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Equal Rights in Practice: Key Voices 2004

Abstract
[Excerpt] We have thus chosen to focus this year on the critical factors and actors in the enforcement of the anti-discrimination Directives emanating from Article 13 of the Amsterdam Treaty on "Race" and "Equal treatment in the workplace"

This collection of independent opinions, bringing together views from stakeholders ranging from National Authorities, NGOs, specialised bodies and experts in the field, provides a vivid testimony to the processes which are leading law and policy makers from paper to practice; from the written legislation, through to the day-today realities of changing attitudes and practices throughout European societies.

Keywords
work, disabilities, person, discrimination, consumer, independence, freedom of choice, benefit, policies, equality, law, model, involvement, intellectual disability, harassment

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Equal Rights in Practice
Key Voices 2004

Fundamental rights & anti-discrimination

Employment & social affairs

European Commission

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Equal Rights in Practice Key Voices 2004

Critical factors and actors for enforcing the non-discrimination Directives

Preface

The broad scope of activities funded under the Community Action Programme to combat discrimination (2001 – 2006) is a reflection of the diverse groups who have already been, or are set to be affected by, the new rules governing anti-discrimination across the EU. Since its inception, there has been an enormously wide range of efforts to promote justice and equity in vastly different legal and cultural settings across the five grounds of discrimination covered by the Race Equality and Employment Equality Directives.

Initiatives funded under the Action Programme have made continuously impressive and creative efforts to meet their primary goal of promoting a discrimination-free Europe. More particularly, Programme participants from all EU-25 Member States have been enthusiastic to learn from each other's experiences, as well as from other legislative initiatives such as previous gender equality legislation.

The 2004 thematic brochure "Equal Rights in Practice: Key Voices - 2004" is published as we enter a new phase in European history with 10 new Member States as from 1 May 2004. It sets out to voice the opinions of the various participants in the Action programme; be they national officials, experts or NGO representatives. As deadlines for transposing the Directives have expired, the challenge ahead is that of ensuring that people will enjoy a common level of protection against discrimination, irrespective of their racial or ethnic origin, religion or beliefs, disability, age and sexual orientation.

We have thus chosen to focus this year on the critical factors and actors in the enforcement of the anti-discrimination Directives emanating from Article 13 of the Amsterdam Treaty on "Race" and "Equal treatment in the workplace".

This collection of independent opinions, bringing together views from stakeholders ranging from National Authorities, NGOs, specialised bodies and experts in the field, provides a vivid testimony to the processes which are leading law and policy makers from paper to practice; from the written legislation, through to the day-to-day realities of changing attitudes and practices throughout European societies.

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From paper to practice - Enforcing the anti-discrimination Directives

Legislation on its own does not change core societal attitudes. The key challenge ahead is how to make the anti-discrimination legislation a reality for all stakeholders.

When it comes to discrimination, all of the European Union Member States share similar experiences in three respects. Firstly, they all have a history of taking measures to fight against discrimination. Most States have incorporated provisions on equality and non-discrimination into their constitutions and often into other parts of their legislation as well. Others have complemented legislative action with diverse policy measures.

Secondly, most, if not all, Member States share the experience that the measures taken have not proven to be sufficient and effective enough. This is reflected by the fact that despite compelling evidence of the existence of discrimination, victims of discrimination rarely bring their cases to the courts. This implies that there are challenges to enforcing the law and, more precisely, that there are various barriers to victims' access to justice. Indeed, research in this area indicates that victims of discrimination often do not take action because they fear that it would be nearly impossible to prove their case, or because they do not believe that the end result would be satisfactory. Many are entirely unaware of their rights, or are in need of advice and support.

But the EU-25 have a third thing in common: they all share a renewed impetus for anti-discrimination work. This state of affairs has largely been brought about by the recent adoption of policy and legislative initiatives at Community level. In the year 2000, the Council of the European Union adopted the Community Action Programme to combat discrimination together with two Directives on equal treatment, namely Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive) and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive).

Bringing national legislation into line with EU Directives

Both of the above-mentioned Directives contain a detailed and inclusive definition of discrimination, which is indispensable for putting anti-discrimination law

into operation. Both Directives also embody provisions which shift the burden of proof in discrimination cases and envisage a role for non-governmental organisations in taking action on behalf of, or in support of, a victim. Furthermore, the Racial Equality Directive instructs Member States, where they have not already done so, to establish bodies for the promotion of equal treatment. These provisions remove many of the barriers victims of discrimination have previously faced, facilitating their access to justice.

The Directives and the accompanying Action Programme have thus opened a new window of opportunity for taking the anti-discrimination agenda further on the national level as well. The Directives place a responsibility on all Member States to ensure that their domestic legislation is in line with the two Directives. National legislation was to be in compliance with the Directives by July 2003, as concerns the requirements of the Racial Equality Directive, and December 2003, as concerns the requirements of the Employment Equality Directive. For new Member States the deadline for transposition was May 2004. Some of the Member States have requested more time to implement provisions on age and disability discrimination.

The ultimate challenge: Transposing national law from paper to practice

Now that the transposition of the Directives into national anti-discrimination law has been largely accomplished, we are faced with an equally important and demanding task of "transposing" the new legislation from paper to practice. To accomplish that, we must know what and who are the critical factors and actors in ensuring that anti-discrimination law does not become a "dead letter". This is because even the best of laws is of no value whatsoever if it is not observed and enforced in practice.

A successful strategy in ensuring that a law has tangible results for the people it is supposed to protect has to have two elements. Firstly, it must, by means of sensitising and awareness-raising, aim at enhancing the observance of the principle of equal treatment. Secondly, it must ensure that efficient enforcement is in place for those who, despite these efforts, do not follow the law.

For people to observe the law, they must be aware of its content and willing to observe it. This is where information campaigns, awareness-raising and sensitising activities come into play. In this context, awareness-raising and sensitising must be understood broadly to include not just media and poster campaigns, but also for instance the setting up of public forums where hot spots relating to discrimination may be discussed.

While such activities will in all probability serve to decrease the occurrence of discrimination, they are not likely to eliminate discriminatory practices entirely. That is why efficient enforcement of the discrimination law is also needed. This implies the need for a low threshold access to justice and organisations providing assistance to the victims of discrimination. This is largely an institutional matter; a matter of ensuring that relevant institutions and organisations exist, are adequately staffed and work efficiently. The police, prosecutors and courts must take discrimination cases seriously; otherwise victims of discrimination will be discouraged from bringing

their cases forward. The existence of ombudsman institutions and equality bodies often provide for an easily accessible and relatively speedy remedy. Non-governmental organisations have an invaluable role to play in assisting victims of discrimination by providing them with advice and support and, if need be, by helping them bring their cases to the courts.

This publication goes to the heart of these issues, and provides a number of examples of how anti-discrimination law may be made more efficient in practice. Section I emphasises the importance of the support and the active involvement of all stakeholders. It also provides examples from different countries of the ways in which NGOs and social partners in particular have been involved in the law-making processes. Section II focuses on the engagement and mobilisation of different key players, especially equality bodies, NGOs, social partners and public authorities, with a particular focus on the biggest European minority, the Roma.

These articles amply illustrate the tremendous advantages of both the active involvement of all stakeholders and the exchange of best practices arising out of experiences from practical fieldwork. Let these two factors become yet another point the EU Member States have in common.

The Directives can help narrow the dichotomy between the immense disadvantages experienced by the Roma communities and their significant potential to add value to an enlarged Europe.

Shared ownership and responsiveness

"The quality of regulation depends crucially on empowerment. By this I mean bringing into the regulatory process the experience and views of those directly affected. Groups such as employers' organisations and trade unions, community associations and public interest NGOs who act as watchdogs, educate and inform others, and help individuals to enforce their rights. These groups must be given rights to be informed, consulted and engaged in the enforcement process."[1]

Bob Hepple
QC, Emeritus Professor of Law,
Cambridge University

Following approval of the Directives, the primary focus in most Member States has been to meet their formal requirements of putting suitable legal and administrative procedures in place. While that may have seemed a difficult process, it is a process with an end point, a process that can be completed.

What Member States now face is an open-ended process - to achieve the aims of the Directives. The process of combating discrimination and promoting equality has no fixed end point. It will continue for as long as is necessary. It is a process that will challenge most institutions and may well expose sharply conflicting interests. Further, it is a process that governments have had to acknowledge cannot be achieved in isolation.

A first responsibility lay primarily with national governments, as only they could secure the necessary legislation. In unanimously approving the Directives, Member States formally endorsed the value of wider participation and agreed that national governments should be required to encourage and promote dialogue with industry and NGOs. There is little evidence, however, that this obligation has yet been given much attention in most Member States of the enlarged EU. While such dialogue regularly occurs in some, in Member States where good communication between government and civil society is not the normal pattern, the requirements of the Directives seem to have had little impact. On the other hand, these requirements could be a catalyst to overcome the distrust that has inhibited dialogue in the past.

It is useful to build on Member States' past experience – positive and negative – in tackling discrimination between women and men; further lessons may be available from jurisdictions that have had other anti-discrimination laws for many years.

Reactive, individual claims are not enough

Fundamental to eradicating discrimination is that victims of discrimination should have a real right to seek and secure redress. But years of striving to combat discrimination have also demonstrated that while essential, this is not sufficient in making real progress towards equality. Well-entrenched institutionalised patterns of discrimination are unlikely to be dislodged in any significant or permanent way by individual claims. Where organisations adopt a rigid defensive posture, individual claims could harden resistance to change. Arguably, it is not only unwise but also wrong in principle to place the burden of eradicating discrimination on the shoulders of the few individuals who are prepared to complain.

Therefore, at the same time as they maintain and support a process for effective individual remedies, governments and groups within civil society must also look beyond an individual-based, reactive approach to find other, more proactive, ways to bring about change to institutional attitudes and practices of an organisation as a whole.

What is needed is for the organisation itself to identify barriers to equality - in employment, education, training or in access to goods or services. Barriers within an organisation can include policies and procedures that, intentionally or unintentionally, exclude or disadvantage particular groups. These may be written policies and procedures or unwritten 'rules' that derive from unchallenged stereotypes and prejudice. Where there are barriers that deny equality of opportunity to particular groups then the organisation should be expected to implement change.

Members of particular groups may also face barriers based on the historic exclusion and disadvantage of that group. This can be seen where, despite measures intended to provide equality of opportunity, there are no, or disproportionately few, members of particular groups selected for employment or able to enjoy benefits or to access services. Without intervention in the form of positive action – to overcome the effects of past discrimination such disadvantage is likely to persist.

Clearly an essential part of identifying barriers and planning for change is involvement of the groups that have been disadvantaged. The role that other stakeholders might play in securing change within organisations will, of course, depend on both national law and traditional relationships. Trade unions could play a lead role or none at all. Legislation could impose positive obligations on public authorities, or on all or certain employers. Specialised bodies may have wide enforcement powers including powers to investigate, to make recommendations or to secure binding commitments to take positive measures to implement change.

(1) *"Work, empowerment and equality" Public lecture to the International Institute of Labour Studies Geneva, November 2000*

Different stakeholders need to work together

Ideally, national governments, specialised bodies, public and private sector organisations, trade unions, NGOs and members of disadvantaged groups will see the mutual benefit in collaborating to promote equality. This could include agreeing mechanisms to prompt organisations to assess the impact of their current practice and to act to remove barriers to equality. When institutional discrimination is exposed and organisations fail to act there need to be sanctions. Formal sanctions may be specified in law or administrative provisions. Informal sanctions can be applied by different stakeholder groups, including exclusion from public contracts, customer boycotts or industrial action.

The real lesson that can be learned from the experience in Member States and other jurisdictions is that the more people engaged as real stakeholders, who recognise that they have a genuine interest in building a society based on equality, the more effective any laws, sanctions or campaigns will be. Furthermore, the involvement of different groups will itself contribute to the process of changing attitudes and practices.

Hungary

In Hungary, the Directives were due to be transposed in time for accession to the European Union on 1 May 2004. The Hungarian government decided to adopt an innovatory and inclusive approach in its 2½-year consultation process. It was the first time that a legislative consultation had been carried out over the Internet as well as through more traditional channels.

In November 2002, an 80-page consultation document was launched on a dedicated website setting out the concepts encapsulated in the EC Directives. The consultation document also set out a proposal detailing how the Government envisaged its transposition into Hungarian law. Furthermore, the Hungarian Supreme Court produced an Opinion on how the implementation of the Directives would affect existing Hungarian legal concepts.

Between November 2002 and May 2003 when the domestic legal text was elaborated, the Hungarian authorities met with Civil Society representatives, particularly those representing the Roma community and the gay and lesbian communities, as well as trade unions and employers networks to gain insight into their concerns and priorities for effective legislation.

The draft domestic legislation was then discussed again with key stakeholders between May and August 2003, and honed in terms of content and language prior to being submitted to the Hungarian Parliament for debate and adoption. The Hungarian legislative text implementing the two Article 13 Directives which was subsequently adopted at the end of 2003, truly represents a collaboration between government and civil society.

Diverse perspectives bring equally innovative approaches

United Kingdom

The United Kingdom's consultation process began in 2000, with a consultation on the broad principles of the Employment Directive. This was followed by two further consultations. The first, called "Towards Equality and Diversity", looked at the broad implementation strategy. The second, "The Way Ahead", launched in October 2002, looked at each strand of discrimination and the specific content of draft legislation. The objectives behind this series of consultations were to discuss the priorities for proposed domestic legislation, and to allow employers, stakeholding organisations, trade unions and employees as much time as possible to prepare for the legislation, before it came into force.

Over the three years prior to the Regulations coming into force, approximately 4,000 responses were received as a result of the various consultations. As a sign of the effectiveness of the process it is important to note that the consultation responses were directly responsible for shaping certain aspects of the legislation, for example, the definition of sexual orientation, used in the Employment Equality (Sexual Orientation) Regulations, which refers to orientation towards persons of the same sex, opposite sex or both sexes.

Finally, it is important to note that the Department of Trade and Industry (DTI) was the lead government department directly concerned with the implementation of the Employment Directive strands covering sexual orientation, religion or belief and age. Other departments have also been involved in the Employment and Race Directives. The Home Office is responsible for race, and the Department for Work and Pensions is responsible for disability. Effective cross-department working has ensured that, where practicable, consistency in definitions has been achieved across the legislative strands on time.

Engaging and mobilising key actors

2.1. The changing role of associations

Victims of discrimination are more inclined and more confident to start legal action when they are supported by organisations. Even though anti-discrimination legislation should be linked to overall social and economic policy goals - *"law and litigation are important mechanisms for enforcing human rights, extending public participation, improving economic conditions, encouraging grassroots empowerment, reforming laws and legal systems, and fostering government accountability - aspects of what some commentators loosely refer to as 'rule of law' values"*[(2)].

There are two main preconditions for effective legislation against discrimination. Firstly, the rights of victims to an effective personal remedy against the person or body that has perpetrated the discrimination and, secondly, the existence of adequate mechanisms in each Member State to ensure adequate levels of enforcement[(3)].

Taking on legal standing

One of the key innovations introduced by the Directives are the procedural safeguards which encompass – *inter alia* – the right for all associations, organisations or other legal entities, which are considered under the Race Equality and Equal Treatment Directives to have a "legitimate interest" to directly support or represent victims of discrimination as defined in the two Directives. Conferring locus standi – or legal standing – has broken new ground and brought inherent challenges with it.

For the first time, the concept of locus standi for associations has been introduced at Community level whereas in the past this fell solely within the remit of national governments with differing levels of cohesion.

Some authors have regretted the fact that, under the Directives, organisations are not given an independent right to bring actions without the need of an identified individual victim of discrimination (collective right of action) which could be particularly useful in tackling institutionalised forms of discrimination – the product of generalised practices and thus less easy for individuals to challenge[(4)].

Nevertheless, in the context of enlargement, the provision contained in both Directives provides a standard for the new Member States on the basis of existing practice in old Member States.

In principle, this evolution should represent a marked improvement for employees and consumers alike. Hitherto, they were either unable, or reluctant, to initiate legal proceedings against an employer or a service provider as it could lead to consequences such as dismissal or poor service. The bolstering of a primarily

non-confrontational "third way" channel of representation should also go some way to encouraging employers and service providers to take a pre-emptive approach to the implementation of the two Directives.

However, the reality is that the provisions of the Directives which require Member States to promote dialogue between industry[(5)] and NGOs[(6)], as well as to confer locus standi on organisations with a legitimate interest, put trade unions, NGOs and other relevant associations in a challenging position.

Challenging because in order to have a real impact on the enforcement of the Directives, organisations will have to meet these new challenges head on. They will have to adapt their working skills and practices, and develop more comprehensive strategies to protect potential victims of discrimination and foster equality better.

Rising to the challenge

Some of the key activities such organisations will need to focus on if they are to achieve their goal include:

- Providing information: potential victims and more generally the public at large must be better informed about existing legislative tools. Too often victims are unaware of their rights to redress, the procedures to be followed or even whom they should approach in case of need.

- Awareness raising and training: a huge effort must be made in the area of raising awareness and training with those working directly in relation to the Directives and their implementation on the domestic stage. Organisations could contribute in giving specific training on questions related to equal treatment and non-discrimination.

- Advocacy and lobbying: legal and advocacy expertise from the NGO sector and other relevant organisations will be needed, for example, to ensure that the provisions contained in the Directives are applied in an appropriate manner, to document abusive practices or for legislative drafting.

- Alliance building and networking: in order to keep equality high on the political agenda, political mobilisation is necessary to achieve greater visibility, credibility and support. Organisations should work at engaging the maximum of stakeholders in the process and cooperate actively with specialised bodies or specific agencies.

We have yet to see if eligible organisations do indeed take full advantage of the possibilities made available through the new rules. Much will depend on their ability to professionalise their structures, to mobilise human and financial resources, and to adapt their organisations. Enforcement and implementation of the Directives are elements of a long process that should eventually lead to social change in our societies. Organisations with a "legitimate interest" are well placed and deserve to be fundamental actors in that process.

(2). Public Interest Litigation: Selected Issues and Examples. Helen Hershkoff.
(3). COM/ 99/ 0565 final.
(4). Meeting the challenge? A comparison between the EU Racial Equality Directive and the Starting line. Mark Bell. In The Starting line and the incorporation of the Racial Equality Directive into the national laws of the EU Member States and Accession States. Isabelle Chopin and Jan Niessen (eds.). London/Brussels: Commission for Racial Equality/Migration Policy Group, 2001. Pp 22-54.
(5). Article 11 Race Equality Directive and Article 13 Framework Equality Directive
(6). Article 12 Race Equality Directive and Article 14 Framework Equality Directive

Specialised equality bodies and the Race Directive

Article 13 of the Racial Equality Directive stipulates that a specialised body (or bodies) must be designated for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. Their tasks are to provide independent assistance to victims of discrimination, conduct independent surveys on discrimination, and publish independent reports and make recommendations on any issue relating to such discrimination.

The Article 13 Directives have heralded a significant amount of change both in terms of substantive rights and the administrative structures needed to enable effective implementation of the new rules.

Specialised bodies: A legal obligation

The Directives oblige governments to do a number of things which are crucial for the effective enforcement of anti-discrimination law. These include establishing specialised bodies which can be counted upon to provide a supportive link between the law and those who have been affected by discrimination. The mandate of the specialised bodies includes the provision of independent support to victims of discrimination and there are many ways to provide such support (from providing information, to mediation and litigation). The specialised bodies may also conduct independent surveys (prioritising certain areas where discrimination occurs), publish reports and make policy recommendations (for example, on pressing matters).

Many EU Member States amended their equal treatment legislation or adopted new laws to transpose the two Directives within the time limits set by the European Commission. However, in order to transpose the Racial Equality Directive, many States have been faced with the challenge of either establishing a completely new independent body for this purpose, or revising the mandate of existing specialised bodies[7].

The (sometimes short) history of existing independent specialised bodies in Belgium, Ireland, the Netherlands, Sweden and the UK, upon whose mandates the tasks outlined in article 13 have been modelled, demonstrates that they are crucial for the

defence of the rights of individuals as well as for the further development of anti-discrimination policies.

Existing bodies set the benchmark

The key role played by the equality bodies in these countries is wider than the mandate required in the Racial Equality Directive. This de facto benchmark has been spontaneously taken up across the EU-25 where there is a tendency to broaden the mandate by including discrimination on more grounds than racial and ethnic discrimination. Where more than one body exists covering different grounds of discrimination there are plans to merge them or to intensify co-operation between them.

From a broader perspective, enhanced transnational co-operation and exchange of expertise is helping specialised bodies to fulfil their role to promote equal treatment better and to provide independent assistance to victims of racial discrimination. Two key initiatives have been set up and financed under the Community Action Programme to combat discrimination (2001 – 2006) to encourage a sharing of knowledge and experience.

Firstly, the project "*Towards a uniform and dynamic implementation of EU anti-discrimination legislation: the role of specialised bodies*" has created a network consisting of six existing specialised bodies, the Ombudsman for Equal Employment Opportunities in Austria and the Migration Policy Group (Belgium). The project aims to promote the uniform interpretation and application of EU anti-discrimination legislation, and to stimulate the dynamic development of legal equal treatment in EU Member States.

The network will be gradually enlarged to include new specialised bodies from other EU Member States and candidate countries, as well as bodies dealing with grounds of discrimination other than race. Representatives of newly established or future bodies are already participating in the project activities, such as regular expert meetings[8].

Secondly, those specialised bodies that do not yet have the capacity in terms of resources or expertise, are being assisted through so-called "twinning" projects which match up more experienced and less experienced specialised bodies. Such a project has already taken place between the Equality Commission for Northern Ireland (ECNI) and the National Council for Ethnic and Demographic Issues (NCEDI) in the Council of Ministers, Sofia, Bulgaria.

ECNI were able to provide knowledge and experience of UK anti-discrimination law and best practice, as well as help in the drafting of the law and promoting public debate and discussion on its content. ECNI started a second twinning project with the Office of the Legal Chancellor (OLC) in Tallinn, Estonia in February 2004. They will help the OLC develop a procedure for handling complaints, and draft a process manual. They will also provide training to the OLC staff on the Directives, drawing on the interpretation of anti-discrimination law and practice from the UK and Northern Ireland.

These and other "twinning" projects provide for relevant experience, materials and models for co-operation and exchange of expertise between specialised bodies.

(7). European Commission, Specialised bodies to promote equality and/or combat discrimination. Final Report (2002). http://europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm (publications, Study on anti-discrimination bodies).

(8). See www.migpolgroup.com/programmes, Diversity and anti-discrimination, Anti-discrimination, Specialised bodies; for reports of the expert meetings, see www.migpolgroup.com/publications

An Association's viewpoint: Protecting the rights of the Roma

"In the past," explains Dimitrina Petrova, the Director of ERRC, "the Roma rights agenda was dominated by the issue of racial violence. However, over the last three years we have seen a shift towards anti-discrimination as our main issue. Now when we talk about Roma legal rights cases, more and more of the substance is about discrimination. Even where the central issue is a violent incident, we combine it with a discrimination claim."

The European Roma Rights Centre (ERRC) is a public interest law and human rights organisation based in Budapest. It is a professional body, governed by an international board of directors. As the majority of European Roma are in Central and Eastern Europe, activities are concentrated primarily in this region.

With a general mandate of protecting the legal rights of the Roma, staff, collaborators and consultants execute the organisation's three core activities: litigation, legal training and advocacy work.

The entry into force of the race Directive has had a major impact not only on the legal activities of the ERRC, but also on their advocacy and training initiatives.

"Since the Race Equality Directive was adopted it has become the central item of our advocacy, training and litigation agenda," says Ms Petrova. "In the area of litigation, we welcome the provision in the Race Directive of giving locus standi to Associations. In fact we rely on it, as it gives us the opportunity to go to court directly to represent victims of discrimination.

"Most of our litigation activities are concentrated in Central and Eastern Europe – home to the majority of the European Roma community. Among the new and candidate Member States to the EU, only Bulgaria, Hungary and Romania have comprehensive anti-discrimination laws based on the EU Directive. In both Hungary and Bulgaria we have taken our first steps to build cases where the ERRC will have standing, focusing on Roma access to public services. So, for example, we've already filed a case concerning discrimination against the Roma in access to the electricity supply network. In this way we are testing to see how the courts will react to an NGO being the claimant.

"We have yet to see whether the discrimination law passed in the other countries will have a provision for standing. In countries where this provision is not included in the law, we will continue to represent the public interest by representing individual clients.

"The ERRC is currently involved in at least 150 on-going cases at a domestic level, with a similar number that are closed. At least 80% of current cases contain a discrimination component. Around 30 to 40 of these are being brought before the court within the framework of one of four 'joint litigation projects' set up in Hungary, Slovakia, Czech Republic and Bulgaria in cooperation with a national legal organisation."

Ms Petrova explains the structure of these joint litigation projects: "A steering committee, comprising ERRC attorneys and representatives of the national NGO, is responsible for selecting the cases for litigation according to pre-established guidelines. The legal tasks are shared between the ERRC and the national partner. For example, we recently filed a case on sterilisation in Hungary together with NEKI (an NGO defending minority rights). All these cases focus on discrimination claims.

"The ERRC also works at the international level – that is the European Court of Human Rights in Strasbourg and treaty bodies of the United Nations. It has filed cases under individual UN complaint procedures such as CERD (Convention on the elimination of all forms of racial discrimination) or CEDAW (Convention on the elimination of discrimination against women). Right now we have around 40 international cases in all, roughly half of which have a discrimination claim."

Ms Petrova realises the importance of sensitising legal practitioners to Roma issues; particularly as they relate to the new EC Directives.

"We have organised six or seven workshops every year for the last three years, targeted at lawyers who have been, or who are, taking Roma cases. As I mentioned, the Roma rights field itself is moving away from police abuse, civilian violence or other cases under the criminal justice system, towards cases of discrimination in the area of socio-economic rights – employment, education, health care, housing and public services – key issues of the Race Directive."

She continues: "So far our training work has been very well received. At first we thought judges would be unwilling to travel to workshops about Roma, but because the law is so new and interesting, and the the Roma are among the main beneficiaries of the Race Directive in Europe, the trainings have attracted a lot of interest among the legal community.

"In total our training has reached almost a thousand legal professionals over the last three years. Of course it won't change attitudes and expertise immediately but it is a start. They have been exposed to new ideas, to the Directive, and to new contacts in the field."

Alongside their litigation and training activities, Ms Petrova also explains their advocacy work.

"We aim to be an active partner in drafting national anti-discrimination law, and we achieved this goal in Bulgaria and Hungary. I myself participated in the working group that drafted the law in Bulgaria, and in Hungary we participated as insiders and gave feedback on drafts. So in both cases we feel some ownership of the laws that were finally adopted.

"With regards to the other countries, we try to keep a constant flow of information and to give opinions on draft laws, together with local partners. Of course, some countries are less transparent and inclusive.

"I'm cautiously optimistic that the new Member States will implement anti-discrimination law based on the EU Race Directive. It exists already in three coun-

tries, and we're waiting to see what happens in Slovenia, Slovakia and Czech Republic. The situation is less promising in Estonia, Lithuania and Poland, which are likely to end up with a mish-mash of provisions scattered across the legislation rather than one comprehensive law."

As to future ERRC priorities, Ms Petrova is enthusiastic but realistic: "EU enlargement and implementing the Race Directive at national level has been our number one priority over the last few years. For the future we want to increase our work in neighbouring countries – particularly in the Balkans, Ukraine and Russia. Violent incidents and police abuse are still the dominant issues facing the Roma in these countries, so fighting for access to education or employment may seem to be a bit of luxury, but this will come and we hope our on-going projects will pay off later."

Roma facts and figures

Estimates of the Roma population in Europe today vary between 6 and 12 million. It is difficult to obtain precise data, because many Roma do not openly declare their ethnicity due to deep-rooted prejudice among the majority community. Around 80% of Europe's Roma live in Central and Eastern Europe, where in several countries they make up over 5% of the population.

The Roma community is very diverse both in language and cultural traditions. Nonetheless, they represent a distinct ethnic group that can be traced back to early migrations from India. The different dialects of the Romani language share a common root based on ancient Punjabi or Hindi. Most Roma can be subdivided into groups according to their place of residence or origin, such as Spanish "Gitanos", French "Manouche" and German "Cinti".

Throughout European history, Roma have suffered persistent rejection and persecution. The most infamous period is the Nazi terror of World War II, responsible for the deaths of up to 1.5 million Roma. As a result of centuries of exclusion, many Roma today continue to live in very difficult conditions on the fringes of society. They are often denied access to basic human rights such as housing, education, social services, and health care. It is not unusual to find reports of 100% unemployment in certain Roma settlements, and segregated schooling is still common for a majority of Roma children.

For more information see:

European Roma Rights Centre:
www.errc.org

European Roma Information Office:
www.erionet.org

Roma News:
www.romnews.com

The Patrin Web Journal - Romani Culture and History:
www.geocities.com/Paris/5121

Roma Education Initiative:
www.osi.hu/esp/rei/

2.2. Involving social partners

Employers: A key partner in tackling discrimination in the workplace

Susan Scott-Parker,
CEO of Employers Disability Forum UK

"Our job is to make it easier for employers to employ disabled people and welcome disabled customers"

The Employers Forum on Disability is a UK-based organisation which focuses on the issue of disability in the workplace. It is funded and managed by employers. With over 375 members, the Forum represents organisations which employ over 20% of the UK workforce. Since its establishment in 1986, the Forum has worked closely with government and other stakeholders, sharing best practice to make it easier to employ disabled people and to serve mentally as well as physically disabled customers.

However, Susan Scott-Parker, CEO and founder of the Forum stresses that the organisation is not a traditional model of an employers' association.

"We operate on a model which centres on both employers and disabled individuals. We see it as our role to bring these two groups together for their mutual benefit. More particularly, we encourage both groups to take a fresh look at how they approach common issues of promoting the economic and social inclusion of disabled people into the workplace as employees and consumers."

She continues: "We try to avoid the traditional and perhaps limiting term 'social partners' per se. Rather, we view our role as one of facilitator providing employers with a safe and open forum to come together to freely discuss their views and experiences. It is of paramount importance to provide a safe environment for employers to have these discussions. Without feeling comfortable about their understanding of disability issues, they cannot engage in meaningful discussions with the disability community on how to make their businesses 'disability confident'."

Whilst the Forum was set up long before the legislation, it has been instrumental in the adoption of the UK Disability Discrimination Act (DDA) 1995 and subsequent amendments. When asked how they manage to keep their membership on track in terms of implementation of

UK law and particularly the new European rules specific to disability which are due to be implemented in October 2004, the answer is simple yet effective.

"We are keeping our membership up-to-date not just on all the legal issues, but more significantly on what this will mean concretely for their organisations. Our ensuing message is that the best way to transform legal obligation into genuine mutual benefit is to apply best practice all the time. For example, we recommend that employers treat every employee as though they were protected under the disability discrimination legislation. Companies want to manage disability alongside race and gender, for example.

"We have formed a legal group that provides advice to our members and is made up of employment lawyers from leading City firms in the UK. We use the law to capture the attention of companies who may not think that they should be employing best practices as a matter of course. As our recent publication 'Promoting Change' demonstrates, we use the law to trigger employers into acknowledging the need for them and key actors within their organisations to learn. This is the only document of its kind within the EU-25.

"Most importantly, we use the law to reinforce the message that it is in the interest of business to treat all people fairly as well as investing in the potential of disabled people. A good example of this is our e-recruitment site."

"With our e-learning package, funded by six major employers at a cost of £180,000 (approximately 270,000 euro), their 165,000 employees can have access to information on the law. In particular, it raises awareness of disability etiquette in the workplace and how to work alongside disabled people and welcome disabled customers. In this way, they will not only use best practices, but will also help non-disabled employees understand the principles behind 'disability confident' measures. Furthermore, it helps preventative measures to be easily set in place – thus saving money and contributing to a fully functional and therefore profitable workforce."

Over the past 12 months, the Forum's work has also concentrated on promoting the Global Inclusion Benchmark, first piloted in 2002. The first full report was published in October 2003 examining the key findings across the world's leading social reporters on the 10 key areas where companies should report on disability. The 10 organisations scoring highest in the 94-question survey were profiled in the report. The aim was to position disability as a mainstream business priority.

"We keep our membership informed through over 2.5 million publications already in circulation on how to create and reinforce a positive culture as a 'disability confident' employer. We also hold a series of events throughout the year and we have a telephone helpline available to our membership."

Ms Scott-Parker acknowledges that despite their efforts, there is, however, still a gap. The Forum believes that it is the obligation of government to improve its own ability to address the needs of business and employ disabled people. Furthermore, the Forum believes that NGOs need to actively empower disabled people as leaders, spokespeople and entrepreneurs. Both parties need to value the employer as the key stakeholder and customer if disabled people are to make real progress. As such, the Forum has taken positive steps to include all stakeholders who can make a meaning-

ful contribution to ensuring employers create disability confident workplaces. Susan Scott-Parker explains: "This year, we have also started a consultancy project called 'Tripod' which is composed of representatives from the UK Government ministries (Department of Trade and Industry), major NGOs dealing with disability and of course our membership. Our aim is to help everyone understand how to engage better and equip employers on this complex issue. What we discuss within the Tripod group can then be applied across a number of wide networks and we hope to see the benchmark developed on a transnational basis".

In the final analysis, the Forum's future will be to enhance good communication between stakeholders, working in the spirit of disability legislation. The Forum already operates a service called 'Connect'. As part of the telephone helpline, disabled employees and customers who have a problem are put in touch with the right senior person in the particular company/organisation. The Forum is currently contemplating the establishment of a mediation facilitation service along the same principles as ACAS (the UK industrial mediation facilitation service).

employers' forum on disability

The Trade Union movement takes the stage

The ETUC project

Today's workforce in Europe is made up of many different nationalities, ethnic backgrounds and religious beliefs. To ensure that this mix works well and that all persons are treated equally, trade unions have to tackle discrimination through their actions, including collective agreements and bargaining. In addition, ensuring adequate representation of workers from ethnic minorities and different nationalities within trade union organisations is key to their involvement and their equal treatment both in the workplace and in the trade union organisations themselves.

The European Trade Union Confederation (ETUC) was awarded funding under the Community Action Programme to carry out a detailed overview across Europe of the extent to which issues of racial or religious discrimination within the workplace are tackled via collective bargaining and collective agreements.

The project consisted of two key phases of transnational and then national dimension. The first involved a detailed assessment of the situation to date across the EU-15 Member States, via its 13 partner organisations – one per EU-15 Member State except Greece and Denmark, with the help of the Labour Research Department (LRD) – a UK-based independent research organisation. The research findings were compiled in a report entitled "Migrant and Ethnic Minority Workers: Challenging Trade Unions".

An Action Plan was then drawn up and subsequently adopted by the ETUC exec-

utive committee in October 2003. Its primary aim was to map how the ETUC membership tackle discrimination systematically through collective agreements as well as increase the representation of persons from ethnic minorities in trade union decision-making structures.

For 2004, ETUC has now moved into the project's second phase. Having completed the study and Action Plan at the European level, the aim is now to translate these into actions at the national level.

"If progress is to be made, it needs to happen at the national level and in particular at the workplace level. This is where the collective agreements will have an impact and this is where the real effect of the work will be seen – providing better working conditions and facilitating a real integration of all workers into companies and also trade unions."

Clearly, the active participation of all the partners at this stage is vital. As such, a series of 13 national seminars were carried out culminating in a final European seminar held in Brussels in May 2004 bringing together all the partners. The discussion focused on the likely impact of the Action Plan and the research findings at national and workplace level, and possible follow-up activities.

"For Diversity. Against Discrimination": A pan-European campaign with a national identity

Social partners on national platforms have played a pivotal role in tailoring core messages to local constituencies and planning effective national initiatives designed to inform as many as possible groups of their rights and obligations under the new rules.

As part of its Action Programme to combat discrimination, the European Commission is running a five-year pan-European information campaign on combating discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation with the slogan "For Diversity. Against Discrimination". Launched in June 2003, the first two years of the campaign have focused primarily on awareness-raising

Awareness raising can bring new ideas to established practices.

activities related to discrimination within the workplace.

Taking national situations, issues and audiences into consideration has been pivotal to its success. National stakeholders – represented with specially formed National Working Groups (NWGs) – have been integrally involved in the strategic planning of the national campaigns from the very outset. These NWGs consist of:

- Representatives of the social partners; namely employers and employees associations;
- Representatives of non-governmental organisations representing groups affected by the Directives 2000/43/EC and 2000/78/EC; and
- Representatives of national ministries responsible for the transposition of the Directives into domestic law.

Meeting at least twice a year, the NWGs' role is to discuss the objectives to be attained on a national level as well as how best to meet them through targeted initiatives planned in co-ordination with MEDIA CONSULTA's national correspondents.

During the first year of the Campaign, discussions focused on the core elements of national initiatives as well as identifying synergies with other on-going activities across the five grounds of discrimination covered under the Directives.

In 2004 discussions have deepened both in terms of content as well as geographic spread. The discussion concentrated on achievements, target groups and the focus of implemented measures. To this end, a series of Focus Groups was held in Latvia, Malta, Poland and the Czech Republic, involving the same three groups of stakeholders, to discuss efficient ways to evaluate the situation in each country.

However, it is important to note that the full involvement of national stakeholders is a gradual process. Measures have to be identified, discussed, adjusted, revised, and sometimes it is a long way from the first idea to the final implemented measure.

On the other hand, the involvement of national stakeholders has already begun to pay significant dividends. National stakeholders can identify with to a large extent and feel a sense of ownership of measures developed in this way.

The resulting national campaigns are as diverse as the countries where they are taking place in Europe, concentrating on different kinds of measures and focal points in each Member State. Some may focus on awareness–raising activities addressed to the general public, while others may use more targeted information seminars. Whereas some countries have rejected an advertising campaign in favour of disseminating more concrete information, others are concentrating all their available resources in this field. All these decisions are based on the strategic focus defined in the NWG meeting.

2.3. Bringing stakeholders together: The role of public authorities

"Joined up" planning will be the key to bringing all stakeholders together for effective implementation of the Directives in Member States.

Legislation can never be effective as an isolated measure. What is needed is a concerted collaboration of all stakeholders who can contribute to a better understanding of the needs of the national population and hence to a more effective implementation. Article 10 of the Race Equality Directive (Dissemination of information) stipulates: "Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory."

Public authorities throughout the enlarged European Union are in a unique position to successfully co-ordinate effective involvement of stakeholders in such implementation.

They hold the key to developing policies that can promote and disseminate the values and practices underlying the fight against discrimination, and to emphasising the European dimension of this fight. Equally, they are invariably at the centre of a complex relationship network, which includes various government bodies and agencies, civil society and industry.

The Action Programme has already demonstrated its commitment to raising awareness of the existence of the new rules and individuals' rights and obligations under them through the five-year information campaign "For Diversity. Against Discrimination".

However, to implement a change in attitude, human and financial resources as well as time are required. The European Community has taken this concept on board and has made €2,300,000 funding available to national authorities for the organisation of seminars and other awareness-raising activities targeted at policy-makers, legal practitioners and the population at large.

Concretely, with a maximum allocation of €100,000 for 2004 per Member State, the Community hopes to encourage active participation and exchange of views across the different sectors. The organisation of "national days on diversity issues" and conferences and seminars should help to bridge the gap between paper policies and concrete actions.

However, it is clear that awareness raising operates on a number of levels and requires a number of different approaches to match a particular audience.

It is universally acknowledged that the underlying principles expressed in the EC Directives are primarily a common set of guidelines that should be adapted to national situations and traditions in their implementation. What is of paramount importance is for core attitudes to be changed. This necessarily leads us onto the need to be pre-emptive rather than reactive in the dialogue between key stakeholders.

Admittedly, public bodies across the EU-25 have different histories with their "triumvirate" networks. They have also dealt with the issue of the promotion of the values encapsulated within the Directives with varying levels of intensity. Some Member States have chosen to implement the minimum requirements set out in the two Directives. The UK having already possessed a wealth of expertise in the conception of "inequality" has not only transposed the European legislation into domestic law, but have re-evaluated their general approach to equality issues. The practical result has been that it has gone much further by placing a duty to promote equality at the centre of their policy development platform across government bodies as well as in their relations with Civil Society.

At the root of the UK's decision to impose this positive duty on all of its public bodies, is a recognition that social discrimination extends well beyond individual acts of racial prejudice. As a result, the duty becomes that of not merely compensating any given victim, but of reconstructing institutions to avoid complaints being necessary in the first place. Although the Race Directive does not specifically require the imposition of positive duties, UK legislation has made it illegal for public bodies to discriminate in any of their functions. In effect, this has meant that it is not sufficient for public authorities in the UK to refrain from discriminating. They must actively promote race equality.

Not only joined up planning, but also thorough information dissemination across all sectors will be the key to the effective implementation of the Directives. Public authorities hold the key. It is up to them to make best use of each other's experiences and ultimately to open the door to all stakeholders.

Public authorities lead the way in the drive for equality: The UK duty to promote equality and the Race Relations Act

The UK Race Relations Act 1976, while a landmark piece of legislation, left gaps in its coverage of public functions. In October 1999 the Government published an Equality Statement, giving its commitment to stamp out discrimination, remove barriers and improve the position of groups facing disadvantage and discrimination in employment, public life and public delivery service in Britain.

According to the Statement: "Public bodies must take the lead in promoting equal opportunities to ensure that public institutions and services are free from discriminatory procedures and practices and should improve the position of disadvantaged groups, both as employees and users of public services."

Fulfilling this commitment, the Government extended the Race Relations Act 1976 to public functions not previously covered, such as the police, through the Race Relations (Amendment) Act 2000. It proved to be an important step in the Government's effort to ensure that the public sector set the pace in the drive for equality.

The Amendment also took the law in a new direction by placing a positive statutory duty on public authorities to promote race equality. This positive duty differs from traditional anti-discrimination laws because it aims to introduce equality measures rather than responding to complaints by individual victims.

It further aims to ensure public authorities provide fair and accessible services, and improve equal opportunities in employment. It places a general duty on public authorities to:

- Work towards the elimination of unlawful discrimination;
- Promote equality of opportunity; and
- Promote good relations between persons of different racial groups in carrying out their functions.

Public authorities are also bound by so-called specific and employment duties, which support the general duty. Specific duties refer to the obligations that must be met by authorities responsible for delivering important public services. They are required to:

- Prepare and publish a Race Equality Scheme;
- Set out the functions or policies that are relevant to meeting the general duty; and
- Set out arrangements that will help meet the duty in policy and service delivery.

Once an authority is made subject to these specific duties, they are given until the end of May of the following year to implement the necessary plans.

Those public authorities bound by the employment duty must monitor, by ethnic group, their existing staff, and applicants for jobs, promotion and training and publish the results every year. In addition, public authorities with at least 150 full-time staff are required to monitor grievances, disciplinary action, performance appraisals, training and dismissals.

The list of bodies subject to the duty to promote race equality is reviewed and updated annually.

The UK duty to promote equality extinguishes fires before they are set alight.

European Commission

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For Diversity Against Discrimination

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This thematic brochure is produced under the European Community Action Programme to combat discrimination (2001-2006). This programme was established by the European Commission's Directorate General for Employment and Social Affairs as a pragmatic support to ensuring effective implementation of the two Directives on "Race" and "Equal treatment in the workplace" (2000) emanating from Article 13 of the Amsterdam Treaty. The six-year Programme primarily targets all stakeholders capable of exerting influence on the development of appropriate and effective anti-discrimination legislation and policies, across the EU-25, EFTA and the EU candidate countries.

The Action Programme has three main objectives. These are:

1. To improve the understanding of issues related to discrimination
2. To develop the capacity to tackle discrimination effectively
3. To promote the values underlying the fight against discrimination

As such activities funded under the Programme analyse and evaluate, develop and raise awareness of measures that combat discrimination on the grounds of race or ethnic origin, religion or belief, disability, age and sexual orientation. Discrimination on the grounds of gender is dealt with under separate legislative instruments. For more information on Community policies, legislation and activities on gender discrimination, please contact the Directorate for Gender Equality within DG Employment and Social Affairs.

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