2002, through which the obligations connected to Poland's participation in the EU's labour law and social policy are discussed. In addition, it undertakes activities aiming at the proper and effective integration of European law in a manner beneficial to Polish employers and employees.²³⁶
- Resurrecting the work of the Tripartite Commission for Socio-Economic Affairs, consultation on the draft national budgets for 2002 and 2003, the national economic strategy for 2002-2005, the government programme "Entrepreneurship – Development – Employment," the reform of the Labour Code, the "Plan of anti-crisis actions for the protection of work and the work place", principles relating to the work of retirees and valuation of retirement benefits, and the draft bill on the minimum wage. The Commission supported two government draft bills – on social security arising from accidents at work and work-related illnesses (25.04.2002), and amendments to the Social Security System Act (26.06.2002). Furthermore the Commission decided for the first time since 1997 the mid-year indicator for wage increase, which was set at 104%.²³⁷
- Conducting dialogue with various branches of industry, in 6 problematic areas: coal mining, sulphur mining, steelworks, light industry, the power industry, the arms industry, and in a bilateral team for matters related to the metals industry, comprising representatives of

²³³ The main institution responsible for conducting social dialogue in Poland is the Tripartite Commission for Socio-Economic Affairs. It was established in 1994 on the basis of a resolution of the Council of Ministers as a result of an agreement called the "Pact for Enterprise". In 1995-96 this Commission served as a negotiation forum, mainly on the topic of an increase of payments. In 1997 the trade union "Solidarity" broke off negotiations, because of the very high expectations of other trade unions for wage increases. There was a break in the Commission's functioning up to 2001, when the *Sejm* passed the Law on the Tripartite Commission. It is a common opinion that the government of Prime Minister Buzek in practice limited the social dialogue. It controlled one of the parties of these negotiations. Thanks to this, Buzek claimed the legitimacy of his policy of consequent implementation of 4 reforms. In the 2001 elections, a new coalition consisting of an alliance of social democrats (SLD-UP) and the Peasants' Party (PSL) came to power. The new government is a great supporter of social dialogue, not only for ideological (social democratic ideals), but also tactical reasons – support for the development of the social dialogue enables the government to claim additional legitimacy for its actions. B. Gąciarz, W. Pańków, *Social Dialogue in Poland – fiction or opportunity?*, Instytut Spraw Publicznych 2001, p. 33.

²³⁴ On 22.10.2002 the Council of Minister passed a programmatic document "The Terms of Social Dialogue", www.mpips.gov.pl/_dialog.php?dzial=17

²³⁵ On 23.11.2002 the *Sejm* passed an act amending the law on the Tripartite Commission for Socio-Economic Affairs and the *voievodship* social dialogue commissions. The law enters into force on 10.01.2003, www.mpips.gov.pl/_dialog.php?dzial=17

²³⁶ www.mpips.gov.pl/wiadomosci_szczegoly.php?nr=1222.

²³⁷ Annual Report of the Ministry of Labour and Social Policy, October 2001-October 2002, Ministry of Labour and Social Policy, Warsaw, October 2002, p.10.

government, trade unions and employers' unions. The dialogue is concerned with the restructuring of the above-mentioned sectors of the economy, including matters of employment.²³⁸

- Adapting Polish solutions to EU standards through the passing of the law of 05.04.2002 on European institutional councils.²³⁹

Aside from this, the government attempted to strengthen the foundations of the social dialogue on collective employment relationships by broadening it to include NGOs, thus meeting the NGOs halfway on demands that they had long been making.

The following are among the effects of the government's work in this respect:

- The preparation of draft bills on public interest activity and volunteer work. These bills regulate the position of the non-governmental sector in the state, especially questions of the cooperation of public authorities with NGO structures, and the issue of volunteer work. These bills were widely consulted with NGOs represented in the Contact Group of the Ministry of Labour and Social Policy. This group acted as a consultative forum of NGOs for the drafting of the above bills.²⁴⁰ The changes proposed in these bills have a groundbreaking, almost systemic scale, because when they enter into force, contacts between public administration and the 3rd sector will be institutionalised. Moreover, the status of volunteers will be regularised. The Minister responsible for social security issues will be responsible for matters related to public interest action and volunteer work. Until the above changes enter into force, there will be a Team on Public Interest Action, Volunteer Work and NGOs (from 25.04.2002 onwards). After they enter into force, an appropriate department in the Ministry will be instituted. The Team has developed a plan to implement actions related to the law; a strategic document has arisen as a result of this work, entitled "The implementation of the public interest action and volunteer work Act", as well as plans for an information campaign.
- Agreement with the church in the Joint Commission of the Government and the Episcopate of Poland on the regulation of legal persons and organisational units of churches and religious associations.
- The inclusion of NGO representatives in the Tripartite Commission at the initiative of the government.

In terms of dialogue between the government and NGOs on combating discrimination, the government has undertaken the following actions:

- The Consultative-Programmatic Council, an advisory and consultative body, has been created alongside the General Inspectorate for Counteracting Discrimination. Its members include, among others, NGO representatives.
- To increase the number of NGOs participating in consultations, the Office of the *General Inspectorate* is creating a database of NGOs.
- The object of consultations in the Council was the amending of the Labour Code and the draft bill on the General Inspectorate for Counteracting Discrimination.

Based on conversations with NGO representatives it appears that their general assessment of the work of the Council as a forum for dialogue with NGOs is positive. Despite this, some of them perceive a tendency on the part of the government to carry out social consultations first of all because they are required by law, and not because there is a will to conduct genuine dialogue. According to them, this tendency is reflected in the fact that NGOs' positions in such consultations are frequently ignored.

An advisory body, the National Consultative Council on Disabled Persons' Affairs, exists alongside the Government Plenipotentiary for Disabled Persons' Affairs. The Council is intended to be a forum for cooperation for the benefit of disabled persons of representatives of the government, local governments, and social organisations. The NGO sector is critical about the Plenipotentiary's efforts

²³⁸ Ibid.

²³⁹ The law of 5 April 2002 on European institutional councils integrates into Polish law the solutions envisaged in Directive no. 94/45/EC of 22 September 1994.

²⁴⁰ www.mpips.gov.pl/_organizacje.php?dzial=593&dokument=673

to maintain contact with this sector. For example, the new members of the Council were to begin their duties as of 1 July 2002, but this had not yet happened by the end of October 2002. NGO representatives interpret this fact as a reflection of the attitude of the Plenipotentiary to the advisability of consultations with the 3rd Sector.²⁴¹

The Office of the Government Plenipotentiary for Disabled Persons' Affairs explains that the Plenipotentiary considers dialogue with social partners and other NGOs to be of great importance, which was reflected for example in the content of the government's proposed changes to the law on Vocational and Social Rehabilitation and Employment of Disabled Persons.²⁴² Firstly, the line-up of the Consultative Council was broadened to include NGO representatives who were not representatives of employers' organisations or unions in the understanding of the Law on the Tripartite Commission for Socio-Economic Affairs.²⁴³ These circumstances, in the opinion of the Office, justify the postponement of the date of appointment of the new members of the Consultative Council (until the new regulations come into force, on 1 February 2003). Secondly, according to the government's draft, the amended act (art. 44a-c) enables the creation of *voievodship* and district social councils for disabled persons' affairs, which will be advisory-consultative bodies working alongside the *voievodship* marshalls and *starosts*.²⁴⁴

²⁴¹ From interviews carried out in November 2002 for the purposes of the project.

²⁴² On basis of the information provided by the Office of the Government Plenipotentiary for Disabled Persons' Affairs.

²⁴³ Art. 43 sec. 1 pt 3 of the 20 December 2002 Act Amending the Law on Vocational and Social Rehabilitation and Employment of Disabled Persons. Some of the changes proposed in this act entered into force on 1 February 2003, the rest will enter into force on 1 January 2004.

²⁴⁴ 20 December 2002 Act Amending the Law on Vocational and Social Rehabilitation and Employment of Disabled Persons, op. cit.

Chapter 3 Specialised bodies

Article 13 (Racial Equality Directive)

Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?

Are existing bodies addressing the issue of multiple discrimination?

Where a body does not exist on the national level, are there plans to establish such a body?

An example of a currently existing autonomous office which acts as a specialised body within the meaning of Directive 2000/43/EC, is **the Commissioner for Civil Rights Protection (the national Ombudsman)**. The Ombudsman defends human rights and civil freedoms enshrined in the Constitution and other legal instruments.²⁴⁵ According to Art. 80 of the Constitution, everyone has the right to lodge a motion with the Commissioner for assistance in the protection of his/her freedoms or rights violated by public authorities.²⁴⁶ The Ombudsman carries out his/her task of defending human and civil rights by investigating whether a violation of law or the principles of community life and justice occurred through the action or failure to act of a government organ, organisation or institution obliged to abide by and realise human and civil freedoms. He/She may also become involved in cases against non-public sector actors, in which he may either conduct the explanatory procedure himself, or refer the investigation of the matter in whole or in part to the appropriate bodies, particularly supervisory, prosecuting, or state, professional or social monitoring bodies.²⁴⁷ In cases involving the Labour Code, the Commissioner turns normally to the National Labour Inspectorate. Where he discerns a violation of human and civil freedoms, he takes appropriate measures. The Ombudsman can examine individual cases, conduct independent surveys, publish reports and make recommendations, which practically covers the scope of competences outlined in Directive 2000/43/EC.²⁴⁸

In examining individual cases, the Ombudsman has wide competences and can be very active.²⁴⁹ No set formal application by an individual is required. A case may be directed simultaneously to a court and the Ombudsman, and in such situation both institutions remain independent while examining the case. However, the Ombudsman can neither assist, nor represent a person before other institutions, nor can he/she issue sanctions.²⁵⁰

His/Her basic tasks include maintaining contact with the *Sejm*'s Commission for National and Ethnic Minorities, public administration and all institutions dealing with the issue of national and ethnic minorities as well as with minority organisations and NGOs focusing on countering racism, discrimination and xenophobia. They also include gathering information, political commentaries and scientific studies on the issue, and undertaking field research.

The activities of the Ombudsman are thematically varied. He/she deals with social issues (24% of all complaints), criminal cases (15% of all complaints), civil law and real estate issues (10% of all complaints), economic law, public levies, consumer protection (10% of all complaints), civil rights and freedoms (3% of all complaints), protection of the rights of aliens and national minorities (less

²⁴⁵ The Act on the Commissioner for Civil Rights Protection of 15 July 1987.

²⁴⁶ Constitution of the Republic of Poland of 2 April 1997 r.

²⁴⁷ Art. 12 of the Act on the Commissioner for Civil Rights Protection of 15 July 1987.

²⁴⁸ www.brpo.gov.pl/poradnik_rzecznicz.html.

²⁴⁹ See Art. 13 and 14 of the Act on the Commissioner for Civil Rights Protection.

²⁵⁰ www.brpo.gov.pl/poradnik_rzecznicz.html.

than 1% of all complaints). Out of 55,000 complaints in 2001, only 35 involved discrimination on the grounds of nationality.²⁵¹

The Ombudsman's Office has a budget of PLN 22 890 000 available to it in order to fund all the activities in 2002. There is no data on the share of spending on discrimination prevention activities in the budget as a whole. 240 people work in the Ombudsman's office, including 150 employees working on substantive issues. A separate position in charge of national minorities and foreigners (one person), on January 1 2001 became an Independent Department for the Protection of Foreigners and National Minorities Rights (the equivalent of 1.5 full-time positions).²⁵²

A second body aiming to combat disability-based discrimination and already existing in Poland is the **Government Plenipotentiary for Disabled Persons' Affairs**. Although this institution does not fit within the scope of the Equality Directive, it is worth mentioning because it forms part of the current system of institutions responsible for combating discrimination, and will also be part of the new system currently being created. The Government Plenipotentiary for Disabled Persons' Affairs and his office belong to the Ministry of Labour and Social Policy. The Plenipotentiary has a substantive supervisory role in the implementation of tasks arising from the Social and Vocational Rehabilitation and Employment of Disabled Persons Act²⁵³. The functions of the Plenipotentiary are, in particular:

- The drafting of government programmes concerning the improvement of conditions of social and professional life of disabled persons, and coordination of the activities arising from them;
- Defining the direction of employment policies, and social and vocational rehabilitation for disabled persons;
- Initiating and coordinating activities with the aim of limiting the effects of disability and barriers making the functioning of disabled persons in society difficult;
- Developing or providing opinions on draft normative acts concerning employment, rehabilitation or living conditions of disabled people;
- Cooperating with NGOs and foundations working for the benefit of disabled persons.²⁵⁴

The work of this Plenipotentiary is supported by an advisory body, the National Consultative Council on Disabled Persons' Affairs mentioned above.

Despite the fact that the office required by the Directive exists in principle, issues related to discrimination have been entrusted in part to the **General Inspectorate for Counteracting Discrimination**. The General Inspectorate will fulfil this role until a separate office is established – that of the General Inspectorate for Counteracting Discrimination. Initially the scope of competences of the General Inspectorate encompassed countering discrimination on the grounds of sex, however this has been extended by law to include countering discrimination for reasons of race, ethnic origin, religion and convictions, age and sexual orientation. The list does not include discrimination on the grounds of disability.²⁵⁵

The Inspectorate is responsible for preparatory work for the establishment of an office to deal with the above-mentioned kinds of discrimination, including the development of a schedule of preparatory work as well as the development of legal acts outlining the functioning of this office. Until this separate office is established, the Inspector's tasks include promoting, initiating, realising or coordinating the realisation of government programmes aiming to counter discrimination for the reasons mentioned above. The realisation of these tasks is to take place in particular through:

- 1) Disseminating information on discrimination and its manifestations as well as methods and strategies of countering its occurrence;

²⁵¹ Information on the activities of the Ombudsman in 2001 with remarks on the state of respect for human and civil rights and freedoms, Bulletin of the Sejm Commission on Justice and Human Rights /nr37/, www.isip.sejm.gov.pl/Biuletyn.nsf/0/...1501AEA96AC1256C01004C6392?OpenDocument

²⁵² Information of the Ombudsman on complaints and motions in the cases of persons belonging to national minorities, Bulletin of the Sejm Commission on National and Ethnic Minorities no. 374/IV, www.isip.sejm.gov.pl/Biuletyn.nsf/0/...8D7F99283FC1256B870030E0A1?OpenDocument

²⁵³ The Vocational and Social Rehabilitation and Employment of Disabled Persons Act of 1997.

²⁵⁴ www.mpips.gov.pl/_osobyniepelnos.php?dzial=383&poddzial=390&dokument=35.

²⁵⁵ Art. 2 of the Ordinance of the Council of Ministers of 2002 concerning the Inspectorate.

- 2) Cooperation with the appropriate organs of public administration, NGOs and institutions within the scope of their responsibilities for realising educational and formative programmes associated with countering discrimination;
- 3) Initiating, providing opinions on, and developing legal acts and other government documents with the aim of countering discrimination;
- 4) Inspiring and supporting groups, organisations and societies working to counter discrimination.²⁵⁶

It must be noted that the focus of the Inspectorate's activity is countering sex-based discrimination, while the mandate to counter other kinds of discrimination outlined in the Directives is of a temporary nature.

The Office of the Inspectorate responsible for the equal status women and men was allocated a budget 1 812 000 PLN in 2002, although we should note here that until July 2002 the activities of the Office were limited to handling issues related to the equality between sexes. On July 1, 2002 a new Ordinance came into force (one on the General Inspectorate for Counteracting Discrimination²⁵⁷), whereby the scope of authority vested in the Inspectorate was extended to include dealing with issues concerning preventing discrimination on the grounds of race, ethnic origin, religion, beliefs, age and sexual preferences. A heavier workload was not however followed by an increase in the funding made available to the Office. This translated into serious difficulties in meeting new tasks and called for extraordinary cuts. The draft budget for 2003 remains at a level similar to the one noted a year before and will total PLN 1 884 000. The 4% difference (against the previous year's budget) results from the adjustment index applied across the entire budget sector (so as to reflect impact of inflation, movements in business cycles etc.) and hence cannot be treated as a real increase in the budget available to the Office. Given that the Office will be implementing tasks related to measures aimed at preventing discrimination on the grounds of sex and race, ethnic origin, religion, beliefs and sexual preferences which are to administered all year round, in practical terms the Office will have less money to rely on. In November 2002 the Office employed 17 staff, of whom 2 were secretaries acting as the General Inspectorate's aides (the General Inspectorate as holder of a position of Secretary of State has the right to hire 2 staff). The Office as such does not have a secretariat and that is why secretarial duties have to be met by other employees.²⁵⁸

In carrying out its duties connected with the establishment of a new office, the Inspectorate's office has prepared a draft Bill on the General Inspectorate for Counteracting Discrimination. This bill has been opened up to initial expert consultations²⁵⁹ and still requires further in-depth work. It is difficult to judge at this stage if the bill will pass in its proposed form, and when that might occur. The Inspectorate proposes the institution of a General Inspectorate for Counteracting Discrimination, autonomous from the government in his/her actions, appointed by the *Sejm* with the approval of the Senate by way of a legal act for a 5-year term.²⁶⁰ The Inspectorate is to counter discrimination on the grounds of race, ethnic origin, nationality, religion and convictions, age and sexual orientation.²⁶¹ The draft includes all the kinds of discrimination mentioned in the Directives, with the exception of discrimination based on disability, without defining who should deal with this issue. The aim of the Inspectorate is the promotion of the equal treatment of all persons, and undertaking activities aiming to eliminate discrimination. The planned scope of the Inspectorate's competences is in principle consistent with the catalogue included in Directive 2000/43/EC and includes *inter alia*:

- 1) Ensuring that the victims of discrimination of the kinds mentioned above receive individual assistance in lodging complaints;
- 2) Conducting independent research concerning the phenomenon of discrimination of kinds mentioned above;
- 3) Publishing reports and formulating recommendations related to countering discrimination.²⁶²

²⁵⁶ Art. 4 point 1 and 2 of the Ordinance of the Council of Ministers of 2002 concerning the Inspectorate.

²⁵⁷ Ordinance of 2002 on the General Inspectorate for Counteracting Discrimination.

²⁵⁸ As indicated by an interview carried for the needs of the project, in November 2002.

²⁵⁹ The consultations took place in December 2002; the authors of this project also participated in them.

²⁶⁰ Art. 4 and 6 of the draft Bill on the General Inspectorate for Counteracting Discrimination.

²⁶¹ Art. 1 point 3 of the draft Bill on the General Inspectorate for Counteracting Discrimination.

²⁶² Art. 10 of the draft Bill on the General Inspectorate for Counteracting Discrimination.

Ensuring assistance to victims of discrimination by the Inspectorate is to involve in particular the conducting of an initial investigative procedure, and, if the accusation of discrimination seems sufficiently likely, the provision of legal aid to the person making the accusation if he/she is able to document that he/she is in a difficult financial situation. Such aid would include legal advice, the preparation of legal opinions, the developing of drafts of trial papers or indicating other possibilities for accessing free legal aid. In particularly justified cases, with the consent of the person making the accusation, the Inspector participates in proceedings towards an out-of-court settlement of the case, or in the appropriate court proceedings with a Party's rights, or in administrative proceedings with a prosecutor's rights.²⁶³

As cases of documented discrimination in Poland are sporadic, it is all the more difficult to access information on multiple discrimination. A person making an accusation of multiple discrimination can claim his/her rights in a similar manner to that applicable in the case of 'ordinary' discrimination.²⁶⁴ The draft bill on the General Inspectorate for Counteracting Discrimination, there is no mention of multiple discrimination.

An analysis of the draft bill on the General Inspectorate leads one to ask the fundamental question of whether or not Poland needs such an institution. The alternative would be to grant Inspectorate's competences to the Ombudsman, which would have the benefit of avoiding the danger, likely under the current shape of the draft bill, of an overlap of competences between the two. If the draft does indeed retain its current shape, the precise separation of competences of these bodies will have crucial significance for the effectiveness of the system of countering discrimination in Poland. This question has not been adequately resolved in the current draft.

The second significant doubt is the question of the protection of disabled persons. The draft does not specify which office should be responsible for defending the rights of the disabled. If this question is left within the mandate of the Plenipotentiary for Disabled Persons, it will be necessary to make essential changes to the Social and Vocational Rehabilitation and Employment of Disabled Persons Act,²⁶⁵ so that the level of protection of disabled persons is on a par with that bestowed on victims of other kinds of discrimination.

²⁶³ Art 11 point 12 and 13 of the draft Bill on the General Inspectorate for Countering Discrimination.

²⁶⁴ From an interview conducted for the purposes of the project.

²⁶⁵ The Law of 1997 on Social and Vocational Rehabilitation and Employment of Disabled Persons.

Chapter 4 Compliance and implementation

Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)

a. Screening

Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

The Constitutional Tribunal adjudicates on the consistence of laws and international conventions with the Constitution, on the consistence of laws with ratified international conventions whose ratification required previous agreement expressed in the law, as well as on the consistence of legal provisions issued by central government bodies with the Constitution, ratified international conventions and laws.²⁶⁶ Moreover, anyone whose constitutional rights or freedoms have been violated has the right, after exhausting other legal avenues, if such avenues are available, to lodge a complaint with the Constitutional Tribunal to verify the consistence with the Constitution of a law or other normative act on the basis of which a court or public administrative organ ruled on his rights or responsibilities which are defined in the Constitution (a so-called Constitutional complaint).²⁶⁷ Rulings of the Constitutional Tribunal are universally binding and final. A ruling of the Constitutional Tribunal on inconsistency with the Constitution, international convention or a normative law, on the basis of which a court issued a legally valid ruling, final administrative decision or a resolution of another matter, is sufficient basis for the renewal of proceedings, repeal of a decision or other resolution on the terms of and in the mode defined in the regulations of the appropriate type of procedure.²⁶⁸

The High Administrative Court rules on matters concerning resolutions of organs of local government units and acts of government administrative organs which comprise local regulations.²⁶⁹

According to the regulations of the Labour Code, decisions on collective labour arrangements and collective agreements, as well as regulations and statutes cannot be less favourable for employees than the provisions of the Labour Code and other laws and executing acts. Regulations and statutes cannot be less favourable than the decisions of collective labour arrangements and collective agreements. Decisions on collective labour arrangements and others, based on the law on collective agreements, regulations and statutes defining the rights and responsibilities of both parties to the employment relationship, which violate the principle of equal treatment of men and women, are invalid.²⁷⁰ In addition, resolutions on labour contracts and other acts on the basis of which the employment relationship is formulated cannot be less favourable for the employee than the provisions of labour law. Clauses in contracts and acts which are less favourable for the employee than labour law are invalid; instead, the appropriate provisions of labour law are applied.²⁷¹ Resolutions on labour contracts and other acts on the basis of which the employment relationship is formulated, which violate the principle of equal treatment of men and women in employment, are invalid; instead, the appropriate provisions of labour law are applied, and in case of a lack of such provisions – such

²⁶⁶ Chapter VIII of the Constitution – the Constitutional Tribunal, art. 188 - 197. See also the 1997 Constitutional Tribunal Act.

²⁶⁷ Art. 188 in relation to art. 79 sec. 1 of the Constitution.

²⁶⁸ Art. 190 sec. 1 and 4 of the Constitution.

²⁶⁹ Art. 16 sec. 1 point 5 of the 1995 High Administrative Court Act.

²⁷⁰ Art. 9 § 2, 3 and 4 of the Labour Code.

²⁷¹ Art. 18 § 1 and 2 of the Labour Code.

resolutions must be replaced by suitable resolutions of a non-discriminatory character.²⁷² The planned amendment to the Labour Code will broaden the scope of art. 9 and 18 to all the grounds of prohibited differentiation mentioned in the Racial and Employment Equality Directives.

²⁷² Art. 18 § 3 of the Labour Code.