

# Europeanization in the Visegrad Countries

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**The adoption of European anti-discrimination legislation in  
the Czech Republic, Hungary, Poland and Slovakia**

**The studies were conducted in the framework of the project entitled  
“Online Platform on the EU Accession Experiences of the Visegrad Countries”.**

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## FOREWORD

Let it be the countries of the so-called Big Bang enlargement of 2004 or the currently ongoing accession processes of the Western Balkan countries, all candidate states need to meet numerous conditions set out by the European Union (EU) before they can join the family of the EU member states. The cornerstone of these requirements is compliance with the threefold Copenhagen criteria adopted in 1993 at the European Council summit. These criteria demand that the state aspiring for EU membership has stable institutions that can guarantee democracy, the rule of law, human rights as well as respect for and protection of minorities; that it has a functioning market economy with the capacity to cope with competition and market forces; and finally that the candidate adopts and implements the *acquis communautaire* of the European Union, that is the whole body of legislative acts of the integration.<sup>1</sup>

Once the country is granted candidate status, Brussels starts to monitor year by year to what extent the future member state is in compliance with these fundamental requirements. The yearly assessments are published as the so-called Progress Reports, evaluating in detail the countries' performance, and highlighting both strong and weak points of the Europeanization process of the countries' institutional and legislative frameworks.

After all conditions have been met, the candidate is ready to join the European Union. This, however, is a lengthy process and compliance with the requirements is often challenging for the candidates. Therefore, evaluating the experiences of those who have already joined and sharing the lessons learnt with those who are currently undertaking this process can be a beneficial exercise. The current candidates can get to know the good and bad practices of their “predecessors,” while those who provide these experiences can make a realistic assessment of the reforms their countries introduced during the accession process.

The present collection of studies, prepared as part of the project entitled “Online Platform on the EU Accession Experiences of the Visegrad Countries,” sought to collect and evaluate the accession experience of countries that are already members of the European Union in order to share these lessons with current aspirants in the Western Balkan region. In their analysis, the researchers focused on the experiences of four current member states: the

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<sup>1</sup> European Council in Copenhagen (21-22 June 1993): Conclusions of the Presidency. SN 180/1/93 REV 1. Article 7/A/iii.

Visegrad countries (the Czech Republic, Hungary, Poland and Slovakia, all of which joined the EU in 2004) and provided in-depth analysis of one particular policy area. The area was selected to reflect a policy that had been challenging throughout the accession processes of all Visegrad states and where the countries of the Western Balkans also face problems, therefore where knowledge transfer is relevant. To identify the challenging areas, the researchers relied on the evaluations published as the EU's Progress Reports on the four Visegrad countries' development between 1997 and 2003, and consulted the Progress Reports of the current and prospective candidates in the Western Balkans.

While several policy matters would deserve detailed attention, based on this analysis, the area of human rights protection and more precisely, *alignment of the Visegrad countries' anti-discrimination legislation to that of the European Union* was selected. The aim of this research was to identify best and 'worst' practices in the alignment process by tracing back the course of reforms in the Visegrad countries. It attempted to uncover the specificities of the different countries' Europeanization processes and explain what the main factors leading to a certain outcome were, e.g. what the role of various actors was, how certain tools and instruments were used by the EU to give impetus to the process and how these were perceived by local stakeholders.

In order to uncover these processes, the research used extensively the accounts of experts, academics, civil servants and representatives of local non-governmental organizations (NGOs) who participated or had a good overview of the implantation of the European legislation into the national frameworks. To obtain comparable results, the researchers used a standardized questionnaire when interviewing local stakeholders. However, due the individual characteristics of the given cases, such comparisons are not always possible. Since the studies were prepared to be able to stand alone, the discussion of certain elements of the European legislation might be repeated in the separate country-specific case studies. Nevertheless, in this compilation, a separate overview of the European legislation on anti-discrimination is provided, as well.

The present compilation of studies therefore contains the following parts: an introductory overview of the European Union's legislation on anti-discrimination which shows how the area developed and what the main legal acts were with which candidates had to comply during their accession processes; and four country-based case studies. The Slovak and the Hungarian case studies show the development of the overall anti-discrimination

legislation and the impact of the European Union on this process in the respective countries, while the Czech and the Polish studies focus on how protection of a selected characteristic (so-called protected ground) developed in their countries. In the Czech case, the selected ground is sex and the development of women's rights is discussed in detail, while in the Polish case, it is disability. Both of them are listed among the characteristics the European Union considers as protected grounds and where it is allowed to legislate. Nevertheless, while the ban on discrimination based on the grounds of sex is well-developed and covers a wide range of areas in the EU-level legislation, the ban on discrimination based on the grounds of disability only covers the scope of employment and vocational training. The studies therefore cover several different, but complementary aspects of the same policy area, and provide insights on how the influence of the European Union worked in various settings.

## OVERVIEW OF ANTI-DISCRIMINATION LEGISLATION IN THE EUROPEAN UNION

The anti-discrimination legislation of the European Union developed rather slowly throughout the various stages of the integration process. In the beginning and during the period of the European Communities, it was strictly related to the economic sphere, more precisely to employment, and only started to break into other spheres of life in the very beginning of the 21<sup>st</sup> century, after the entering into force of the Amsterdam Treaty in 1999. While the current legislation covers significantly more protected grounds and its scope is essentially broader, it still leaves much to demand.

To provide a basic understanding of what legislative frameworks the candidates had to adjust their national legislation to, this section briefly presents the main stages and elements of the EU's anti-discrimination legislation.

The *Treaty of Rome*, the founding document of the European Economic Community from 1957, already made reference to the principle of equality and non-discrimination in its Article 141, which established equal pay for equal work for men and women. The reason for enacting such a provision was to guarantee that unequal payments between men and women cannot lead to unequal competition in the different member states. At this point, the provision was defined narrower than anti-discrimination regulations in the national laws: its scope was only payment in employment, and it forbade differentiation only on the ground of sex.<sup>2</sup> Between 1975 and 1997, several directives have been adopted concerning equality among sexes in various aspects of employment.<sup>3</sup> Nevertheless, the scope of employment itself remained the exclusive focus of anti-discrimination legislation.

The EU legislation started to exceed this scope and the ground of sex only in 1999 with the *Amsterdam Treaty*. With this momentum, the EU's anti-discrimination policy as such began. Article 13 of the Amsterdam Treaty states that the Council can unanimously accept directives to help the fight against discrimination on the grounds of sex, race and ethnicity, religion or belief, disability, age, sexual orientation, therefore significantly broadening the protected grounds. However, Article 13 did not specify the potential scope of such directives.

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<sup>2</sup> "4.2. Egyenlő bánásmód és esélyegyenlőség." (2005) in: Kende, Tamás and Tamás Szűcs (eds.) *Bevezetés az Európai Unió Politikáiba* (Budapest:KJK-KERSZÖV Jogi és Üzleti Kiadó Kft.) p.507.

<sup>3</sup> The following directives belong to this group: 75/117/EEC, 75/207/EEC, 79/7/EEC, 86/378/EEC, 92/85/EEC, 96/34/EC, 97/80/EC.

The first two anti-discrimination directives, the Council Directive 2000/43/EC and the Council Directive 2000/78/EC, which were later followed by several more, were adopted already the year after the Amsterdam Treaty entered into force. They set requirements to current and future EU member states on how to address discrimination in the individual countries, establishing exact dates by which the new regulation need to be enforced. The main characteristic of EU directives is that they outline the desirable final goals, but do not specify how the member states should arrive to that point. Therefore, the implementation of a directive varies from country to country, and has the advantage that it can better fit the context in which it is applied. Variance from country to country is definitely the case concerning the implementation of the anti-discrimination directives of the EU that brought along different institutional and legal frameworks in the member states.

The first ant-discrimination directive adopted in 2000 under the Amsterdam Treaty was the so-called “*Race Directive*” (Council Directive 2000/43/EC), which forbade discrimination on the grounds of race and ethnic origin in the scope of employment and occupation, vocational training, membership of employer and employee in organizations, social protection, including social security and health care, education, access to goods and services which are available to the public, including housing. It has to be noted, however, that the legislation sets minimum requirements and the national legislation might go further both in scope and level of protection – which indeed it often does.

This was the first directive that defined what we mean by direct and indirect discrimination, harassment and victimization. These definitions were later on used in subsequent EU legislation, as well, and had to be introduced to the national legal frameworks. It provided protection to natural and potentially also to legal persons, and as an important new element, it empowered associations or legal entities to engage in support of any victim, which significantly improved the situation of the victims who otherwise would often not be able to represent themselves. A similarly significant step was the reversal of the burden of proof, which from this point on lies with the respondent in anti-discrimination cases, that is, it is the respondent who has to prove that no discrimination took place.

The directive also required the introduction of dialogue with social partners on discrimination and anti-discrimination. It required the establishment of a body in the member states with competences to analyze the problems raised in this domain, to provide assistance to victims of discrimination in pursuing their complaint, to conduct surveys, to publish independent reports and make recommendations and to promote equal treatment in their

country. Furthermore, the member states were required to introduce effective, proportionate and dissuasive sanctions in cases where discrimination was proven, which may be a payment of compensation.

After the directive entered into force, the member states were required to abolish legislation contrary to the principle of equal treatment, abolish in individual and collective contracts clauses which go against this directive, introduce sanctions and implement the directive by July 19, 2003, through laws, regulations, administrative provisions and refer to the “Race Directive” and report on the application of the directive by July 17, 2005, and from then on every 5 years. The implementation of the directive also entailed setting up a body competent in discrimination cases, as mentioned before. Since candidates needed to comply with the EU legislation, they were also required to meet the requirements outlined in the directive upon their accession to the European Union. Subsequent directives largely followed the structure of the “Race Directive.”

The second groundbreaking directive of EU anti-discrimination legislation was the so-called “*Employment Equality Framework Directive*” or “*Framework Directive*” (Council Directive 2000/78/EC), which forbade direct and indirect discrimination on the grounds of sexual orientation, religion and belief, age and disability in the scope of employment and occupation. However, the “Framework Directive” does not extend the scope to social protection, social advantages, education, access to and supply of goods and services which are available to the public, including housing. The “Race Directive” covers these areas with regards to the grounds of race and ethnic origin. In this case, member states faced the same requirements with regards to the adoption and implementation as in the case of the “Race directive”. The deadline for compliance and the introduction of sanctions here was December 2, 2003, with the exception to grounds of age and disability, where an additional 3-year period was granted, thus the deadline was: December 2, 2006.

Although there were further directives adding to the EU regulation in this domain, the “Race Directive” and the “Framework Directive” were the ones defining the development of the policy. These were also the ones, which most significantly influenced the Europeanization of the sphere in the candidate states of the time in Central and Eastern Europe as the subsequent directives were adopted after the “Big Bang” enlargement. Nevertheless, they are ought to be mentioned here briefly, since the current candidates will have to comply with these legislative acts, as well, by the time of their EU accession.



Therefore, the *Council Directive 2004/113/EC* should be listed here, which required the implementation of the principle of equal treatment between men and women in access to supply of goods and services in the scope of insurance and pension that are private and voluntary. However, it allows for exemptions when sex is a decisive actuarial factor. The deadline of compliance was defined in three years, by December 21, 2007. The *Council Directive 2006/54/EC* implements equal treatment between men and women in EU labor law, and is a consolidation of previous directives in this area, notably, the Council Directive 76/207/EEC, which was amended by Council Directive 2002/73/EC.

| Grounds Field                    | Race | Religion | Disability | Age | Sexual orientation | Sex |
|----------------------------------|------|----------|------------|-----|--------------------|-----|
| Employment & vocational training | Yes  | Yes      | Yes        | Yes | Yes                | Yes |
| Education                        | Yes  | No       | No         | No  | No                 | No  |
| Goods and services               | Yes  | No       | No         | No  | No                 | Yes |
| Social protection                | Yes  | No       | No         | No  | No                 | Yes |

**The protected grounds and scope of fields covered by the Council directives on anti-discrimination<sup>4</sup>**

All in all, the overview of the above listed Council directives show that the European legislation is still very limited in scope. There are significant differences with regards to the protected grounds, where sex, race and ethnic origin are covered quite well, but there are major shortcomings with regards to the ground of disability, age, sexual orientation, religion and belief as these are only considered as protected grounds in the scope of employment and occupation. Similarly, the scope of employment and occupation is well covered, but the scopes of social protection, including social security and health care or education are only listed under the “Race Directive.”

To overcome these shortcomings, the European Commission prepared a proposal for a broad, overarching Anti-Discrimination Directive in 2008, which would have provided protection for all grounds outlined already in Article 13 of the Amsterdam Treaty (disability,

<sup>4</sup> Source of the table: Academy of European Law, E-Learning course on EU anti-discrimination law. Accessible at: [http://www.era-comm.eu/anti-discri/e\\_learning/module1\\_1.html](http://www.era-comm.eu/anti-discri/e_learning/module1_1.html)

religion and belief, sexual orientation, age on the top of sex, race and ethnic origin) and would have expanded the scope of the already existing “Framework Directive” to cover all scopes that are covered in the “Race Directive.” However, the proposal did not get the support of the Council, and while the idea to adopt it periodically reappears, so far no real progress has been made.

While this attempt has been unsuccessful, the Lisbon Treaty, which entered into force in 2009, extended the powers of the Union in the field and introduced the Charter of Fundamental Rights as a binding legislative act. The current candidates are therefore obliged to comply with the Charter in addition to the main Council directives on anti-discrimination in order to join to the EU.

The Lisbon Treaty reinforced the importance of fight against discrimination through three documents. The *Treaty of the European Union (TEU)*, in which Article 2 lists, among others, equality and respect for the rights of persons belonging to minorities as fundamental values of the Union, and states that “[t]hese values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” Furthermore Article 3(3) states that the EU “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.”

Article 10 of the *Treaty on the Functioning of the European Union (TFEU)* calls the EU to combat discrimination when creating and implementing its policies, and Article 19, which can be regarded as the continuation of Article 13 of the Amsterdam Treaty, empowers the EU to act on Article 10. It says that “[w]ithout prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

The third legal document, having binding effect after the Lisbon Treaty entered into force, is the *Charter of Fundamental Rights (CFR)*, which goes much further with regards to the protected grounds than any EU Treaty ever did, however, as Article 51(2) states, it does not give new powers to the European Union. Article 21 in Chapter III provides a freestanding right to non-discrimination in the implementation of EU law on “any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any

other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.” It should be noted though, that while this list is much broader than the grounds specified in any of the Council Directives in force on anti-discrimination, according to Article 19 of the TFEU the European Union does not have legislative powers over all these grounds at the moment.

# THE EUROPEANIZATION OF ANTI-DISCRIMINATION LEGISLATION IN HUNGARY

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## **Introduction**

The present framework of the Hungarian anti-discrimination legislation was developed through various stages in the past 25 years starting from a general ban in Hungary's Constitution to the introduction of a horizontal law implementing this ban in various sectors. This law was adopted in 2003 and entered into force in 2004, just before Hungary's accession to the European Union (EU) on May 1, 2004. The present paper seeks to study the development of the Hungarian anti-discrimination legislation from after the regime change in the country till Hungary's accession to the European Union. We attempt to answer the question whether the conditions set by the European Union had a significant impact on this development and what other factors might have played a role in the process. Based on our preliminary research, we found that the adoption of the Hungarian Equal Treatment Act (ETA) in 2003 was preceded by a very quick legislative process after the EU had adopted two relevant Council Directives (2000/43/EC known as the "Race Directive," and 2000/78/EC, the "Employment Equality Framework Directive") in 2000. Through this process, the Hungarian government introduced a comprehensive set of regulations backed by mechanisms to sanction the breach of the ban on discrimination. Therefore, we expect that the European Union's standards and requirements likely had a decisive impact on the adoption of the Equal Treatment Act.

Additionally, we aim to identify which tools and methods facilitated the development of the legislation and helped to put it into practice, while also keeping an eye out for aspects that might have held back the process. Through this, we will be able to pinpoint good and bad practices of Hungary and of the EU in Hungary that are worth sharing with future member states of the European Union who are currently undergoing the process of meeting the political, economic and legal prerequisites to join the integration.

In order to shed light on the above questions and to collect information on the process, the study relies on the analysis of both legal documents of the European Union and Hungary (directives, treaties and relevant national legislation), reports produced by the European Union

as well as several interviews with experts of the topic. In the framework of the present project, fourteen interviews have been conducted between August and October 2013 in Budapest, Hungary, with representatives of civil society organizations involved in the protection and representing the rights of vulnerable groups, representatives of the academia (professors and researchers) and those of the government, who are currently or have been previously involved with the issue.

The interviews themselves were semi-structured covering preset questions, but also allowing the interviewees to expand on any issue areas whenever they considered it valuable and/or necessary. The areas covered in the questionnaires were the following: the background of the interviewee; the milestones of the Hungarian anti-discrimination legislation; the impact of EU conditionality as well as various other tools and mechanisms on the developments; the evaluation of the role of the European Union; the identification of strengths and weaknesses of the Hungarian legislation; and finally, good and bad practices.

The present paper will proceed as follows: firstly, we will provide an overview about the legal framework dealing with discrimination in Hungary before the adoption of the Equal Treatment Act in 2003. We will then discuss the development process and adoption of the ETA in light of the relevant Council Directives adopted in 2000, also identifying the specificities of the Hungarian framework. We will then evaluate the Europeanization process through the accounts of the people interviewed in the framework of the research. The study will conclude with the collection of “lessons learnt:” a brief summary of experiences from the Hungarian case we consider relevant to share with future EU members, candidates and prospective candidates.

### **The legislative framework in the 1990s**

While the adoption of the Equal Treatment Act in 2003 created the first overarching legal framework concerning the ban on discrimination, the ban on discrimination goes back already to the Constitution of the Republic of Hungary.<sup>5</sup> Ever since the regime change, it was in Article 70/A. of the Constitution that the Republic of Hungary guaranteed the human and civil rights of people irrespective of their racial origin, color, sex, mother tongue, religion, political or other opinion, ethnic or social origin, financial, birth or other status. The article also stated that discrimination based on any of the above mentioned characteristics is strongly punished

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<sup>5</sup> XX. Act of 1949: The Constitution of the Republic of Hungary.

by law.<sup>6</sup> The general ban on discrimination therefore existed, but in the beginning there was no – unified or fragmented – legal act that would have regulated how it should be put into practice.

While in Hungary the ban on discrimination is treated separately from the rights of national and ethnic minorities,<sup>7</sup> it is noteworthy that from the second half of the 1990s on, before the ETA, the case law on discrimination developed, in fact, through the work of the Parliamentary Commissioner (Ombudsman) for Ethnic and Minority Rights, who interpreted the relevant paragraphs of the Constitution in discrimination cases. This meant that the Ombudsman did not only deal with questions of guaranteeing the collective rights of ethnic and national minorities in Hungary, but in the case of discrimination on the grounds of ethnic and national origin, by interpreting Article 70/A. he went further, and addressed the matter from the individual citizen's point of view, as well. The office of the Ombudsman for Ethnic and Minority Rights itself was initiated by the LXXVII. Act of 1993, and started operating in 1995.<sup>8</sup> The case law on discrimination thus developed through the Ombudsman's interpretation of the Hungarian Constitution at this stage, and the first group of experts dealing with the topic in the public administration was based in this institution.

The necessity for the leading role of the Ombudsman for Ethnic and Minority Rights in the development of anti-discrimination legislation is easily understandable, if we consider that one of the most vulnerable groups to discrimination is the Roma, a significant ethnic minority in Hungary. The 1999 Progress Report highlights that the situation of the Roma has to be closely followed as they face discrimination, mainly in their access to employment, public institutions and services. It also mentions that Roma children are seriously affected by segregation during their education. However, this discrimination is naturally not *de iure*, but *de facto*. To fight the problem, the Ombudsman proposed that labor centers should report on discrimination and employers who discriminate should be excluded from public works contracts.<sup>9</sup> In 2000, the Ombudsman stated that discrimination against Roma is present in the

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<sup>6</sup> Following the adoption of the Hungary's new constitution, the so-called Fundamental Law, adopted in 2011, kept the general ban on discrimination in Article XV. The list of characteristics based on which discrimination is prohibited now also includes disability along with all other characteristics already listed in the previous constitution.

<sup>7</sup> In the Constitution of the Republic of Hungary, the rights of groups and individuals belonging to a national or ethnic minority are laid out in Article 68.

<sup>8</sup> Under the new Fundamental Law, the independent office of the Ombudsman for Ethnic and Minority Rights was closed. Instead it established the position of the Commissioner for Fundamental Rights and two deputies one of which is responsible for minorities (and other one is responsible for the rights of future generations).

<sup>9</sup> 1999 Regular Report from the Commission on Hungary's Progress Towards Accession. pp. 14-16.

judiciary, in the police, in employment and education.<sup>10</sup> The Legal Defense Bureau for National and Ethnic Minorities (in Hungarian: *Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, NEKI*) noted that the majority of the discrimination issues arise either on local, community level or in employment relations.<sup>11</sup>

Another significant development in the 1990s was the adoption of a legal act on the protection of the rights and equal chances of people with disabilities in health care, education, employment, transport and residence.<sup>12</sup> Passed in March 1998 and in force since January 1, 1999, this was in this sense the first legislation concerning a characteristic which later became a protected ground of the 2000/78/EC directive. After the adoption of the law, the Council for Disability Matters was established with the task to advice on related issues and to create a National Disability Program and an Action Plan. The two most important tasks at this time were to ensure that employers employing more than 20 people have 5% of the statuses filled by disabled people; and that all public buildings would be accessible by 2009 for people living with disabilities.<sup>13</sup>

In the field of employment, the year 2000 brought some initial developments: starting from this year, the burden of proof lies with the employer in labor discrimination cases – a reversal introduced also by the European directives. This reversal was adopted in Hungary by the Law on Labor Inspection in January 2000, and it strengthened the prohibition of discrimination in labor law.<sup>14</sup> According to a former public official, who participated in the codification of the Hungarian anti-discrimination law, at this stage the general opinion in the government was that there is no need for a mid-level, horizontal law that would regulate the matter, and including provisions in the sectoral legislation (in addition to having the general ban in the Constitution) would be sufficient.<sup>15</sup> Later on this opinion proved to be faulty.

All in all, what we can conclude about the period before the adoption of the ETA is that while a general ban existed on discrimination, its application was only developing and the Hungarian legal system lacked legal acts that would have regulated its implementation. While in this regard the XXVI. Act of 1998 about the rights and equal chances of people with disabilities was a welcome development, the existing legal framework at the end of the 1990s

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<sup>10</sup> 2000 Regular Report from the Commission on Hungary's Progress Towards Accession. p. 19.

<sup>11</sup> *ibid.* p. 20.

<sup>12</sup> XXVI. Act of 1998 about the rights and equal chances of people with disabilities.

<sup>13</sup> 2000 Regular Report from the Commission on Hungary's Progress Towards Accession. p. 19.

<sup>14</sup> *ibid.* p. 18.

<sup>15</sup> The interview with the former public official was conducted in September 2013, in Budapest.

was certainly not enough to meet the later requirements of the European Union in fighting discrimination.

### **Reforming the legislation – The adoption of the Equal Treatment Act**

After the adoption of the Race directive and the Equal Treatment directive of the EU, the 2001 Regular Report of the Commission paid specific attention to the anti-discrimination legislation of Hungary, and revealed its shortcomings: its fragmentation, incompleteness and the fact that the ban on discrimination was not well implemented even at the time of signing the Protocol No.12. of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which forbids discrimination in the widest sense. Although this protocol was signed by Hungary, it has not been ratified ever since.

With the directives coming into force, Hungary was now obliged to address and take the issue of discrimination seriously, and comply with clearer European guidelines. Nevertheless, the directives still left significant room for interpretation. This allowed Hungarian lawmakers to take into account the specific characteristics of the Hungarian legal order, and, as such legislation should react to the societal needs of the country, the social context it is supposed to work in.

As mentioned before, the initial approach in the government was that no mid-level anti-discrimination legislation is necessary, and Hungary would be able to meet the requirements of the European Union by amending the sectoral laws. In 2000, the Constitutional Court examined this possibility and deemed such an approach constitutional, saying that the legal system as a whole needs to guarantee protection from discrimination, therefore not having a horizontal law in itself is not against the Constitution.<sup>16</sup> The same year a committee was set up by the Ministry of Justice, which reviewed the existing legislation with regards to provisions concerning discrimination. The goal of this revision was to come up with a consolidated legal text in line with the *acquis*. The review found that the law enforcement and the sanction system should be strengthened and reinforced in this regard.<sup>17</sup>

While the government was still reluctant to introduce a horizontal framework, not everyone agreed with this position. The Ombudsman for National and Ethnic Minorities prepared a draft proposal for a unified anti-discrimination legislation already in 2001,<sup>18</sup>

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<sup>16</sup> Constitutional Court decision No. 45/2000. (XII.8.)

<sup>17</sup> 2001 Regular Report from the Commission on Hungary's Progress Towards Accession. p. 19.

<sup>18</sup> *op.cit.*



building on the practical expertise that was collected at this institution in the past years.<sup>19</sup> This proposal would have made the Ombudsman's office the responsible body for enforcing the principle of equal treatment, that is, the equality body the establishment of which was required from the member states by the EU as laid out in the two directives.

The change in the government's approach came with the actual change of the government in 2002. Several interviewees involved in this process pointed out that the new socialist-liberal coalition government was more open to introducing a new regulative framework as it wished to push this specific issue forward in compliance with the European Union's *acquis*. By this time, it was clear that several things are missing from the Hungarian legislation, which are explicitly required by the EU directives, such as the basic definitions of the various types of discrimination in line with the EU definitions, procedural aspects like the shift of the burden of proof in discrimination cases outside the scope of the Labor Code (as modified in 2000), or the institution of *actio popularis* as such. Furthermore, introducing the required procedures into all sectoral laws would have been too complicated, and according to the previously cited former public official, they knew at this stage that such an approach would not have satisfied the European Union. This was certainly an argument in favor of adopting a horizontal legal text instead of adjusting the sectoral legislation. Additionally, in the opinion of several interviewees, the creation of a brand new legal act sent the message to the EU that Hungary is a "good student" eager to comply.

Finally, the new horizontal, codex-like law on prohibiting and sanctioning discrimination, called the Equal Treatment Act,<sup>20</sup> was adopted after a very quick, slightly over-a-year-long preparatory process in 2003, and entered into force still before Hungary's EU accession, in January 2004. Since then it has been amended several times – on certain occasions because it was in breach of the European directives. The ETA introduced the basic definitions, defined the procedures and sanctions, and established the equality body. However, the Equal Treatment Authority started its operation only on February 1, 2005, which means that in this regard Hungary was in delay with implementing the provisions of the equality directives of the EU. The establishment of this separate body also meant the refusal of the Ombudsman's proposal to base the equality body on his institution.

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<sup>19</sup> Interview with Katalin Szajbely, the Ombudsman's Office, August 2013.

<sup>20</sup> CXXV. Act of 2003 about equal treatment and the furthering of equal chances

## **Some specificities of the Hungarian framework – and the reasons behind**

One important characteristic of EU directives is that they only set goals for the EU member states, but they do not define how exactly member states should get there. This leaves a significant room for interpretation, which is particularly useful in cases where the specific political, economic or social context of the country should be taken into account. This is without doubt the case in the field of anti-discrimination legislation, and the Hungarian framework certainly has several elements that reflect Hungarian realities. This is partly due to previous legal practices in Hungary, to the case law developed by the Ombudsman and the Constitutional Court, and also to the involvement of the civil sector in the preparatory works.

The adoption of the law was preceded by a consultative process organized by the Ministry of Justice that involved over a 100 civil society actors through conferences and made the draft documents available via the website of the ministry for commentary.<sup>21</sup> While the process was considered useful and on their part successful by a representative of an NGO working on the rights protection of the LGBTQ community,<sup>22</sup> an academic who also participated in this process underlined that the ministry was not open to discuss the very basic principles, especially the establishment of the Equal Treatment Authority as opposed to giving additional authorities to the Ombudsman's office.<sup>23</sup>

A substantial feature of the ETA in which it largely exceeds the requirements of the EU directives, is the number of the protected grounds. While the European legislation requires member states to guarantee protection based on race, religion, disability, age, sexual orientation and sex, the ETA enlists 19 grounds which are as follows: sex, racial origin, skin color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or other similar philosophical conviction, political or other opinion, marital status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social status, financial status, type of employment, belonging to an association representing interests, any other status or characteristic. This last point leaves the list open-ended.

The list clearly covers all grounds listed in Article 19 of the Treaty on the Functioning of the European Union, as well as in the directives and many more. In fact, the list is broader and more detailed than the one in Article 70/A. of the Hungarian Constitution or later in Article XV. of the Fundamental Law. While this again suggests that Hungary tried to be an

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<sup>21</sup> Interview with Tamás Gyulavári, Pázmány Péter University, September 2013.

<sup>22</sup> Interview with Tamás Dombos, Háttér Support Society for LGBT People, August 2013.

<sup>23</sup> Interview with Judit Tóth, University of Szeged, September 2013.

overachiever, the reason for incorporating such a broad list into the ETA goes back to the case law on discrimination. According to the previously cited former public official, they did not want to redefine concepts and thus overwrite the case law of the Ombudsman and the Constitutional Court, therefore they stuck to the wider approach in order to allow for legal clarity and continuity.

Originally, sexual identity was not on the list of protected grounds, and it is thanks to LGBTQ rights defenders that this characteristic has been included – this is why from their perspective the consultations were important and fruitful. The broad list might have helped to “push through” this more controversial ground, as well. The open-endedness of the list, however, brought controversy. According to multiple experts working in the civil sector, this allows for abuse of the legislation. The Advisory Body working alongside the Equal Treatment Authority in 2005-2011, helping to develop its practice, also had problems with interpreting the “other” category, according to a former member.

At the same time, many positive achievements were brought along by the ETA: it introduced unified definitions, shifted the burden of proof to the respondent in discrimination cases, introduced the method of testing, the *actio popularis*, and requested the development of equal opportunities plans (although this latter has often been overlooked by authorities until today). Reflecting the Hungarian situation, the category of segregation as a form of discrimination was also listed in the act and in this regard the Hungarian legislation went further than the European. As mentioned before, the Roma population often becomes the object of discrimination and segregation e.g. in education is a significant problem in Hungary even nowadays. Therefore, the inclusion of this category reflected on real, social problems on the ground and is a sign of good usage of the flexibility the transposition and implementation of a directive provides.

The new law also established the equality body requested in the Council directives with fairly broad responsibilities. Nonetheless, the Equal Treatment Authority was also the object of many debates from its launch due to its status, limited resources and therefore limited scope of activities. Before the adoption of the ETA, there was a debate about extending the competences of the Ombudsman and making it the equality body or establishing a completely new institution. The arguments bent in favor of the new body both for legal, practical and political reasons. According to former public officials, the EU requested an authority which means that it can sanction and can make legally binding decisions. These were alien from the Ombudsman’s role in Hungary. Additionally, an independent authority is

perceived more like a court, which was seen favorably by some. Finally, the law on the Ombudsman, which would have had to be modified, required two-thirds of the votes in the Parliament, and at that point it was not likely to be achieved. In the end, the Authority was set up under the Ministry of Justice, which seriously questioned the independence of the new institution among experts in Hungary, but was accepted by the European Union.<sup>24</sup>

Although on paper the Authority is independent, its president can be named and removed directly by the president of Hungary, and it is financially dependent on the ministry since 2005 as it lost its own budgetary line in the first year already. While originally it was planned to have about 40 people working as staff, the necessary budget was never provided, and in fact was cut multiple times since 2005. This also meant that the Authority could not exercise all its powers (like raising awareness about equality, starting procedures *ex officio* etc.) and remained reactive due to the lack of financial and human resources.<sup>25</sup>

Along the Authority was working an Advisory Body that helped the new institution to develop its practice and provided advice in the interpretation of the law on a case by case basis. The Advisory Body was functional between 2005 and 2011, and was disbanded in 2011 by the government, which raised significant criticism among the interviewed experts who considered the Advisory Body a real added value to the Authority.

Regarding the implementation of the ETA, several interviewees noted that certain elements the new procedure introduced, like the reversal of the burden of proof or the method of testing, were not automatically adopted by other authorities who also dealt with discrimination cases (e.g. civil courts, labor courts). Since the new Act did not open the possibility for reparation, but only introduced sanctions targeting the discriminating actor, if the plaintiffs wanted to receive compensation, they needed to take the case to a forum other than the Equal Treatment Authority. However, these in turn often did not use the procedures specified in the ETA. On the level of sectoral laws, the previous regulations remained in force, which in general work with different procedures, deadlines or resources. In order to overcome this problem, certain NGOs, like the previously mentioned *NEKI* launched trainings to acquaint judges of these fora with the procedures introduced by the ETA and in order to sensitize them to the matter of discrimination.<sup>26</sup> While those involved from the trainers side

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<sup>24</sup> On the independence of the Equal Treatment Authority, see: Kádár, András Kristóf (2010). "Az Egyenlő Bánásmód Hatóság Függetlenségéről" [About the independence of the Equal Treatment Authority]. in: *Fundamentum*. 2010. Nr.2., pp. 98-101.

<sup>25</sup> Interview with Judit Demeter, former President of the Equal Treatment Authority, October 2013.

<sup>26</sup> Interview with Bea Bodrogi, Civil Media, formerly NEKI, and Erika Muhi, NEKI, September 2013.

evaluated these trainings successful, others pointed out that parallels are still present in the system and adaption to the procedures is still not complete<sup>27</sup> even ten years after the ETA.

These difficulties of applying the ETA in all sectors or of guaranteeing the independence of the Equal Treatment Authority highlight that the Europeanization of the system as a whole, takes a lot more time and effort than the “simple” transposition of the directives into national legislation. In the next section, the actual process of Europeanization will be discussed.

### **The Europeanization process and local stakeholders**

*“Without the European Union, we would not have any anti-discrimination act today.”* This was the main conclusion of all but one interviewee. When considering that the general ban contained in the Constitution was not enough to initiate the creation of legal acts reinforcing this ban, the impression rings true. However, perceptions diverge whether the EU requirement in itself generated the legislative process or just “legitimized a need that was already present since 1998,”<sup>28</sup> and helped to push the legislation forward. The explicit requirement of the European Union to adopt the legislation, in line with the 3<sup>rd</sup> Copenhagen criterion about the adoption of the *acquis communautaire*, certainly brought more attention to the matter and provided a strong impetus.

According to the interviewed experts, the EU was relatively strict before Hungary’s accession with regards to complying with the council directives, and everyone without exception listed the political conditionality exercised by the EU as the single most important tool in the hands of the Union. As one interviewee pointed out, the directives were useful orientation tools for the circle of experts (often Western-educated) who wanted to press the government to reform legislation.<sup>29</sup> Nevertheless, many noted that the increased attention of the EU that came after the adoption of the Council directives and right before the EU accession was more political than technical and did not go into the practical aspects, like application of the legislation, how it would work in practice in Hungary.

This lack of consideration for the context on the EU’s side made the process rigid, in fact, several interviewees noted that the codification resembled box-ticking. Additionally, the desire to comply and to push the legislation through before the country’s EU accession

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<sup>27</sup> Interview with J. Tóth.

<sup>28</sup> Interview with T. Gyulavári.

<sup>29</sup> *op.cit.*

significantly shortened the time for consultation. While people participating in the codification from the ministry's side highlighted that there were discussions on the law involving the civil sector, representatives of NGOs and academia missed a deeper social dialogue on discussing real alternatives in depth<sup>30</sup> that would have provided an opportunity to build up knowledge about and support for the new framework in the society, as well.<sup>31</sup>

A further criticism was that since the EU has directives in this field, only minimum requirements are set for the member states and candidates. Therefore, once the minimum is met, the EU has no authority any longer to require further developments. This also brings the idea of embeddedness to the fore. While the EU conditionality is most likely effective, after the accession the Union no longer has a strong leverage and without its political conditionality, it becomes weightless. Even if the national legislation experiences certain backdrops, the EU no longer has strong instruments to enforce directives. In this situation, much depends on the member state and whether there is a political will in the government to maintain the level of protection or maybe even strengthen it. Just by the accession no new member state reached the point of no return and in the case of Hungary certain elements of the system started to weaken eventually (e.g. the dissolution of the Authority's Advisory Body is considered to be a significant backdrop, just like the cutting of its funds and staff).

A tool that should be noted here is the infringement procedure that is used when a member state does not comply with European legislation already after accession. Certain modifications of the ETA and the accounts of one codifier suggest that due to the rushed implantation process, there were mistakes in the text (e.g. in the translation of the definitions) and certain provisions contradicted the directives, which were then corrected due to infringement procedures launched by the EU.

Interviewees have been asked about other tools and instruments the EU has used to facilitate the transposition and the implementation of the Equal Treatment Act. Here several respondents referred to European networks, like Equinet<sup>32</sup> or FRA,<sup>33</sup> as useful and helping instruments in the reform process. Especially those highlighted this, who were involved in the work of these bodies. Furthermore, financial support provided both for civil society organizations as well as governmental bodies was listed to have a high importance and relevance, but many who participated in projects implemented from EU funds mentioned that

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<sup>30</sup> Interview with András Kádár, Hungarian Helsinki Committee, September 2013.

<sup>31</sup> Interview with J. Tóth.

<sup>32</sup> European Network of Equality Bodies: <http://www.equineteurope.org/>

<sup>33</sup> European Union Agency of Fundamental Rights: <http://fra.europa.eu>

the sustainability of those is highly questionable once the EU funds run out, since the government itself is not willing to commit significant resources for their continuation.<sup>34</sup>

Along the similar lines, but among the less direct tools, one interviewee listed the project and grant calls of the EU which required that within the implemented project the grantee implements the principles of equal treatment. Such a requirement can help to spread the idea within the society.<sup>35</sup> This, however, is still a limited impact on initiating social change.

According to some, less useful were the TAIEX and twinning trainings, but the cause for their unsuccessfulness goes back not to the EU, but to the Hungarian administration, that is, those who participated in the trainings did not always stay in the ministries or considered these trainings as an obligation imposed on them, and consequently the knowledge either did not stay with the institution or was not even acquired.<sup>36</sup>

Although it is outside the scope of the present paper, it should be finally mentioned that the principle of equal treatment goes beyond the adoption and implementation of the legal framework and relies on as well as should be present in the society itself. While developing a tolerant and inclusive society is a lengthy and difficult process, the recent years, especially after the financial crisis sensibly increased tensions and intolerance against minorities, which proved that having the legal prohibition is not sufficient in itself to fight discrimination.

## Lessons learnt

All in all, the respondents highlighted the ultimate significance of the European Union and its conditionality in the reform process of the Hungarian anti-discrimination legislation, but it is important that the legal framework is not everything. Based on the Hungarian experience, we collected some lessons, which we consider useful for aspiring EU member states in adjusting their legislation to the European directives.

**Develop the framework through inclusive social consultation! Build the social foundation!** The Hungarian experience showed that rushing the codification process can result in mistaken adoption of the directives and does not provide the possibility for thorough

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<sup>34</sup> One cited example was a still running “TÁMOP-supported” project of the Equal Treatment Authority which aimed at setting up a network of legal experts throughout the country to whom people who have been discriminated against can turn to. The former president of the Authority voiced her concern that she does not see the continued funding guaranteed after the European resources run out.

Interview with J. Demeter.

<sup>35</sup> Interview with K. Szajbély.

<sup>36</sup> Interview with J. Tóth.

discussions of the potential alternatives. This can lead to building up and adopting a structure that is alien to the given context. Therefore, one important lesson is to make sure that the legislation and any new institutions were developed with the involvement of all stakeholders (ministries, academics, civil sector – rights defenders, organizations representing the interests of people with the specific characteristics). However, involving NGOs is not enough, their reach is limited. The socialization process has to occur also through education and information campaigns, otherwise the social practices will only reproduce themselves.

**Learn from others, engage in European networks!** The discussion should extend to learning from the experience of others who have undergone this reform process, even if the social context is different. Learning should not automatically mean endorsement. European networks provide valuable platforms for exchanging experiences, and the stakeholders in candidate and prospective candidate states should make use of them.

**Even if formalism and quick box-ticking seems tempting, avoid it!** Along with developing a legal framework that reflects the needs of the given society (such elements in the Hungarian legislation were the number of the protected grounds based on the case law previously developed or the inclusion of segregation among the definitions), the candidates should pressure the EU to recognize these country-specific needs. The EU's acknowledgement in these matters can also help to streamline the financial resources available. If real needs identified by the government get EU support, it is more likely that later on national funds might be engaged for them since they were not externally imposed, but reflected the country's own priorities.

**Guarantee the independence of the equality body and give it sufficient resources!** Concerning the equality body, the Hungarian experience taught us that, in order to make it more efficient, it should be more independent and free both from formal and informal political influence. Ideally, it should not be under a ministry, but should be a separate institution with its own budget. However, the exact structure of the institution should reflect the needs of the society and should have the necessary resources to act upon these needs.

**Implementation is a learning process!** Questions and problems can arise even after the law enters into force, therefore having an advisory body that helps the implementation of the law and has certain control over the law enforcement activity of the equality body proved to be a strong asset in Hungary.

**Train the judges!** Providing training on newly introduced practices is essential and it is important to involve not only those who have access to the European networks, can go on



exchanges and trainings abroad (e.g. because they speak English or French), but to reach out to those officials who would otherwise not be part of these exchanges. At the same time, the unification of the procedures in discrimination cases should be guaranteed.

# EU CONDITIONALITY AND ANTI-DISCRIMINATION IN SLOVAKIA

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## Introduction

Fundamental rights and freedoms have been an integral part of Slovakia's return to Europe in the 1990s. Slovakia's membership in the Council of Europe in 1994 went hand in hand with far reaching institutional commitments to protection of basic human rights and fundamental freedoms. Accession into the European Union was tied to political, economic and legal conditions of equal treatment and equal opportunity for everyone. Yet, the practice of political equality and individual protection continue to be a problem despite past commitments and many improvements in the field of anti-discrimination. We argue that EU conditionality worked as an important tool, which helped in adoption of formal changes in the field of anti-discrimination legislation. However, these changes were not adopted smoothly and divided rather than united Slovakia's political scene. Consequently, the biggest problem remains the practical implementation of anti-discrimination measures in everyday life. Although Slovakia has good quality legislation, its public institutions, such as courts and schools, hardly possess knowledge and experience in dealing with anti-discrimination legislation.

This paper looks at this issue more closely by analyzing the influence of EU conditionality on anti-discrimination. It will mostly engage formal problems in enacting anti-discrimination legislation. In addition, though, it will summarize the main practical issues with existing legislation as possible lessons for other candidate countries working toward EU membership today.

In short, the process of enacting an anti-discrimination legislation in Slovakia was not an easy one. This process was influenced in great deal by the ambition of the Slovak Republic to become a member of the European Union. The final form of Slovak anti-discrimination legislation was thus predefined by European legislation in this field, namely the directives 2000/43/EC, 2000/78/EC and 2004/113/EC. The compliance with these, especially the former two, was an essential condition of continuing with the accession process, and the process of preparing and enacting this legislation in Slovakia was determined hugely by European law and fostered by regular reports of the European Commission. Even after the anti-discrimination law was enacted by the National Council in Slovakia, the form of protecting

citizens from discrimination remained an issue of political struggle in Slovakia, as the European *acquis* reserved some space for different interpretation, namely in questions of positive discrimination. However, the biggest problem remains the everyday life of anti-discrimination measures, which look good at best on paper.

## **EU Conditionality**

The Treaty on European Union (TEU),<sup>37</sup> Article 49 states: *“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union... The conditions of eligibility agreed upon by the European Council shall be taken into account.”* Article 2 states that *“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”* The conclusion from these citations is that any state wishing to join the EU has to be based on the principles of respecting human rights and freedoms. However, this formulation is rather vague – that is why the part of Article 49 stating that *“the conditions of eligibility agreed upon by the European Council shall be taken into account”* is especially important.

These conditions were elaborated by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. These councils set up the criteria which every candidate country has to cope with – these can be divided into three groups:<sup>38</sup>

- *political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*
- *economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;*
- *acceptance of the Community acquis: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.*

For the purposes of explaining the EU conditionality on Slovak anti-discrimination legislation forming process, the first and last points are to be considered. The political

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<sup>37</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF>

<sup>38</sup>[http://europa.eu/legislation\\_summaries/glossary/accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm)

criterion requires that there are stable institutions guaranteeing human rights and respect for protection of minorities. Without doubt, the anti-discrimination legislation is one fundamental institution of this kind. This institution, however, had to be in compliance with the Community *acquis* in this field – for this reason, existing European anti-discrimination legislation had essential relevance in the conditionality of the EU on Slovak human rights protection.

### **Role of the European Commission**

In the enlargement process, which has the greatest conditional impact on policy development in candidate countries, the European Commission plays pivotal role. Each year it adopts a new, updated so-called ‘Enlargement Strategy Paper,’ which “*sets out the way forward for the coming year and takes stock of the progress made over the last twelve months by each candidate country and potential candidate.*”<sup>39</sup> Not only does the Commission exercise agenda-setting power in creating this enlargement strategy paper, but it influences internal development in candidate countries as well, as the ‘Progress Reports’ are internal parts of this document. The progress reports are specific reports of progress in the direction of compliance with the accession criteria made about each candidate country in the last twelve months. These also contain specific recommendations on further steps to be taken for these countries. Slovakia was reported this way 6 times from 1998 till its accession in 2004.

The accession process of the Slovak Republic started in 1998, after the general elections that brought political change and a new government that intended to bring Slovakia closer to the membership in the EU. In 1998, the Slovak government passed the first National Program for the Adoption of *Acquis Communautaire*. “*The main, often contentious areas such as the judiciary, the fight against corruption, human rights and the protection of minorities, the Copenhagen Criteria (economic)... are covered.*”<sup>40</sup> It means that Slovak legislators were aware of the need to implement additional human rights and anti-discrimination legislation at this point. However, the first Regular Report from the Commission on Slovakia’s Progress Towards Accession from 1998<sup>41</sup> raised criticism on this program. It was clearly viewed as incomplete, inconsistent, not understanding the *acquis* in

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<sup>39</sup>[http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm)

<sup>40</sup><http://www.aquamedia.at/National-Program-for-the-Adoption-of-Acquis.2905.0.html>

<sup>41</sup>[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovakia_en.pdf)

some parts, and too vague in clarifying necessary budgeting and institution building. The plan was, however, edited annually till the accession of Slovakia in 2004.

The 1998 Progress Report reports on the situation in the field of human rights and protection of minorities in Slovakia. *“Slovakia has already acceded to most of the international human rights instruments,”* it states. The criticism is aimed mainly at different issues inherited from the pre-1998 government, like the Law on Non-Profit organization, the high degree of political control over public radio and television and the legal vacuum in minorities’ language usage regulation. It also criticized Slovakia for no progress in the implementation of the Basic Treaty with Hungary, for the continuing discrimination and lack of protection of the Roma. The report resumes that *“during the period July 1997 to end September 1998 there has been a lack of stability in the institutions guaranteeing democracy, the rule of law and protection of human rights, as reflected by the inability to elect a President, the controversial use of the transferred presidential powers, the unsatisfactory functioning of the parliamentary committees and the disregard for the Constitutional Court rulings.”*

Against this background, the report expressed the belief that the newly, democratically elected government would bring progress to the issues and problems identified. Truly, one year later, in the 1999 Progress Report<sup>42</sup> the Commission stated that *“[t]he respect for civil and political rights has improved in Slovakia.”* In the area of minority rights and protection of minorities the Commission talked the Slovak government up for restoring the practice abolished by the previous government and bringing it back into conformity with the constitution and international conventions. The government and parliament established a number of new institutions to cope with minority tensions in Slovakia: the Parliamentary Committee for Human Rights and National Minorities, including a commission for Roma issues; the Government Council for National and Ethnic Minorities; minorities units within the Ministries of Culture and Education and within the Office of Government; Joint Slovak-Hungarian Committee for Minority Issues; and a government commissioner for Roma issues, which were identified as the most scalding problems at the time. In the general evaluation, the 1999 Report states that Slovakia fulfills the political Copenhagen criteria.

In the 2000 Regular Report from the Commission on Slovakia’s Progress Towards Accession, the part devoted to human rights and protection of minorities confirmed that the trend is continuing. In the field of civil and political rights, it talked up the newly enacted law

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<sup>42</sup>[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf)

on free access to information and improving dialogue between the government and the “Third sector.” On the other hand, it pointed out that Slovakia is increasingly being used both as an origin and trafficking country in the trade of women. In the field of economic, social and cultural rights the strengths identified were the continuing social dialogue and some progress in implementing the equal opportunities principle (removing the complete prohibition of women working at night, strengthening rights of pregnant employees, prohibition of job offers with discriminatory requirements as to gender), whereas women and children rights protection was identified as a key problem. In the field of minorities rights and protection, the issue of the Hungarian minority almost disappeared – the main problem from the Commission’s point of view remained the situation of the Roma.

In the 1999 Accession Partnership for Slovakia, a short-term priority was to “*improve the situation of the Roma through strengthened implementation, including provision for the necessary financial support at national and local levels, of measures aimed, notably, at fighting against discrimination, foster employment opportunities and increase access to education.*” As the 2000 Report states, the measures taken by Slovak executives apparently brought little success. Roma people continually suffered from discrimination, hate-speech and open violence. Roma students were under-represented in higher education and over-represented in special schools for retarded children: there were signs of segregation in elementary schools and *de facto* segregation existed in some cities and villages.

To improve fighting discrimination in general, “*an action plan to prevent all forms of discrimination, racism, xenophobia, anti-semitism and other forms of intolerance was adopted, covering the period 2000-2001. The plan aims to raise public awareness about all forms of intolerance and to promote and co-ordinate education initiatives vis-à-vis students, targeted professional groups (the police, judges, prosecutors, the army, health and social workers), as well as the population in general.*”

The year 2000 was especially important for one more reason not stated in the Progress Report: the Council Directives 2000/43/EC and 2000/78/EC have been enacted. If Slovakia intended to meet the Copenhagen criteria, it had to implement these directives as part of the *acquis communautaire*. This implementation had become a political matter in Slovakia for the next four years at least.

## Slovakia's legislative and institutional changes

The Council Directive 2000/43/EC<sup>43</sup> of 29 June 2000 concerned the implementation of the principle of equal treatment between persons irrespective of their racial or ethnic origin. The purpose of the directive was to lay down the framework for combating discrimination in all countries of the European Union. It defined, in Article 2, the concept of direct and indirect discrimination as well as harassment. Article 5 of the directive was of special importance concerning the following implementation in the Slovak Republic, as it stated: *“With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”* Article 8, that ordered the transfer of the burden of proof, was equally important. Chapter III of this directive ordered national parliaments to establish special bodies for the promotion of equal treatment in the country.

The other important directive that influenced the preparation of anti-discrimination legislation in Slovakia was Council Directive 2000/78/EC,<sup>44</sup> which concerned combating all forms of discrimination in the field of employment and occupation. This directive did not only lay down a framework for combating discrimination in this field, but listed forms of discrimination to be concerned, as well: *“discrimination on the grounds of religion or belief, disability, age or sexual orientation”*. Out of these, dealing with discrimination on the grounds of sexual orientation was problematic in the following period in Slovakia.

The next Progress Report from 2001<sup>45</sup> debated the need of accepting the specific anti-discrimination legislation in Slovakia. On the one hand, in November 2000, Slovakia signed the Protocol No.12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, prohibiting discrimination on any grounds. Also, a constitutional amendment establishing the institution of the Ombudsman was perceived positively. On the other hand, according to the Report, *“specific anti-discrimination legislation transposing the EC anti-discrimination acquis remains to be adopted.”* The Report states that the Slovak government is already in the process of adopting such legislation. Specifically, the Report mentions the ‘Policy paper for equal opportunities between women and men’ adopted by the government in March 2001, and the amendments to the Labor Code in this light made in June.

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<sup>43</sup><http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en.sk&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=236982;cs>

<sup>44</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

<sup>45</sup>[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/sk_en.pdf)

In the field of minority rights, all minorities, except the Roma, have been mentioned as being well-integrated into the Slovak society. The Roma minority and its discrimination, separation and exclusion remained the major problem in the field of human rights protection in Slovakia.

Building on this report, the Slovak government prepared the so-called ‘Priority objectives of the Government,’<sup>46</sup> which required Deputy Prime Minister Pál Csáky: *“To prepare, in cooperation with the minister of labor, welfare and family, the minister of home office, the minister of justice, the minister of environment, the minister of healthcare and the minister of education, the proposal of the anti-discrimination law implementing the directives 2000/43/EC, 2000/78/EC, and to submit it to the government till January 31, 2002.”* (Point B.15.)

The objective of passing this law in the National Assembly was also part of the legislative objectives of the government for year 2002. The first draft of the required law was prepared in December 2001. Although it was approved by the government,<sup>47</sup> it was never put on the agenda of the National Assembly because of the resistance of the Christian Democratic Movement (KDH), which was part of the governing coalition at the time, and positioned itself strongly against this proposal as it mentioned discrimination on the grounds of sexual orientation. The failure to pass this law was reflected in the following 2002 Annual Progress Report of European Commission:<sup>48</sup> *“As previously reported, Slovakia has signed but not yet ratified Additional Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits discrimination on any grounds. The Slovak Constitution contains a general anti-discrimination provision. However, specific anti-discrimination legislation transposing the EC anti-discrimination acquis remains to be adopted. In June 2002, the Parliament rejected two relevant draft laws.”*

The only real progress in combating discrimination was the adoption of the action plan by the Slovak Government: *“In March 2002, the Government adopted a second Action Plan to prevent all forms of discrimination, racism, xenophobia, anti-semitism and other forms of intolerance. It foresees, inter alia, training of professional groups (such as the police, judges, prosecutors, soldiers and civil servants), activities in the educational sector, the strengthening of governmental bodies dealing with the fight against racism, enhancing co-operation between state institutions and NGOs in preventing discrimination and adopting anti-discrimination related legislation.”*. Yet, the goal of adopting anti-discrimination legislation

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<sup>46</sup><http://www.build.gov.sk/mvrrsr/source/legislation/001829.pdf>

<sup>47</sup><http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-8878?prefixFile=u>

<sup>48</sup>[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf)



was not achieved for some period. It is notable that, while the main reason this law was not passed successfully in 2002 was the conflict over the incorporation of sexual minorities' protection into this law, the European Commission avoided this topic in every single Progress Report even though it reported on the unsuccessful attempts to pass the law and the importance of adopting this legislation.

After the general elections, the rightist cabinet was able to continue governing the country, this time even stronger than before. As no left-wing parties were part of the coalition, it was closer in terms of policy positions. However, the year 2003 brought two more unsuccessful attempts to transpose the anti-discrimination *acquis* into the Slovak legal system. One of them was the draft law<sup>49</sup> initiated by opposition MP Monika Beňová (SMER – Tretiacesta), which was refused by the National Assembly in first hearing. Probably a more important one was the governmental proposal: this time it did not even pass the government, as in intra-resort marking up two ministers (Home Office and Justice, both Christian democrats) expressed fundamental refusal. The refusing position of KDH was later explained by MP Vladimir Palko:<sup>50</sup> *“If we passed this law, it would be the first step towards the legalization of homosexual partnerships and all the rights married people possess, including adoptions.”*

The Commission representatives expressed more than once during 2003 that the adoption of the anti-discrimination *acquis* is a fundamental prerequisite for joining the EU. Even though Progress Reports have been largely positive towards Slovakia and its anti-discrimination progress, the 2003 Comprehensive monitoring report on Slovakia's preparations for membership<sup>51</sup> was already openly critical in this matter: *“Concerning anti-discrimination, the EC legislation is only very partially transposed, especially as regards sexual orientation, disability and race or ethnic origin. Legislation remains to be fully aligned with the acquis and the equality body required by the acquis needs to be established. Despite continuous efforts across all sectors, the situation of the Roma minority remains very difficult. The majority of the persons belonging to the Roma community are still exposed to social inequalities, social exclusion and widespread discrimination in education, employment, the criminal justice system and access to public services. Living conditions, including housing and infrastructure, as well as health status, are essentially far below the average. The gap between good policy formulation and its implementation on the spot has not significantly*

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<sup>49</sup><http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=3&CPT=423>

<sup>50</sup><http://www.euractiv.sk/socialna-politika/clanok/antidiskriminacny-zakon-opat-na-stole>

<sup>51</sup>[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2003/cmr\\_sk\\_final\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf)

*diminished. Considerable efforts need to be continued and reinforced to remedy this situation... Slovakia is partially meeting the requirements for membership in the areas of public health, European Social Fund and anti-discrimination. Significant efforts are required in order for Slovakia to be in line with the antidiscrimination acquis by accession.”*

In 2003, a special committee was established in Slovakia, consisting of the representatives of the governing coalition and specialists of the human rights section of office of the Deputy Prime Minister of the Slovak government for European integration, Human rights and Minorities. The commission was committed to explore the anti-discrimination legislation of Slovakia and possibilities of coping with the objective of bringing it into compliance with the EU *acquis*. This commission came to the conclusion that it is essential to prepare one single anti-discrimination law; otherwise it would be necessary to amend 81 others.<sup>52</sup> Even after this statement and short before Slovakia was to join the EU, the KDH still opposed the idea of a single anti-discrimination law. That was the actual reason the law was not passed before the Slovak Republic actually joined the EU on May 1, 2004. The compromise anti-discrimination law was passed by the National Assembly of Slovak Republic 20 days later.<sup>53</sup>

Even after the law was passed, it remained problematic. Shortly after it came into effect, it was attacked<sup>54</sup> at the Institutional Court by Government represented by Minister of Justice Daniel Lipšic (KDH) because of § 8, No 8 that allowed for positive discrimination: „*To achieve equality of opportunities in practice and principle of equal treatment, it is possible to implement compensating measures to prevent handicapping relating to racial or ethnic background.*”

This paragraph was originally not part of the law, but the National Assembly adopted it in the process of hearings as an amendment. It was in compliance with Article 5 of Directive 2000/43/EC. However, the Slovak Institutional Court agreed mostly with the Slovak Government, and decided that the paragraph is not in compliance with the Slovak Constitution. The court decided in 2005 that this paragraph is creating the state of legal uncertainty, as there are no clear rules set for implementing the compensating measures, and as it does not specify the time for which these measures can be taken.<sup>55</sup> The Constitutional

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<sup>52</sup><http://2003.rnlweb.org/modules.php?name=News&file=print&sid=327>

<sup>53</sup><http://www.zbierka.sk/sk/predpisy/365-2004-z-z.p-7967.pdf>;

<http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=3&CPT=566>

<sup>54</sup>[http://www.concourt.sk/podanie.do?id\\_spisu=18662](http://www.concourt.sk/podanie.do?id_spisu=18662)

<sup>55</sup>[http://www.concourt.sk/SearchRozhodnutiav01/rozhod.do?urlpage=dokument&id\\_spisu=31723](http://www.concourt.sk/SearchRozhodnutiav01/rozhod.do?urlpage=dokument&id_spisu=31723)

Court also stated in the same judicature that specific compensating measures are inevitable to achieve real equality in society where people have to start from different positions and face many obstacles constructed by society. In the opinion of the Constitutional Court, however, these measures have to be temporary and applicable only for so long as is needed to achieve the goal they are created for.

The law was amended again less than two years later. The impulse for this amendment was two infringement procedures<sup>56</sup> for non-conformity and incorrect application of Council Directive 2000/43/EC. As the changes were prepared, the third sector participated, as well: the civic association named “The Citizen and Democracy” initiated the mass comment of public procedure.<sup>57</sup> During the hearing of representatives of this organization, 12 proposals were introduced of which 2 were incorporated into the draft law. The amendment of the anti-discrimination law was passed in the National Assembly in June 2007.<sup>58</sup>

Another amendment came shortly thereafter, as Council Directive 2004/113/EC<sup>59</sup> implementing the principle of equal treatment between men and women in the access to and supply of goods and services had to be transposed before December 2007. The draft law was submitted to the National Assembly in November 2007, and was passed in February 2008.<sup>60</sup> This change incorporated Directive 2002/73/EC<sup>61</sup> amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards to access to employment, vocational training and promotion, and working conditions. Since public discussion about the anti-discrimination law continued after the previous amendment, some of the outcomes of these discussions were incorporated, as well (namely, the explicit prohibition of sexual harassment, higher degree of protection of sexual minorities, the principle of equal treatment of people with disabilities, etc.).

One of the most significant changes made was the new § 8a that again enacted positive discrimination in the form of compensating measures. The law also founded a new institution, the Slovak National Center for Human Rights (SNSLP), which was given competence to assess continuance of temporary compensating measures. These compensating measures, however, could not be implemented on the racial, ethnic or national basis. This has not

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<sup>56</sup>2006/2260 and 2006/2447

<sup>57</sup><http://www.oas.sk/?q=sk/node/150>

<sup>58</sup><http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=4&CPT=277>

<sup>59</sup><http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en.sk&lng2=bg.cs.da.de.el.en.es.et.fi.fr.hu.it.lt.lv.mt.nl.pl.pt.ro.sk.sl.sv.&val=392730:cs>

<sup>60</sup><http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=4&CPT=474>

<sup>61</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:269:0015:0020:EN:PDF>

changed until 2013, when this law was amended for the third and last time so far. The last amendment was passed by the National Assembly on February 5, 2013.<sup>62</sup> The main change that this amendment has brought, as mentioned before, is in the field of compensating measures. These can be applied on the basis of ethnic, racial or national differences since. Article 1 of § 8a reads: *“It is not considered discrimination if temporary compensating measures are implemented by organs of public administrative or other legal persons, if these are intended to eliminate handicaps resulting from racial or ethnic background, being national minority or ethnic group, gender or sex, age or health disability, if aimed to ensure equality of opportunities in practice.”*

### **The problem of implementation**

In the course of the research on anti-discrimination practice in Slovakia, a member of the Ombudsman’s Office, two people responsible for the adoption and the implementation of the human rights strategy, and an academic working on human rights issues were interviewed.

While our respondents agreed that EU conditionality worked as an important tool, which helped in the adoption of the formal changes in the field of anti-discrimination legislation, the practical use of legislative measures is limited. In part, this reflects important **political divisions over anti-discrimination measures in Slovakia**. Many Slovak politicians supported human rights agenda and anti-discrimination measures as a matter of pragmatism in responding to demands of the EU. The principles and values contained in these legislative acts, however, have not been internalized in daily practices.

Although Slovakia has its Ombudsman’s Office and National Center for Human Rights to document and deal with human rights abuses, these institutions have limited resources and competences. They can document and deal with individual complaints, however, their capacities to raise awareness and help educate about anti-discrimination in Slovakia are low. Anti-discrimination measures have not become an integral part of wider public institutions in Slovakia. **Schools, universities, courts, practices of public service do not possess anti-discrimination as part of their institutional DNA.**

There are two related shortcomings to making anti-discrimination measures an integral part of public life in Slovakia. The first: who is or should be in charge. From 2010 to 2012, Slovakia had a Deputy Prime Minister responsible for the human rights agenda, who

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<sup>62</sup><http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=6&CPT=276>

possessed staff and a modest budget to implement projects in this area. However, since the change of government in 2012, the current leadership under Prime Minister Robert Fico has delegated the agenda to Deputy Prime Minister and Minister for Foreign and European Affairs. Hence, **Slovakia's foreign ministry, charged with representing the country externally, is now formally in charge of coordinating and implementing human rights and anti-discrimination measures domestically. This reflects the extent to which human rights and anti-discrimination issues have become the "hot potato" of Slovakia's politics.** It is an agenda politicians prefer to sideline rather than to confront it. While the ambition of the foreign ministry may be commendable, its resources, competencies and externally focused culture make it at best a handicapped actor to push this issue ahead.

Second, **Slovakia so far lacks a national strategy for the implementation of human rights and anti-discrimination measures.** While this is a priority for the current foreign minister, the issue of the strategy is politically divisive. The importance of the practical implementation of anti-discrimination legislation has been overshadowed by a struggle between Slovakia's traditionalists keen preserving the societal *status quo* from the 19<sup>th</sup> century and liberals keen on furthering pro-choice agenda and registered partnerships. While this debate is not unique to Slovakia, because of the lacking practical experience with human rights and anti-discrimination practices, there is virtually no basis for dialogue between these two ideological camps. Yet, the country and its citizens do need at least a very basic strategy to recognize the importance of political equality, equal individual opportunities and some common understanding of human dignity in public space. The question is, however, whether the foreign ministry can achieve this without wider political support and engagement. In essence, Slovakia needs some essential compromise to move ahead in making anti-discrimination measures part of its public life.

## **Conclusion**

In sum, almost ten years after Slovakia's EU accession, the country has done its formal legal homework in adopting anti-discrimination measures. However, the role, culture and use of human rights tools in daily practices remain very limited, and the issue of anti-discrimination tends to divide rather than unite the country. Perhaps the biggest lesson for the Western Balkan countries stems from the way the issue of anti-discrimination was pitched in Slovakia in the very first place. This is not a legal or parliamentary exercise but it is about a certain

level of individual protection, which is to correct both past injustices and prevent further slipping of fundamental freedoms. Hence, the debate should be less about EU conditionality and more about the needs of individuals in accession countries, and a possible societal consensus on basic definitions of political freedoms, equal opportunities and human dignity regardless of color, ethnicity, religion, gender or sexual orientation.

## ANNEX – SUMMARY OF THE ADOPTION OF SLOVAKIA’S ANTI-DISCRIMINATION LEGISLATION

| GOV.   | WHAT  | WHERE   | LEVEL OF PREPARATION  | WHO  |
|--|---|---|---|--|
| 1 <sup>st</sup><br><br>D<br>Z<br>U<br>R<br>I<br>N<br>D<br>A<br><br>G<br>O<br>V | 1 <sup>st</sup> GOVERNMENTAL DRAFT BILL (2002)                | Government of SR  | Assignment to prepare the draft law   | Deputy Prime Minister for Human and Minority Rights and regional development <b>CSÁKY</b>        |
|  |   |   | Draft submitted to government for approval  | Submitted by Deputy Prime Ministers <b>CSÁKY</b> and <b>FOGAŠ</b>                                |
|  |   | National Assembly of Slovak Republic                              | Member of government assigned to present governmental proposal in National Assembly | Deputy Prime Minister for legislature <b>FOGAŠ</b>   |
|  |   |   | NR SR refused to include the draft bill into National Assembly programme            |  |
| 2 <sup>nd</sup><br><br>D<br>Z<br>U<br>R<br>I<br>N<br>D<br>A<br><br>G<br>O<br>V | OPPOSITION DRAFT BILL (2003)                                  | National Assembly of Slovak Republic                              | Submitter   | MP <b>BEŇOVÁ</b>   |
|  |   |   | NR SR refused the draft law after 1. reading  |  |
|  | 2 <sup>nd</sup> GOVERNMENTAL DRAFT BILL (2003)                | Government of SR  | Prepared by   | Deputy Prime Minister for European Affairs, Human Rights and Minorities <b>CSÁKY</b>             |
|  |   |   | Interdepartmental comment procedure – principal disagreement                        | Home Office ( <b>PALKO</b> ) and Ministry of Justice ( <b>LIPŠIC</b> )                           |
|  |   |   | Draft bill stopped during intergovernmental comment procedure                       |  |
|  |   |   |   |  |
|  | 3 <sup>rd</sup> GOVERNMENTAL DRAFT BILL (2004)                | Special committee established to explore the necessity of new law | Recommendation to introduce one, new, complete Law on Antidiscrimination            | Representatives of coalition parties + deputy prime minister <b>CSÁKY</b> 's office specialists  |
|  |   | Government of SR  | Proposal preparation and presentation to the Government of SR for approval          | Deputy prime minister <b>CSÁKY</b> ; Deputy prime minister and Minister of Justice <b>LIPŠIC</b> |
|  |   | National Assembly of Slovak Republic                              | Presentation of proposal to National Assembly                                       | Deputy prime minister <b>CSÁKY</b>   |
|  |   |   | Sponsor committee: Human rights, national minorities and women status committee     | Committee chairman <b>LászlóNAGY</b>   |
|  |   |   | Important amendment of § 8 nr. 8 installing the positive discrimination             | Amendment proposal from joint report of the committees   |
|  |   |   | Act passed by National Assembly   |  |
|  |   |   |   |  |
|  | ACT BROUGHT BEFORE THE CONSTITUTIONAL COURT OF SR (2004/2005) | Government of SR / Constitutional Court of SR                     | Advocate of Government before Constitutional Court.                                 | Minister of Justice <b>LIPŠIC</b>  |

|  |  |                                      |   |   |
|--|--|--------------------------------------|---|---|
|  |  |                                      | Constitutional Court agreed with the Government's objections and cancelled § 8 nr. 8 of the Act |   |
| 1 <sup>st</sup><br>F<br>I<br>C<br>O<br>G<br>O<br>V | 1 <sup>st</sup> DIRECT AMENDMENT OF THE ANTIDISCRIMINATION LAW (2007)      | Government of SR                     | Preparation of draft bill amending Antidiscrimination Law.                                      | Deputy prime minister for knowledge-based society, European affairs, human rights and minorities<br><b>Dušan ČAPLOVIČ</b> |
|  |  |                                      | Interdepartmental comment procedure – Public hearing after Mass Public Comment on proposed bill | In the name of public – <b>DEBRECÉNI OVÁ, DLUGOŠOVÁ, ORAVEC</b><br>In the name of Government - <b>ČAPLOVIČ</b>            |
|  |  |                                      | Presentation of proposal to Government of SR  | Deputy prime minister<br><b>ČAPLOVIČ</b>  |
|  |  | National Assembly of Slovak Republic | Presentation of proposal to National Assembly   | Deputy prime minister<br><b>ČAPLOVIČ</b>  |
|  |  |                                      | Sponsor committee: Human rights, national minorities and women status committee                 | Committee chairman<br><b>László NAGY</b>  |
|  |  |                                      | Act amending the Antidiscrimination Law passed by National Assembly                             |   |
|  | 2 <sup>nd</sup> DIRECT AMENDMENT OF THE ANTIDISCRIMINATION LAW (2007/2008) | Government of SR                     | Proposal preparation and presentation to the Government of SR for approval                      | Deputy prime minister<br><b>ČAPLOVIČ</b>  |
|  |  | National Assembly of Slovak Republic | Presentation of proposal to National Assembly   | Deputy prime minister<br><b>ČAPLOVIČ</b>  |
|  |  |                                      | Sponsor committee: Human rights, national minorities and women status committee                 | Committee chairman<br><b>László NAGY</b>  |
|  |  |                                      | Act amending the Antidiscrimination Law passed by National Assembly                             |   |
| 2 <sup>nd</sup><br>F<br>I<br>C<br>O<br>G<br>O<br>V | 3 <sup>rd</sup> DIRECT AMENDMENT OF THE ANTIDISCRIMINATION LAW (2012/2013) | Government of SR                     | Proposal preparation and presentation to the Government of SR for approval                      | Minister of Justice<br><b>BOREC</b>   |
|  |  | National Assembly of Slovak Republic | Presentation of proposal to National Assembly   | Minister of Justice<br><b>BOREC</b>   |
|  |  |                                      | Sponsor committee: Human rights and national minorities committee                               | Committee chairman<br><b>Rudolf CHMEL</b>   |
|  |  |                                      | Act amending the Antidiscrimination Law passed by National Assembly                             |   |



# WOMEN'S RIGHTS AND GENDER EQUALITY IN THE CZECH REPUBLIC

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## Introduction

The Czech society has always been in a difficult position concerning rights of women. It did not go through the phases of women's emancipation that Western European countries did, mainly because of the Communist regime that lasted over fifty years and ended in the Velvet Revolution. There were no groundbreaking trials as in the European Communities (such as the Defrenne case of 1975) to help shape the gender equality in the country.<sup>63</sup>

Prior to the revolution, women of then Czechoslovakia were celebrated – there were TV series about working women, they were celebrated in the literature of the time and the International Women's Day was one of the major national celebrations. However, despite all this the position of women was not equal to that of men; women's power was merely symbolical and all of the actual power was wielded by men; and rights of individuals, men and women alike, were trampled on by forces of the state very often.

After the Velvet Revolution of 1989, the situation seemed to get better. The revolution itself was not a movement of men, but a movement of people, women included. They formed an important part of student revolutionary committees at universities and acted in the large-scale protests just as much as men.

But when the first government was formed during the division of the Czechoslovak federation and the creation of the Czech Republic in 1993, no women were given a political position in this government.<sup>64</sup> A woman got appointed to the government of the Czech Republic for the first time in 1997.<sup>65</sup> Women were given equal rights as men by the new

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<sup>63</sup> Cour du Travail, "Judgment of the Court of 8 April 1976. - Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena," <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61975J0043:EN:HTML#CO>

<sup>64</sup> Vláda České republiky, "Přehled členů vlády (2.7.1992 – 4.7.1996)," Vláda ČR, <http://www.vlada.cz/cz/clenove-vlady/historie-minulych-vlad/prehled-vlad-cr/1993-2007-cr/vaclav-klaus-1/prehled-ministru-24631/>

<sup>65</sup> Vláda České republiky, "Přehled členů vlády (4.7.1996 – 2.1.1998)," Vláda ČR, <http://www.vlada.cz/cz/clenove-vlady/historie-minulych-vlad/prehled-vlad-cr/1993-2007-cr/vaclav-klaus-2/prehled-ministru-24632/>

Constitution, but the deep-rooted belief that they are in many ways inferior to men held on in the minds of people, and worse, in the minds of women themselves.

Since the Velvet Revolution, there were no major breakthroughs on the issue of women's rights and gender equality. The Czech society has not considered these issues very important; absurdly, it almost considers them unneeded. People supporting women and their rights – such as feminists – are often ridiculed, by media and society alike. Women are still underrepresented in high politics; there is only a handful of them in high-ranking positions such as ministries – there was, for example, only one female minister in the government in 2011–;<sup>66</sup> high positions in business and industry are dominated by men, as well.

However, the accession to the European Union has changed these facts. Even though feminism is still perceived awkwardly, this perception is slowly adjusting. Universities have started giving lectures on feminism, with a few of them even opening a new study program focused on gender and gender related issues.<sup>67</sup> Numerous organization defending the rights and freedoms of people (and women) have since sprung up or gained strength – one example being the NGO *Nesehnutí* and their project *Sexistické prasátečko* (i.e. “sexist piggy”) that started in 2009 and is aimed at exposing sexist advertisement.<sup>68</sup> The society got a bit more used to the idea of women in charge of business or a corporation and a large number of Czech people believe that women have the skills and qualities necessary for high-responsibility positions.<sup>69</sup> With this progress in mind, we try to analyze the influence of the accession to the European Union on women's rights and gender equality.

Gender equality and women's rights are getting increasing attention from local authors. The studies published are slowly growing in numbers with the issue being thoroughly researched both by Czech academic experts and Czech students. Their papers research various topics connected to both issues of women's rights and the accession to the European Union and as such will be worked with in this document.

These issues are at the same time closely monitored by the European Union and its experts. The European Commission (as well as other groups within the EU) periodically

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<sup>66</sup> Český statistický úřad (ČSÚ), “Veřejný život a rozhodování.” in *Zaostřeno na ženy a muže 2012*. (Praha: ČSÚ, 2013), [http://www.czso.cz/csu/2012edicniplan.nsf/kapitola/1413-12-r\\_2012-17](http://www.czso.cz/csu/2012edicniplan.nsf/kapitola/1413-12-r_2012-17)

<sup>67</sup> Masaryk University, “Gender Studies – Field of Study,” Masaryk University, <http://www.muni.cz/study/fields/6087>

<sup>68</sup> Nesehnutí, “Sexistické prasátečko,” Ženská práva jsou lidská práva, <http://zenskaprava.cz/dlouhodobá-aktivita/sexistické-prasátečko/>

<sup>69</sup> European Commission, “Special Eurobarometer 376, Women in decision-making positions – Report,” March 2012, p. 16. [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_376\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_376_en.pdf)

publishes reports on legal issues in gender equality.<sup>70</sup> These reports include analyses of the state of matters in the Czech Republic as well as in other European countries, long-term strategic goals in these matters etc. This paper will use the information they provide as well, to form a theoretical background.

Among the materials provided by the European Commission, we have found particularly valuable the annual reviews of changes in gender laws. These should be of great help to readers who want to establish a basis of knowledge about changes in laws considering gender issues; these can be found on the website of the European Commission on [www.ec.europa.eu](http://www.ec.europa.eu) between justice documents considering gender equality.

Readers interested in these topics could also use the information provided by several websites that explore the fields of gender equality and integration of the member states of the European Union; such as [www.equineteurope.org](http://www.equineteurope.org) or [www.non-discrimination.net](http://www.non-discrimination.net).

Should the readers prefer to review literature directly connected with the Czech Republic, we feel they should peruse the materials provided by the Sociological Department of the Academy of Sciences of the Czech Republic at the [www.soc.cas.cz](http://www.soc.cas.cz). In particular, its articles that deal with the attitudes of society to gender issues should help readers establish a better overview of the opinions of the Czech people.

In this paper, we will analyze the statements of several people who either are or were involved in the process of human rights reforms during the EU accession and afterwards, whether their involvement was direct or observational. These interviews will be compared with each other and within the theoretical framework set by the literature.

The statements were collected from the people involved through semi-structured interviews. These were constructed to allow for covering the same issues with every interviewee and to offer flexibility if they wanted to talk more in depth about one of the areas that are of interest to us. The interviews were recorded with the subjects' permission.

During these interviews, we tried to focus on particular areas of interest. For one, we asked the subjects about issues they consider successfully solved. We wanted to know in what areas the EU contributed to their resolution and by what methods. We also asked our subjects about issues they considered unresolved pre-accession or that they consider still unresolved. We also explored in what areas the subjects think a backlash occurred and what fault, if any, they find with the EU.

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<sup>70</sup> European Commission, "Strategy for equality between women and men", European Commission Gender Equality Documents, [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/document/index_en.htm).

This paper also explored papers and reports related to the key issues at hand. These were accounted for in the analytical section as well.

As stated, we contacted key people relevant to issues at hand. We conducted semi-structured interviews to best cover all of their various aspects. These were recorded in a digital format. The interviewer informed the interviewees of the main purpose of the research and the whole process of the interview beforehand. The interviewees were given choice between revealing their true name in this report or being kept anonymous. The interviews followed the pre-made pattern of questions, but straying from these was permitted and even encouraged, when the topic breached by the subject proved to be of interest. Even so, all of the pre-made questions were fully answered. After the interview, the subjects were thanked and properly debriefed.

## **Overview of the situation in the Czech Republic**

The situation considering women's rights and gender equality in the Czech Republic in the pre-accession period has been outlined in the introductory text of this paper.

But the situation has further evolved since then and has so many aspects that it is impossible to even just list them all, let alone describe them. The topics of women's rights and gender equality are interconnected with pregnancy policies, discrimination against other-than-heterosexual orientations, political and business employment quotas for women, problems of law implementation and many other aspects that are distinctive in the Czech Republic.

However, we feel that one aspects deserves special notice, because it is one that has not been as of yet properly addressed. The problem is that there has not as of yet been a nation-wide discussion about whether Czech people consider the gender equality an issue that needs to be resolved. This has several implications: because of this, any measures that are adopted or even just proposed concerning the gender equality and women's rights are viewed as a command from the outside, from an external source, but not from the country itself. This means that every gender equality measure or debate about such measure collides with the resistance against it, based on the fact that it is seen as something required by outside forces. This can be seen in the media reaction to almost every regulation from the European Union, but is most notable in aspects that everyone feels they 'understand' – topics such as what

constitutes a certain kind of baked goods,<sup>71</sup> what should be the name of a certain spreadable fat,<sup>72</sup> but unfortunately also if there should be quotas for women in political or private sector and other questions connected with gender equality. All of these topics get treated by the public and most media on the same level of contempt.

Another implication of this is that the long-‘established’ opinion prevails on gender equality among many Czechs that equality is already there, that there is nothing left to establish, because the Czech Constitution says that men and women have the same rights. This is often used as a (weak) counterargument against new gender equality measures, even though it is not true. The problem is that this opinion is still held close even by some of the politicians and thus blocks the way of giving gender equality the importance it deserves. These were the issues we felt were in need of further description to our reader, though as previously stated, there are many more to be explored.

## **Exploration of the EU impact through reports and interviews**

Throughout this chapter we will present the subjects that were interviewed, their key opinions and their background to explain their relevance and provide context for our readers. We have offered our subjects to maintain their anonymity by substituting their names with letters and also by not expanding precisely on their education and occupation so as to protect their identity. However, not one of our subjects chose to do so, therefore every one of our subjects is labelled by their real name.

Afterwards we will look more closely at the reports about the impact of the European Union and try to compare them with our interviewees’ opinions.

### ***The interview subjects***

#### **Kateřina Hodická (Subject A)**

Subject A is a woman that currently runs a non-governmental organization focused on informing society about gender issues and women rights. The organization she now runs was formed after the EU accession; Hodická joined the organization few years later in 2009. She

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<sup>71</sup> Kateřina, Vokurková, „K rohlíku návod. Nařízení EU mění prodej potravin,“ *Aktuálně.cz*, August 5, 2013. <http://aktualne.centrum.cz/ekonomika/podnikani/clanek.phtml?id=786581>

<sup>72</sup> Ihned.cz, „EU zakázala českým výrobcům používat název pomazánkové máslo. Má být tukem,“ *Byznys.Ihned.cz*, October 18, 2012. <http://byznys.ihned.cz/c1-57988200-eu-zakazala-ceskym-vyrobcom-pouzivat-nazev-pomazankove-maslo-ma-byt-tukem>

has studied at two Czech universities, holds degrees in economics, international relations with focus on European integration processes and English language and literature.

At the time when the pre-accession negotiations were ongoing, Hodická's position was close to decision makers, as she worked at the Foreign Ministry in 1998. As such she has both inside and outside experience and point of view relevant to these issues.

Quotes:

*"Czech society generally considers gender equality as secondary to other issues."*

*"Money from the European Union often ends up in useless projects."*

*"Many things that happen in the field of women's rights and gender equality in the Czech Republic happen only because the European Union pushes us in that direction."*

*"If the Czech Republic was not a member state of the Union, there would be no positive development in this field."*

**Lucie Jarkovská (Subject B)**

Subject B teaches gender studies at the Masaryk University in Brno. The subject is engaged in several projects designed to help promote gender sensitivity among Czech people. She writes articles for an online feminist magazine Femag.cz and publishes academic articles and studies. She is currently working on a book about the reproduction of gender in school environment. She has thorough understanding of the issues explored by this study on both academic and personal level.

Quotes:

*"The topic of gender equality would not be talked about seriously, were it not for the European Union's influence."*

*"The more strict control there is, the more developed are the means to surpass this control."*

*"What appears problematic to me is the bureaucratization; the culture of accountability, where you have to account everything – if something was profitable, if it helped the project and so on. In the end, this just harms the trust of the NGOs towards the Union."*

*“The way to transfer our experiences could lie in the cooperation of the non-governmental organizations of the eastern block and in sharing the knowledge and information between them.”*

### **Martina Hynková (Subject C)**

Subject C is working for a non-governmental organization that focuses on promoting women's rights and spreading knowledge about gender issues. She has studied gender studies at the Masaryk University in Brno. She has years of experience of working for various NGOs aimed at informing the population about gender issues. She started taking part in these activities around the time when the Czech integration process was starting and as such has experienced the transformation the process has brought.

#### **Quotes:**

*“Gender issues still elicit a negative reaction in the Czech society.”*

*“Non-profit and non-governmental organizations are a great tool in promoting gender issues – if they are transparent.”*

*“The most important role is played by the non-profit organizations. They effectively substitute the state in some matters. These should group together to give their voices more weight.”*

*“A discussion about gender equality and women's rights that would involve the whole society is something that is sorely missing in the Czech Republic.”*

### **Petra Havlíková (Subject D)**

Subject D works for the non-governmental non-profit organization *Nesehnutí* that is active in several fields. Havlíková is the leader of a program about women's rights and gender equality called *Ženskáprávjásoulidskápráva* (“Women's rights are human rights”). She is also in charge of the aforementioned well-known project *Sexisticképrasátečko* (i.e. Sexist piggy) that exposes sexism in the Czech media and advertisement. She holds degrees in both gender studies and sociology, and works as a gender expert on several European projects.

#### **Quotes:**

*“The financial support apparatus is weighed down by bureaucracy.”*

*“The experience of the non-governmental and non-profit organizations is very valuable and should be transferrable to other countries.”*

*“Because gender issues are one of the main topics of the whole European Union, they are becoming a larger topic on the national scale.”*

*“Without the support of the European Union, these topics would not be dealt with at all.”*

### **Petr Pavlík (Subject E)**

Subject E teaches gender related subjects at the Faculty of Social Sciences of the Charles' University in Prague. He is the deputy chair of the gender department at said school and a chairman of the institute of master-degree studies. He is a member of the Governmental Council for Equal Opportunities of Women and Men and the chairman of the Committee for Institutional Security of the Equal Opportunities of Women and Men. As such, he has internal knowledge of many aspects of the decision making and a professional knowledge of gender issues.

#### **Quotes:**

*“The Czech state is not dealing with these topics adequately. Its bodies for gender equality have little practical effect.”*

*“The money from the European Union gets practically tunnelled away.”*

*“The communication with the public is lacking. Even though there are laws against discrimination on the basis of gender, people are not aware that they could defend themselves against this behaviour.”*

*“The issue of gender equality is one of the key items that are slowing down the Czech Republic. Lately, this has been noticed by economists, too. This is good for the topic, because money is much stronger argumentation tool than human rights.”*

### **Martina Kampichler (Subject F)**

Subject F teaches gender related subjects at the Faculty of Social Studies of the Masaryk University in Brno. She works at the Department of Social Policy and Social Work on European Union Framework 7 project that is aimed at connecting women with the labour market. She specializes in teaching methods of promoting gender equality. She holds a Ph.D. in sociology and has experience in this field both from the Czech Republic and abroad. As



such, she is in an excellent position to compare the situation of the Czech Republic to that of other countries.

Quotes:

*“The European Union is not a universal remedy.”*

*“Gender discrimination never exists in isolation. There are always others, be it religious, ethnic and other kinds of discrimination also present.”*

*“People need to realize that there are things the European Union is well suited for and that then there are others that it is not. They need to realize that they should do these things on their own.”*

*“I am not sure if the European Union in the current form has sufficient tools to effectively solve the problem of gender equality.”*

## **The political and societal climate of the Czech Republic**

### **The anti-discrimination law**

Before the accession, the Czech Republic had to carry out several important steps. Probably the most important of all was the adoption of the *“Law on Equal Treatment and Legal Instruments of Protection against Discrimination”* (also known as the anti-discrimination law). This law was supposed to implement the Council Directive 2002/73/EC. However, despite there being legislative preparations for the adoption of such a law in the pre-accession period, the law was actually proposed after the accession in 2007 (and adopted even later), when the Czech Republic was already a member country of the EU.

Even though such laws should be high on the list of priorities of competent decision makers, it took over two years before the law was adopted. Its way through the Czech legislative process was interrupted by several political crises that showed how (un)important this law actually was to the politicians. In the end, it was obvious that the sole reason for the adoption of this law was the pressure to be in accordance with EU equality directives. As Koldinská remarked in the European Gender Equality Law Review of 2009: “Actually, the obligations of the Czech Republic towards EU have been the strongest argument for adoption of the antidiscrimination law.”<sup>73</sup> Respondent Kateřina Hodická agrees with this statement

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<sup>73</sup> Kristina Koldinská, “Czech Republic,” in *European Gender Equality Law Review 2009-2*, European Network of Legal Experts in the Field of Gender Equality (European Commission, 2009), 42–44.

completely, saying: “Our society sets gender equality measures *de iure*, but the reality is *de facto* different.” This has been agreed on, astoundingly, by all the respondents.

The anti-discrimination law is flawed, our subjects agreed. Pavlík thinks that the fault lies with Czech politicians interfering with European directives. He commented on the anti-discrimination law: “It has been truncated, watered down.” According to him, the good ideas contained in the European directive have not been carried through in the anti-discrimination law. It is possible to notice this when directly comparing directives of the European Council with the anti-discrimination law. Council Directive 2004/113/EC sets many rules regarding discrimination, but also points out which parts of the system the member states should amend.<sup>74</sup> The Czech anti-discrimination law follows only the hard-set rules, but bypasses the suggestions. One of the more obvious rule-bends is the execution of Article 12 of said directive – the need to designate a body or bodies for promotion, analysis, monitoring and support of equal treatment of all persons without discrimination. The anti-discrimination law does not found a new body for this task, but instead piles all these important responsibilities on the office of the ombudsman.<sup>75</sup>

In a way, this was a logical step – the ombudsman was already in charge of protecting people against discrimination as well as of their other rights. Our subjects think, however, that this was just a way to seemingly fulfil the obligation set by the directive and that the ombudsman is busy enough as it is with his other tasks. Pavlík says on this matter: “He does not, in my opinion, have the capacity to pursue this task as well [as the others].” Martina Kampichler thinks that there being one institution in charge of upholding all anti-discrimination policies could be perceived as a good thing. “However, it is always a question of what personal resources the institution has. Otherwise there is a risk of gender topics being pushed out in favour of other matters, such as racial discrimination,” adds Kampichler. Apart from that, she points out that there is another risk in this interconnection of problems. “Some of the important topics in women’s rights and gender equality might disappear,” she explains. She thinks that this risk is all too real. “Unfortunately, this happens a lot in gender. That some topics simply get forgotten,” says Kampichler.

Even though the directives of the European Commission were meant to get help and an advocate for discriminated persons, in reality these people may have worse access to this help than was originally intended, because the ombudsman might be just too busy.

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<sup>74</sup> European Commission, “Council Directive 2004/113/EC”, Official Journal of the European Union, December 21, 2004.

<sup>75</sup> The Czech Republic, „Zákon 198/2009 Sb. – o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)“, Portál veřejné správy, April 23, 2009.

### **The judicial system in general**

Our respondents also found flaws when looking at the Czech judicial system on a larger scale. One of our respondents, Lucie Jarkovská, thought there were not enough precedential trials concerning the discrimination issues of gender equality and women's rights. "Or maybe they were just so poorly covered by the media." She explains why that would be possible: "The discrimination of women at workplace is, in a way, boring for media. There is no life at stake. Even though there could be a life at stake, if the woman discriminated at work were a single parent working hard for her livelihood, then the stakes would've been that high. But this is not easy to notice and it's not such an interesting topic for media."

The fact is that the cases' number is low and is increasing ever so slowly. There were no trials based on disputes on employment with sex discrimination motive and infringement of women's rights in 2000. Five years later the statistics show one trial. Then again, in 2009, there was just one trial about discrimination at workplace, with the number increasing to three in 2010.<sup>76</sup> This is a very complex problem affecting this issue. "There are not enough precedent cases, where a discriminated person appealed to court and won," subject Lucie Jarkovská said. Precedents from the European courts are not well known in the general public of the Czech Republic, and so they provide only little encouragement to the discriminated people trying to find help. Our respondents think that this needs to change. "In the future, these cases should have more publicity," thought Jarkovská.

One of the causes why discriminated people do not appeal to courts might be very simple – unwillingness of the discriminated to pursue trials. In fact, discriminated people might not even think it worth it to sue their employer when they are being discriminated, because the average time it takes to resolve a case of discrimination at a workplace in the Czech Republic ranges from one to two years and can take even longer.<sup>77</sup> By that time, the results of the case might not even be relevant for the discriminated.

There are probably many more causes behind the phenomenon of low number of discrimination trials. One other that our subjects breached was the societal pressure. They feel that discriminated people in the Czech Republic are ostracized and frowned upon when they

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<sup>76</sup> Český statistický úřad (ČSÚ), "Soudnictví, kriminalita. Rozhodnutí soudů v občanskoprávních věcech" in *Zaostřeno na ženy a muže 2012*. Praha: ČSÚ, 2013.

[http://www.czso.cz/csu/2012edicniplan.nsf/t/F00036919A/\\$File/1413126614.pdf](http://www.czso.cz/csu/2012edicniplan.nsf/t/F00036919A/$File/1413126614.pdf)

<sup>77</sup> Ministerstvo spravedlnosti ČR, "Ročenka, Rok 2011, druhá část". (Praha: Ministerstvo spravedlnosti ČR, 2012), p. 14, item 256.

[http://csprav.justice.cz/InfoData/servlet/FileServlet?tabulka=ccav\\_dokument\\_sestavy&sloupec=obsah\\_dokumentu\\_pdf&where=id\\_dokumentu=474582&typSloupce=pdf&fileName=null](http://csprav.justice.cz/InfoData/servlet/FileServlet?tabulka=ccav_dokument_sestavy&sloupec=obsah_dokumentu_pdf&where=id_dokumentu=474582&typSloupce=pdf&fileName=null)

take the matters to the court. This is most notable in the employment discrimination cases, particularly when dealing with sexual harassment. Czech sociologists pointed out, that the negative connotations connected with sexual harassment can even incite the feeling of shame and self-blame in the victim; according to authors this attitude to sexual harassment is in a way promoted by mass media that often try to put at least partial blame on the victim by pointing out their provocative clothes etc.<sup>78</sup> Victims of sexual harassment are often viewed as people who did not get the joke and are upset over nothing. Kateřina Hodická thinks that this problem is embedded in the thinking of our society. “We have not undergone the same emancipation development as other countries, so the thinking is rigid. Our (the Czech) society is very conservative, traditional. People have many prejudices and judge others based on the category they fit in, not as individuals.”

But this perception is slowly changing thanks to the European Union and its influence. As our subject Lucie Jarkovská coined it: “It’s surely because of the influence of the European Union that this topic is moving somewhere. Because the Union points out that this is an important topic that needs to be dealt with. This frames the issue very differently from the usual ‘That woman was discriminated and reported it, let’s laugh at her now’ way. It gives the topic of gender equality and discrimination issues credibility.” According to her, the society is starting to feel about this issue differently than it used to.

We feel that the judicial system is an area that cannot be understated, when thinking about the benefits that this study could bring to its readers. The need for a properly working judicial system to be able to tackle the problem of discrimination is very high. There are, as pointed out in this part of the document, several interconnected problems that need to be dealt with. It is also important to point out that the influence of the European Union is invaluable in affecting these issues (and the judicial system) to a certain degree, but potential member state candidates should not rely solely on the ‘outside influence’ when solving these.

### **The financial influence of the European Union on the Czech Republic**

Our respondents have agreed on one principal point – that the money that is available to the Czech Republic, to organizations both governmental and non-governmental, is of utter importance. However, they have found varied faults and oversights with the system employed

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<sup>78</sup> Alena Křížková et al., *Obtěžování žen a mužů a sexuální obtěžování v českém systému pracovních vztahů – Rozsah, formy, aktéři, řešení*. (Praha: Sociologický ústav AV ČR, 2005), 86.  
<http://www.mpsv.cz/files/clanky/1699/obtezovani.pdf>

in the redistribution of said money and in various other factors involved. We will refer to each of the problems thus perceived in a separate sub-chapter.

### **The impact on NGOs and non-profit organizations**

The money coming from the EU provides an ample opportunity for non-governmental and non-profit organizations. The money that they can obtain from the Structural Funds can help them continue with their work and can even enhance their efforts.

However, as our respondents repeatedly pointed out, these same funds can at the same time do the NGOs and non-profits harm. This is possible because of several aspects of the situation.

One of them is that to actually obtain the money from the European Union, these organizations have to act more professionally than they did before. This could be perceived as a good thing. However, our respondents do not think so. “A large amount of non-profit organizations has undergone this so-called ‘professionalization.’ This just means that they have started to function as profit organizations. They have managerial positions, CEOs of non-profit organizations,” Pavlík describes the change. According to him, the aims and goals of the original non-profit organization get overlooked in the process. “This was a transformation of the non-profit sector that no-one expected,” Pavlík continues. According to him this harms the sector a lot. “Non-profit organizations don’t share anything anymore. Not their experience, know-how or resources,” Pavlík states. Some of our respondents go further and say that this harms the governmental sector, as well. “The knowledge and experience used to be mainly in the non-governmental sector. But the NGOs have not shared it with the governmental sector,” Kampichler adds. She thinks that this trend is slowly changing, though. “In a matter of the last five to ten years, this has changed. The connection with the governmental sector is starting to work now,” she says. This can be attributed to the European Union and its ongoing pressure on the importance of gender equality.

Another aspect that can harm the non-governmental and non-profit organization is that the money they can obtain is available only to some parts of this sector. “Only the bigger organizations can ask for the financial support of the European Union. This excludes the smaller ones and can cause them to run out of funds and disband,” Pavlík describes. This exclusion may not be openly stated, our respondents said, but may be embedded in the process of applying itself – some organizations are kept away from the money because they do not have the resources to write a proper application and project documentation. “The way

the funding politics are set only helps private companies and the governmental sector,” Petra Havlíková said. This topic is obviously interconnected with the next.

### **The bureaucratization of the money redistribution process**

Our subjects have repeatedly stated that the process to actually acquire any of the money provided by the European Union is very long, tedious and resource demanding. In short, they thought that the process was overly bureaucratized and full of unimportant steps. The project needs to be properly documented and this documentation requires much diligence and dedication, to the rage of our subjects. One of our respondents Jarkovská coined for this the term bureaucratization, saying: “What appears problematic to me is the bureaucratization; the culture of accountability, where you have to account everything – if something was profitable, if it helped the project and so on.” This need to account for almost everything in the project documentation requires non-governmental organizations to have an employee solely devoted to this task. “In the end this just harms the trust of the NGOs towards the Union,” Jarkovská added.

Our subjects understood that the European Union cannot give out money on a whim and that the documentation and project preparation is very important. They have pointed out, though, that this process could be done more effectively, as proved by other, more streamlined supporting programs. “There are funding options out there that give the applicants more trust and allow them to use the funds with less obstacles along the way,” Jarkovská stated. Her and other subjects have pointed out the foundation Open Society Fund as an example of good practice.

Most of them do not blame the European Union for this fact, though. “I am not sure if this is a fault of the European Union or if the rules were set so by our ministries,” Havlíková pondered. This was a fact that was, interestingly, not clear to most of our respondents, regardless of occupation or academic background. We feel that this shows that there is not a proper level of communication established between the European Union and the citizens of its member states. We also feel that this is something that should, however, be fixed by the country’s own decision makers.

One other aspect of this situation was voiced by all of our respondents: The decision makers of the Czech Republic are, overall, incompetent. This could be just a reflection of the national trend of not trusting the people in high political offices – only 17 % of people asked in a public opinion poll by the Czech research agency STEM answered, that they trust their

government (the Lower House of the Parliament and the Senate scored around 30 %, with the poll peaking at 70 % of people trusting the – now former – president Klaus).<sup>79</sup> Our respondents felt that the Czech government and ministries should not be trusted with keeping the books on the money from the European Union. “The Union should control the money directly. This way the money gets practically tunnelled away [colloquialism for ‘asset stripping’],” Pavlík said. The way this gets done, according to our respondents, is this: A private business applies for a financial support in one of the programs, usually ‘to help improve the balance between work and personal life.’ For this money there is usually a child centre ‘built’ in the company (for its employees) or a presentation about gender equality held for the employees. Our respondents think this is a waste of funds that could be used in a better way for the good of more people, not just for the good of few companies. Interviewees also thought that it was in fact the influx of money that was ‘there to be taken’ that people not interested in gender equality at all started applying for the financial support. What is worrying is that, according to our respondents, such people and their projects often succeed. They see the fault precisely in the fact that the responsibility for redistributing the money lies in hands of the Czech decision makers and not in the hands of the experts from the European Union.

This whole situation could be based upon the deep-rooted belief of Czech people that gender activists are still fighting with today, but was more prevalent earlier. “In the nineties there was this argument against gender equality that said that we already have the equality, because it’s written in our Constitution, that men and women are equal and have equal rights,” Kampichler explained. According to her, people did not realize that women had worse access to many facets of life and were treated differently. Problem is that this belief still prevails in some. Kampichler says: “There’s still this barrier for any politician, man or woman, who wants to make gender equality his or her agenda. Many politicians still think about it as a ‘luxurious’ topic that can only be dealt with after the ‘more important’ ones were successfully resolved.” This leads to only half-hearted attempts at fulfilling conditions outlined by directives of the European Union, as was more in-depth examined in the sub-chapter about the anti-discrimination law.

The formal fulfilling of the conditions is, according to our respondents, a very widespread problem. The only possible solution we see could be in stricter control, but that in itself brings a whole load of other problems.

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<sup>79</sup> STEM – Středisko empirických výzkumů, „Důvěra v nejvyšší politické instituce, informace z výzkumu STEM Trendy 9/2012,“ October 5, 2012. <http://www.stem.cz/clanek/2578>

## **Lessons learnt**

Through the interviews conducted we have established several key areas that are potentially valuable for any country that is taking steps leading to accession to the European Union. We list them with a short description, discuss their transferability and propose solution where possible.

### **Decision makers are not under enough pressure**

As far as our interviews reveal, it seems that the pressure that the EU executes on the decision makers of the Czech Republic to devote themselves to women's rights and the gender equality was not strong enough. Our respondents thought that if the pressure was even stronger – for example with set goals for the country to accomplish under the threat of harsh penalties – the issue of women's rights would get much more attention from decision makers and the general public.

However, it seems that at the same time there is not enough pressure by society or non-governmental organizations to promote these issues. This implies that the society of a country considering accession should have non-governmental organizations strong (or loud) enough to voice their opinions on women's rights and gender equality. Otherwise the issue will be swept away by other, “more pressing” issues, such as financial security.

### **The influence of the EU is important**

The point we find interesting is that the subjects interviewed have agreed, that the involvement of the EU during the accession negotiations and even after the accession itself was a big help to the issue of women's rights and gender equality in the Czech Republic. The involvement was many times named as a number one reason for a positive change in this field in the local society. We feel this would be the same for any country at least a little similar to the Czech Republic, i.e. eastern block and Balkan countries.

### **The judicial system is slowly transforming thanks to the EU**

Respondents have also stated their dissatisfaction with the Czech judicial system and its inability to help discriminated people. This is connected with the issue of people not hearing enough about the precedential cases in the European law. However, the situation is getting better thanks to the involvement of the European Union. This could be true for any judicial



system that is not fighting against discrimination or for the upholding of the human rights as well as it could, and as such we think this lesson is transferrable to Western Balkan countries. The influence of the European Union is not omnipotent, however, so countries should try their best in this area also on their own.

### **The communication with the society is not done properly**

Our subjects have raised the point that Czech society is not well enough informed about gender equality, basic gender concepts and about the prevalence of stereotypes it conforms to. The communication is also lacking in the judicial area, with people not being informed enough about precedential trials and even being discouraged from attempting to sue in case of discrimination by the media. The lack of communication is also seen in the non-governmental sector, where organizations stopped sharing information and knowledge to improve their competitiveness. We think proper communication about gender equality and women's rights could pose a problem in countries where people do not trust their governments (and the information they give them).

### **The influx of attainable money transforms the non-governmental sector**

One of the problems the funding coming from the European Union brings is the major transformation of the non-governmental (and non-profit) sector. Our interviews have established that this is a phenomenon that would not have happened were it not for the Structural Funds. The change lies in the professionalization of the sector in face of the higher demands set by the European funding. That has a negative effect on the whole sector and is causing smaller NGOs to disband. This is a negative development that could be countered if the countries and their NGOs were aware of this phenomenon beforehand. Possible solutions could be, for example, creating alliances between several NGOs that share the same goals or setting the requirements for financial support with the countries' NGOs and their characteristics in mind.

### **The bureaucratization and inability of the Czech decision makers**

A major point raised by our respondents was that the Czech decision makers are often incompetent. Interviewees have voiced their opinion that there should be more control in the hands of the European Union and less in the hands of the local government and its bodies. We feel that this point cannot be understated. If the Czech experiences are what they are, we

could only expect worse results in countries with governmental bodies even less prepared than the Czech Republic's.

### ***The need for a nationwide debate about the importance of gender equality***

As stated previously, we feel that an important step – and maybe the first one any country preparing itself for the possible integration with the European Union – should be to discuss the issues of gender equality and women's rights on a national level and to establish whether and why this is an important topic for the country and its people. Otherwise any directives and recommendations from the European Union will be seen as commands of an outer force that need to be complied, but not agreed, with. We think that if the country and its people decide that they care about gender equality on their own, then the effort and results of gender equality measures will be much better. This could be done by promoting these issues by NGOs, politicians and the media.

### **Conclusion**

This study has shown that there are several problems in the human rights issue of gender equality and women's rights in the Czech Republic. Our respondents saw many faults with the Czech government, society and people. However, they did not find many faults in the conduct of the European Union. Overall, they all thought that the integration process helped the issues of women's rights and gender equality move along and as such found it very positive and helpful.

The points our respondents did not like were very few. Even though some of the respondents criticized the effectiveness of the mechanisms the European Union uses to solve these issues, they often could not think of a better (or more effective) solution to the problem. This could be seen in the aspect of overwhelming bureaucracy when applying for financial support – our respondents criticized it in unison, but could not precisely point out, which parts of this aspect should be streamlined.

Our respondents have however agreed, that the European Union should exercise more control over these matters and should be more diligent when monitoring if the measures proposed by the European Union were pursued properly by the member states.

Our study has pointed out several key areas that we feel should be explored by any country that considers becoming a member of the European Union. We think that the most

important element should be establishing the importance of gender equality and women's rights issues by the people of the country themselves. If this does not happen, then there is a risk of measures being resented and the overall effect of the efforts to make the situation better will be much lower, since ignorance about these issues is a major part of the problem.

In conclusion, we feel that this study should benefit readers from any country that seeks how to make the country better ahead of its integration process. The fact that they think it is worthwhile to pursue this task gives us hope that gender equality will be eventually established.

# **DISABILITY RIGHTS IN POLAND – THE EUROPEAN UNION’S INFLUENCE ON BREAKING BARRIERS AND SOCIAL INTEGRATION**

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## **Introduction**

In the discussion on human rights and change in the approach to disabled in Poland, two periods should be taken into consideration: 1) 1989 – after the shift in the political system; 2) 2004 – after Poland’s entry to the European Union.

After 1989, new regulations and institutions came to existence, which initiated changes in the approach to disability in domains such as: education, employment, vocational and social rehabilitation, disabled-friendly facilities and the representation of disabled persons’ interests. In 1991, a new law on the employment of persons with disabilities came into force. The National Fund for the Rehabilitation of Disabled Persons (*Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych*, *PFRON*) was created, which contributes to the employment and rehabilitation of the disabled<sup>80</sup> (the Fund is subsidized by obligatory payments from employers who do not employ disabled staff), and the Governments’ Representative for Persons with Disabilities (*Pełnomocnik Rządu ds. Osób Niepełnosprawnych*) was appointed. In 1997, the Sejm passed the Disability Rights Charter (*Karta Praw Osób Niepełnosprawnych*) and another bill concerning vocational and social rehabilitation as well as employment of persons with disabilities.<sup>81</sup> Regulations concerning equal treatment and non-discrimination of people with disabilities have been included in the Polish Constitution<sup>82</sup> and the Labor Code.<sup>83</sup> Since 2003, the Prime Minister annually presents to the Parliament about measures taken for the implementation of the Charter of the Rights of Persons with Disabilities.

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<sup>80</sup> The Fund is based on mandatory payments of employers not having disabled workers.

<sup>81</sup> Ustawa z 27 sierpnia 1997r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych, (DZ.U. 1997 Nr 123 poz. 776, z późn. zm. 1407).

<sup>82</sup> Dz.U. 1997 Nr 78 poz. 483.

<sup>83</sup> Dz.U. 1974 Nr 24 poz. 141, z późn. zmian.

After Poland's entry to the EU, many regulations were incorporated into the Polish legal system. The Lisbon Strategy (2000) has launched the process of the reconstruction of the European social model in the direction of increasing the labor force, investment into the development of human capital and the prevention of poverty and social exclusion. Support for persons with disabilities – people with fewer opportunities on the labor market, at risk of social marginalization and poverty, has become a goal of many common policies and Union documents. The prohibition of any discrimination on grounds of disability and the requirement to control it were included in the Charter of Fundamental Rights of the European Union and the Treaty on the Functioning of the EU. Article 26 of the Charter states: *“the EU recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”* Other important documents are:

- **the United Nations Convention on the Rights of Persons with Disabilities:**<sup>84</sup> The Convention adopted in 2006 by the General Assembly of the United Nations, ratified by the EU in 2010, and in 2012 by Poland. The Convention is a comprehensive act designed to contribute to the improvement of the situation of persons with disabilities by allowing them to actually use all of the human rights and fundamental freedoms on an equal footing with others.
- **the European Disability Strategy 2010-2020: a Renewed Commitment to a Barrier-Free Europe:**<sup>85</sup> The aim of the strategy is to increase opportunities for people with disabilities, so that they can fully exercise their rights and participate in the social and working life. The strategy, according to the concept of disability mainstreaming<sup>86</sup> (contained in the UN Convention), recommends the gradual mainstreaming of disability in the mainstream policies of the state and the creation of institutional arrangements involving these people in mainstream social life.

The accession of Poland to the European Union strengthened the position of people with disabilities in efforts to decent and independent living, as well as in the fight against

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<sup>84</sup> The United Nations Convention on the Rights of Persons with Disabilities, Annex 1, (2010/48/EC)

<sup>85</sup> *European Disability Strategy 2010-2020: a Renewed Commitment to a Barrier-Free Europe*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 15.11.2010, COM (2010) 636 final.

<sup>86</sup> Disability mainstreaming means introducing the inclusion perspective/aspects of disability into the main social streams.

discrimination due to disability. The policies mentioned in the documents of the Foundation of the Community have a significant impact on the change in the philosophy of thinking about disability: that is, there is a transition from the so-called medical model, which assumes that a disabled person is affected by an illness or a physical injury and is therefore the subject of care, to the social model, which assumes that a person has a disability because of the barriers that exist in the law or infrastructure. This change of perspective, although this is not only due to the accession to the European Union, is still in progress. It involves specific decisions due to which people with disabilities will not be treated as subjects of care, but as entities with their rights and obligations.<sup>87</sup> For example, thanks to instruments of the European Union the economy began to revive, which is seen as a chance for achieving geographical and social cohesion and creation of new jobs, especially for people who are socially excluded.<sup>88</sup>

Member States are responsible for improving the social and economic situation of people with disabilities. Poland has implemented in its legal system the EU provisions relating to persons with disabilities and has also obtained significant financial resources from EU funds to support this policy. On January 1, 2011, the *Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment*<sup>89</sup> came into force, referring among others to Council Directive 2000/78/EC that prohibits all direct and indirect discrimination on the grounds of religion or belief, disability, age or sexual orientation, and recommends the introduction of adequate legal protection by the Member States.<sup>90</sup>

In Poland, the following organizations are responsible for the implementation of the principle of equal treatment: the Polish Ombudsman (*Rzecznik Praw Obywatelskich*) and the Government Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu do spraw równego traktowania*).<sup>91</sup> The Act was prepared very quickly and is now inconsistent with the

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<sup>87</sup> Interview with Anna Błaszczak from the Office of the Polish Ombudsman.

<sup>88</sup> T. Schimanek, *Prawo przedsiębiorczości społecznej w Polsce*, <http://issuu.com/instytutprawpublicznych/docs/prawopredsiebiorczoscispolecznejwpolsce?e=5790194/3367882>.

<sup>89</sup> Dz.U. Nr 254, poz. 1700.

<sup>90</sup> Council Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation

<sup>91</sup> For example, the office of Government Plenipotentiary for Equal Treatment started to work on changes because of discrimination of people with mental disability (*Informacja Rządu Rzeczypospolitej Polskiej o działaniach podejmowanych w 2011 roku na rzecz realizacji postanowień uchwały Sejmu Rzeczypospolitej Polskiej z dnia 1 sierpnia 1997 r. Karta Praw Osób Niepełnosprawnych, Sejm RP, druk 742, Warszawa 2012, p. 137*). In the Office of Polish Ombudsman, there is a Group of Experts for People with Disabilities which works on the report "Polish road to the Convention," including a description of Polish law and practice relating to specific articles of the UN Convention on the Rights of persons with disabilities. [www.rpo.gov.pl/default/Informacja\\_o\\_dzialaniach\\_KE\\_ds\\_OzN\\_luty2013.pdf](http://www.rpo.gov.pl/default/Informacja_o_dzialaniach_KE_ds_OzN_luty2013.pdf).

Constitution of The Republic of Poland – it has a lot of shortcomings and inaccuracies, so it is difficult to comply with the principle of equal treatment. The Polish Ombudsman announced the preparation of the amendment project.

In December 2012, the Polish parliament accepted a resolution on the exclusion of people with disabilities, appealing to citizens and institutions for the implementation of the policy in accordance with the spirit of the UN Convention aiming to social inclusion: *“The Polish Parliament calls upon all citizens and public institutions to take various initiatives to implement the letter and spirit of the Convention on the Rights of persons with disabilities, in particular, the creation of conditions for equal access of disabled people to public goods and to promote greater activation and integration of these people into the mainstream of the social life of our country.”*<sup>92</sup>

Between 2008 and 2012, an analysis on the compliance of Polish law with the provisions of the Convention was conducted. The Polish government confirmed that people with disabilities have constitutionally guaranteed civil and political rights, as well as social, economic and cultural rights. Laws and regulations relating to all areas of the state activity assure social, economic and legal protection against discrimination.<sup>93</sup>

Changes in the law, however, do not guarantee obedience to the law. There are numerous organizational, financial, technical and social barriers in implementing new rules. They will be discussed in the present paper on the example of better lawmaking and putting into practice the following rights: the right to education, the right to work, the right to participation in political and social life, and the right to equal treatment.

In the present study, the official documents, reports and the results of empirical research will be used along with the opinions of experts representing different environments: the government, public administration, scientific groups and people with disabilities. Four areas were selected for the analysis: education, employment, participation in political and social life, and accessibility and universal design.

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<sup>92</sup> Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 7 grudnia 2012 r. w sprawie przeciwdziałania wykluczeniu społecznemu osób niepełnosprawnych, Warszawa, M.P. Poz. 991.2012.

<sup>93</sup> Informacja Rządu Rzeczypospolitej Polskiej o działaniach podejmowanych w 2012 roku na rzecz realizacji postanowień uchwały Sejmu Rzeczypospolitej Polskiej z dnia 1 sierpnia 1997 r. Karta Praw Osób Niepełnosprawnych, Sejm RP, druk nr 1672, Warszawa 2013 r., p. 22.

## **Right to education – Education for everybody**

### **Inclusive and vocational education**

The right to education means providing persons with disabilities with access to education at all levels (including higher education) and with all the necessary improvements in the process of education. It also means creating an inclusive education system, enabling the integration of children and youth with disabilities.

The availability and quality of the education for children and youth with disabilities significantly affect their chances and life. The inclusive education system, enabling the integration of children and youth with disabilities, began to be built in Poland after 1989. The earlier education system was dominated by special schools<sup>94</sup> with properly prepared personnel and technical facilities. After 1989, special needs education carried out with healthy peers developed, but lessons were held in separate classrooms for students with disabilities. Inclusive education carried out in public classrooms and in district schools closest to the student's place of residence also began to develop.

In the 1990s, compulsory education of disabled persons in special schools started to decrease, but then the process stopped. The number of students with special education needs studying in special schools stabilized: in primary education (6 grades) at the level of about 40%, in secondary (3 grades) about 55% (see Table 1). In recent years, there has also been a tendency to increase the number of children and youth in integration classes (which are a form of segregated education) and reduce it in the primary grades. This concerns particularly big cities, where training in special schools and classes is more frequent.<sup>95</sup>

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<sup>94</sup> Special schools are type of schools only for students with need of special education.

<sup>95</sup> G. Ciura, J. Osiecka-Chojnacka, *Edukacja włączająca w szkolnictwie obowiązkowym w Polsce*, „Infos” Biuro Analiz Sejmowych, nr 9 (146), 9 maja 2013, p. 2.



**Table 1. – Students with special education needs<sup>96</sup> in primary and lower secondary schools, in given years**

| School year                                 | Number of students | Special schools (%) | Public schools      |                         |                        |
|---|--------------------|---------------------|---------------------|-------------------------|------------------------|
|   |                    |                     | Special section (%) | Integration section (%) | Mainstream section (%) |
| Primary schools                             |                    |                     |                     |                         |                        |
| 1995/1996                                   | 95,806             | 86.63               | 6.90                | 2.13                    | 4.34                   |
| 2000/2001                                   | 100,014            | 52.01               | 3.21                | 6.90                    | 37.88                  |
| 2005/2006                                   | 76,552             | 43.38               | 1.89                | 17.74                   | 36.99                  |
| 2010/2011                                   | 61,211             | 39.96               | 2.82                | 23.75                   | 33.47                  |
| 2011/2012                                   | 58,529             | 40.62               | 1.35                | 24.25                   | 33.78                  |
| Lower secondary schools ( <i>gimnazja</i> ) |                    |                     |                     |                         |                        |
| 2000/2001                                   | 48,580             | 62.51               | 3.44                | 2.28                    | 31.77                  |
| 2005/2006                                   | 64,075             | 55.64               | 2.83                | 8.15                    | 33.38                  |
| 2010/2011                                   | 53,956             | 55.11               | 3.38                | 14.48                   | 27.03                  |
| 2011/2012                                   | 51,623             | 55.46               | 2.02                | 14.85                   | 27.66                  |

**Source:** calculations based on *Education in 2011/2012 School Year*, Central Statistical Office, Warsaw 2012, p. 150, 152.

Paweł Kubicki, Ph.D., considers that inclusive education is possible because of – among others – the European Union. Unfortunately, 50% of the students are in special schools.<sup>97</sup> In Poland, in 2010, there were no students with disabilities in 2/3 of the schools.<sup>98</sup> Despite that educational regulations form a legal framework that enables such a system to be created, the promotion of inclusive education system encounters numerous barriers.

Experts from the Bureau of Research of the Sejm (*Biuro Analiz Sejmowych*) indicate that schools do not have organizational and professional support concerning inclusive education. Teachers from public schools do not have sufficient skills to work in diversified classes. The system of school's work evaluation does not sufficiently take into account the process of integrating students with disabilities in general education. There is a lack of financial resources for the schools' adaptation and for the maintenance of effective educational process to the extent that would satisfy the needs.<sup>99</sup>

One of the most important barriers is the social context, especially the unfriendly attitude of the school community (teachers, students and parents) towards the students with disabilities who are present in regular education. Scientists', teachers' and parents'

<sup>96</sup> Students with special educational needs consist of two groups, students with disabilities and students with special needs.

<sup>97</sup> Interview with Paweł Kubicki, Ph.D.

<sup>98</sup> M. Zima-Parjaszewska, *Osoby z niepełnosprawnościami*, in: B. Kozka, D. Szwed, B. Maciejewska (ed.), *Zielony Nowy Ład Społeczny*, p. 66, [http://zielonyinstytut.pl/pdf/zielony\\_nowy\\_lad\\_spoleczny.pdf](http://zielonyinstytut.pl/pdf/zielony_nowy_lad_spoleczny.pdf).

<sup>99</sup> G. Ciura, J. Osiecka-Chojnacka, *Edukacja włączająca...*

communities are against the idea of inclusive education regardless of the type of illness and the degree of disability.<sup>100</sup> The participation of youth with intellectual disabilities in integration classes is particularly questioned.

In her book, “Mentally Handicapped. Outside Humanity” (*Upośledzeni umysłowo. Poza granicami człowieczeństwa*), E. Zakrzewska-Manterys is firmly against treating mentally handicapped as “worse normal” people.<sup>101</sup> The author says that the progress in the race for normality is connected with exposing people with intellectual disabilities to a variety of educational, medical and rehabilitation activities in order to activate them professionally, generally ends with failure. These measures do not take into account the distinctiveness of mentally handicapped and their inability to settle in the sphere of cultural values of the surrounding society.<sup>102</sup>

In 2012, Poland ratified the UN Convention on the Rights of Persons with Disabilities and thus declared that the aim of the education policy of the state is the introduction of the inclusive model of education.<sup>103</sup> Some experts consider this document a chance to implement inclusive education.

Another problem in Poland occurs in the field of upper-secondary education on the professional level. Youth with disabilities has a limited chance of choosing the right vocational school. This is the result of the lack of professional vocational orientation and career counseling, as well as the limited availability of schools corresponding to the expectations and aspirations of young people. As a result, the youth often studies the specialties that are unsuitable to their illness or that do not provide them with job opportunities. Educating students according to the school’s needs, in other words – in professions available in local educational offer, reduces their chances of finding employment.<sup>104</sup>

In the discussion about changes in the model of teaching students with disabilities, social campaigns promoting good practices are among the most important things, just like the need to take additional actions by the government and local governments in order to increase merit-based, organizational and financial support for schools and students with disabilities.

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<sup>100</sup> Interview with Paweł Kubicki, Ph.D.

<sup>101</sup> E. Zakrzewska-Manterys, *Upośledzeni umysłowo. Poza granicami człowieczeństwa*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2010, p. 181.

<sup>102</sup> Ibidem, pp. 106–107.

<sup>103</sup> Although the convention has not been developed by the European Union, the document has been ratified by it and is now part of EU law.

<sup>104</sup> Por. E. Giermanowska (ed.), *Młodzi niepełnosprawni – aktywizacja zawodowa i nietypowe formy zatrudnienia*, ISP, Warszawa 2007, E. Giermanowska (ed.), *Młodzi niepełnosprawni. Rodzina, edukacja, praca*, ISP, Warszawa 2007.

There is also a need of substantive debate on the participation of disabled students in inclusive education.<sup>105</sup>

### **Higher education**

The right to education also means the access of persons with disabilities to higher education. After the regime in Poland had changed, a record increase in the number of students (nearly 5-time) was noted.<sup>106</sup> This phenomenon is called educational boom. This increase concerns also the disabled students.<sup>107</sup>

In the academic year 1998/1999, there were more than 1.2 million students, including 826 disabled students (0.06% of the total number). In the academic year 2011/2012, 460 higher universities in Poland educated more than 1.7 million students, including 30,249 students with disabilities. They represented 1.7% of all students (see Table 2).

**Table 2. – Disabled students in Poland**

| School year      | Students<br>Total   | Disabled students | Percent of students<br>with disability |
|------------------|---------------------|-------------------|--|
|                  | In absolute numbers |                   |  |
| <b>1998/1999</b> | 1,273,955           | 826               | 0.06                                   |
| <b>2000/2001</b> | 1,584,804           | 2,476             | 0.16                                   |
| <b>2005/2006</b> | 1,953,832           | 14,510            | 0.74                                   |
| <b>2010/2011</b> | 1,841,251           | 30,096            | 1.6                                    |
| <b>2011/2012</b> | 1,764,060           | 30,249            | 1.7                                    |

**Source:** *Higher Education Institutions and their Finances in 2011*, Central Statistical Office, Warsaw 2012, (Publication from year 1999, 2001, 2006, 2011).

Higher education is necessary to even out the life chances of disabled people. Rapid changes at universities were possible due to the change in the law on higher education that obliged universities to adapt infrastructure and educational programs to the needs of students with disabilities. A decline in the number of students and unfavorable demographic forecasts for the coming years (since 2010) also influenced the changes in universities' policy and their adaptation to the needs of people with disabilities.

<sup>105</sup> G. Ciura, J. Osiecka-Chojnacka, *Edukacja włączająca...*, p. 4.

<sup>106</sup> In the school year 1900/1911 about 400,000 students studied, *Higher Education Institutions and their Finances in 2011*, Central Statistical Office, Warsaw 2012, p. 28.

<sup>107</sup> M. Garbat, *Młodzież z niepełnosprawnościami w kształceniu akademickim*, in: H. Ochonczenko, M. Czerwińska, M. Garbat, *Osoby z niepełnosprawnościami w szkole wyższej. Wybrane zagadnienia*, Oficyna Wydawnicza Uniwersytetu Zielonogórskiego, Zielona Góra, 2011.

Universities obtain financial support from PFRON and EU funds in order to adapt the infrastructure and educational programs. They participate in research and implementations programs concerning the support for students with disabilities. It is worth to note, among others, the project “Education, disabilities, information, technology - removing barriers in access of persons with disabilities to education” (*“Edukacja, niepełnosprawność, informacja, technologia – likwidowanie barier w dostępie osób niepełnosprawnych do edukacji”*), which was carried out between 2009 and 2011 by the Office of People with Disabilities at the University of Warsaw. Activities of the project were designed in order to support people with disabilities in accessing an open education system both in higher and other levels education. The project was co-financed by the European Social Fund<sup>108</sup> and it included computer training, preparing a database of teaching materials for disabled students, training for teaching staff etc.

Another project is “Lion Constellation” (*“Konstelacja Lwa”*). The aim of this project is to support students with mental disabilities. It was launched in 2010 by the Office of People with Disabilities at the Jagiellonian University in Cracow. The Program was initially funded by the European Social Fund, now it is financed from its own resources.<sup>109</sup>

Under the influence of the EU, training programs for the national qualifications framework, which aim to standardize qualifications, increase mobility, recognize out-of-school and informal learning, and to promote life-long learning, have been implemented. Some changes were introduced to the EU’s education programs addressed to youth, such as *Socrates, Erasmus, Youth for Europe* and *Leonardo da Vinci* in order to take the needs of students with disabilities into account.

Nowadays, the majority of universities have agents for people with disabilities or a separate office of persons with disabilities. They support students during their education. They are also advisory bodies for universities and lead a broad exchange of experience with other countries. Students with disabilities may use different forms of support from the university and PFRON, among others: scholarships, covering the costs of educational aids purchase, tuition fees or commuting.

The growing problem is to provide job opportunities for graduates with disabilities. The universities’ support ends with the completion of the process of education. High unemployment among young people, low quality of support offered by the public employment service, as well as strong stereotypes and prejudices of employers towards the

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<sup>108</sup> More about the project: [www.bon.uw.edu.pl/likwidowanie\\_barier.html](http://www.bon.uw.edu.pl/likwidowanie_barier.html)

<sup>109</sup> More about the project: [www.konstelacjalwa.home.pl](http://www.konstelacjalwa.home.pl)

disabled workers still constitute strong barriers in finding and keeping a job. A research concerning graduates with disabilities shows that this group is very strongly motivated to work, mobile and trained to deal with obstacles. However, there is a lack of professional institutions supporting young people in efforts to find work and promoting the employment of persons with disabilities.<sup>110</sup>

## **The right to work – Employment and income**

### **Low activity of people with disabilities**

The right to work is to enable people with disabilities to make a living by working on a freely chosen post in an open, inclusive and accessible work environment. It also means the introduction of every improvement in the workplace and the prohibition of discrimination, as well as providing access to the labor market and vocational training. The professional activity of persons with disabilities in Poland is low. According to the Central Statistical Office, in 2012, among 1,930,000 disabled persons of working age (18-59/64 years), only 448,000 worked. They represented 23.2% of the working age population (see Table 3). Professional activity rates, taking into account the people working and looking for employment, are also low, for all categories. In Poland, nearly 60% of young people with disabilities, aged 25-34, do not work and do not look for work after graduation – they are included in the category of people referred to as passive.

**Table 3. – Economic activity of disabled persons aged 16 and more, quarter 4, 2012 (in %)**

| <b>In the age:</b>                  | <b>Activity rate</b> | <b>Employment rate</b> | <b>Unemployment rate</b> |
|-------------------------------------|----------------------|------------------------|--------------------------|
| <b>16–24</b>                        | 19.4                 | 13.0                   | 33.3                     |
| <b>25–34</b>                        | 39.1                 | 29.9                   | 23.4                     |
| <b>35–44</b>                        | 36.5                 | 29.7                   | 18.5                     |
| <b>45–54</b>                        | 32.1                 | 26.7                   | 17.1                     |
| <b>55–64</b>                        | 19.0                 | 16.5                   | 13.1                     |
| <b>65 years and more</b>            | 2.8                  | 2.8                    | –                        |
| <b>Working<br/>(18–59/64 years)</b> | 28.0                 | 23.2                   | 17.2                     |

**Source:** *Labor Force Survey in Poland IV Quarter 2012*, CSO, Warsaw 2013, p. 252

<sup>110</sup> E. Giermanowska, A. Kumaniecka-Wiśniewska, M. Raclaw, E. Zakrzewska-Manterys, *Wejście na rynek pracy absolwentów szkół wyższych. Integracja społeczna i zawodowa*, project carried out by Wydział Humanistyczny Akademii Górniczo-Hutniczej z Krakowa years 2012-2013, found by PFRON.

The causes of professional inactivity of disabled people are complex. They lay on the side of the employers, institutional and system solutions at the state level and in the local environment of the disabled persons. The combination of unfavorable conditions is often self-marginalization of people with disabilities and their withdrawal from the labor market. President of the “Integration” Association, Piotr Pawłowski, stresses that a disabled person calculates what is more profitable: taking up the job or getting due benefits. This situation is not just the fault of the employer. One needs to wonder how to make a disabled person independent on the labor market and how to strengthen such a person.<sup>111</sup>

### **Mobilizing and supporting employers**

In Poland, policies promoting the employment of people with disabilities are based on a quota system. Employers with more than 25 employees and without the required amount of disabled workers are obliged to pay monthly contributions to the PFRON. The employer shall pay contributions to the PFRON if:

- the employment rate of people with disabilities in the company is less than 6%;
- in case of state and non-state schools, teacher training establishments, care and education centers and re-socialization: when the employment rate is less than 2%.

Employers established in the field of social, medical and educational rehabilitation or care-providing for people with disabilities are exempt from contributions, if they do not work in order to make profit.

Employment of people with disabilities is associated with many additional benefits for employers. They can get subsidies for the disabled employees’ salaries (excluding employers financed from the State budget), reimbursement of the costs of training, adapting and equipping the workplace, refund for hiring an employee helping the disabled in the workplace.

After Poland’s accession to the European Union, it has become a necessity to adapt national legislation to community legislation in the field of using public aid. This aid is based on the principle of *de minimis*, originating in Roman law, *de minimis non curant lex* (the law does not care about trifles). This is a small-size public aid that does not affect competition in

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<sup>111</sup> B. Rędziak, *Wciąż trudno o pracę w urzędzie*, [www.niepełnosprawni.pl/ledge/x/171135#.UiL-XnEFqQ](http://www.niepełnosprawni.pl/ledge/x/171135#.UiL-XnEFqQ).

the market. Since 2004, *de minimis* support surveyed in Poland many various forms of employment support for people with disabilities, addressed to employers from a protected and open labor market and to persons with disabilities (to start and operate a business). From January 1, 2007, *de minimis* aid has been reduced and could not exceed EUR 200,000 over three years.<sup>112</sup>

The majority of the funding is spent to support the subsidies to the remuneration of disabled workers (about PLN 3 billion out of PLN 4 billion from the PFRON budget). This form of support is most desired by employers, but in the opinion of the European Commission, this system is in conflict with the principle of competitiveness.<sup>113</sup>

“Poland filed a protest against the new project of the European Commission,<sup>114</sup> which introduces a dramatic reduction in public aid from 2014,” stresses Jarosław Duda, Deputy Minister of Labor and Social Policy. These measures’ entry into force would result in a reduction of the amount of funding to PLN 200 million, which would actually mean the elimination of disabled people employment support system based on surcharges to the remuneration, and, as a result, a sharp decline in the employment of disabled workers.

The reduction of the amount of funding from public assistance hit the companies from a protected labor market to the greatest extent. Before Poland’s accession to the EU, the system employers’ support preferred those who held the status of sheltered employment facility (*zakład pracy chronionej*, *ZPCH*). The status of *ZPCH* allowed to obtain funding from PFRON and allowed the exemptions from taxes and charges (including VAT).<sup>115</sup> Profit-oriented companies committed to maintain a high level of employment of people with disabilities often applied reprehensible practices, such as: fictitious employment of people with disabilities, creating jobs that did not meet the specific needs of persons with disabilities or giving preference to employing people with low degrees of disability. As a result, people with a low degree of disability begun to replace people with higher degrees of disability on the labor market, the latter group requiring higher expenditure on funding jobs and being less efficient.

The solutions relating to the recommendations of the European Union concerning public assistance introduced in recent years reduced funding for enterprises from the protected

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<sup>112</sup> Commission Regulation (EC) No 1998/2006 of December 15, 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid.

<sup>113</sup> Interview with Marek Plura, politician.

<sup>114</sup> The proposed regulation establishes limits on the amounts of state aid. They amount to 0.01 percent of GDP of the Member State and enter into force as of January 1, 2014.

<sup>115</sup> In Poland, protected labor markets operate such sheltered employment facility (*ZPCH*) and companies operating for profit (*Zakład Pracy Chronionej* - *ZAZ*).

labor market. The amount of subsidies to the remuneration of disabled workers employed in ZPCH, as well as the aid to pay disabled retirees, were limited; so was the amount of funding for workers with light and moderate degree of disability (2010). Currently, the system of salaries subsidizing is diversified and depends on the degree of disability. The employer receives 180% of the lowest salary if he employs a person with a significant degree of disability, 100% if it is a moderate degree and 40% where a degree is light.<sup>116</sup> Additional support is targeted to persons with multiple disabilities.

Because of the protests of ZPCH, it was impossible to equalize funding for employers from protected and open labor market. Currently an employer from an open labor market receives about 30% less funding per employee than the ZPCH.<sup>117</sup> Reduction of subsidies for ZPCH influenced the decline in their numbers, but they are still an overwhelming majority (nearly 70%) using the system of funded employment of disabled workers. The gradual alignment of funding for employers from a protected and open labor market contributed to an increase in the number of employers from the open labor market, benefiting from the system of funded employment of persons with disabilities in the open labor market (from 19.3% in 2009 to 32.9% in 2012).<sup>118</sup> Expenses of PFRON for financing the employment of disabled workers do not decrease. Wojciech Skiba, the president of PFRON, underlines that this is due to the rising unemployment and the declining contributions for the lack disabled employees, as well as to employers forcing their disabled employees to raise their degree of disability in order to receive higher subsidies for salaries.<sup>119</sup> Currently further changes are planned: lowering the amount of subsidies for hiring disabled workers and aligning funding for protected and open labor markets.

Marek Plura thinks that the reduction of funding support is good for people with disabilities: “We have to invest in disabled, not in employers.”<sup>120</sup>

### **New forms of supporting employment and good practice of employers**

New instruments of supporting the employment of the disabled are: social employment, job coaching, supported employment and disabled employee’s assistant. In 2003, the parliament

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<sup>116</sup> *Dofinansowanie do wynagrodzeń osób niepełnosprawnych*, [www.niepelnosprawni.gov.pl/zatrudnienie-osob-niepelnosprawnych-dofinansowanie-do-wynagrodzen-os/](http://www.niepelnosprawni.gov.pl/zatrudnienie-osob-niepelnosprawnych-dofinansowanie-do-wynagrodzen-os/).

<sup>117</sup> *Niepełnosprawni pracownicy będą tracić zatrudnienie*, July 17, 2013, [www.serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/719263,niepelnosprawni-pracownicy-beda-tracic-zatrudnienie-html](http://www.serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/719263,niepelnosprawni-pracownicy-beda-tracic-zatrudnienie-html)

<sup>118</sup> *Informacja Rządu Rzeczypospolitej Polskiej o działaniach podejmowanych w 2012 roku...*, p. 13, data in percent about employment of people with disabilities concerning only people with PFRON’s support.

<sup>119</sup> *Niepełnosprawni pracownicy będą tracić zatrudnienie*, July 17, 2013, [www.serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/719263,niepelnosprawni-pracownicy-beda-tracic-zatrudnienie-html](http://www.serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/719263,niepelnosprawni-pracownicy-beda-tracic-zatrudnienie-html).

<sup>120</sup> Interview with Marek Plura, politician.



passed a law on social employment<sup>121</sup> that defined this type of work and established its rule. Social employment is a form of social assistance to persons in social exclusion, who because of their situation of life are not able to satisfy their needs and who find themselves in situations restricting their participation in professional, social and family life and causing poverty. This group consists of, among others, mentally ill and disabled.

Subsequent changes in the law introduced the opportunity of work and support for people with disabilities in the new legal organizational form, namely social cooperatives.<sup>122</sup> It should be noted that the emergence of the law on employment and social welfare cooperatives is the result of actions motivated by the European Union. It is also thanks to the EQUAL Community initiative and the European Social Fund that a lot of social economy entities were created, which hire also persons with disabilities.<sup>123</sup> There are also new forms of services in favor of the greater activity of persons with disabilities in the labor market, such as disabled employee's assistant and supported employment. These services are addressed to people with disabilities who require an individualized support in the labor market and for whom, without professional help and support, it would be difficult to find and keep the employment.

Amendments to the law on civil service from 2011 were designed to increase the employment of people with disabilities<sup>124</sup> - a person with a disability should be employed in the public administration if he/she is among the top five candidates for the post. It is also worth to mention the examples of good practices of employers, who bring anti-discrimination solutions in their personal policies: within the frame of socially responsible business, the diversity penalty and disability management in the workplace.<sup>125</sup> There are also social campaigns aimed at convincing employers that the employment of a person with a disability brings many benefits. These are sporadic activities, but the implementation of the EU policy of equal treatment and the prohibition of discrimination spread these solutions. Social clauses give a chance to increase the employment of people with disabilities, being the exceptions to the general principle of public procurement, and can be used due to the significant benefits to society.

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<sup>121</sup> Ustawa z dnia 13 czerwca 2003 r. o zatrudnieniu socjalnym (Dz.U. 2003, Nr 122, poz. 1143 z późn. zmian.).

<sup>122</sup> Ustawa z dnia 27 kwietnia 2006r. o spółdzielniach socjalnych (Dz.U. 2006, Nr 94, poz. 651 z późn. zmian.).

<sup>123</sup> T. Schimanek, *Prawo przedsiębiorczości społecznej w Polsce*, <http://issuu.com/instytutprawpublicznych/docs/prawoprzedsiebiorczoscispolecznejwpolsce>.

<sup>124</sup> Nowela ustawy z 19 sierpnia 2011r. o zmianie ustawy o służbie cywilnej i niektórych innych ustaw (Dz.U., nr 201, poz. 1183).

<sup>125</sup> Zalecane m.in. przez: Kodeks dobrej praktyki w zakresie zatrudniania osób niepełnosprawnych. Decyzja Prezydium Parlamentu Europejskiego z dnia 22 czerwca 2005 r.

The applicability of social clauses is given by the Directive 2004/17/EC of the European Parliament and of the Council of March 31, 2004, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and Directive 2004/18/EC of the European Parliament and of the Council of March 31, 2004, coordinating the procedures for awarding the public procurements for works, supplies and services. Since 2009, the clause from Article 22 of the Public Procurement Law applies (the so-called reserved clause) that allows the purchaser to limit the circle of entities who may apply for the award of the contract only to public contractors, who hire more than 50% of employees with disabilities.<sup>126</sup> Social clauses are in Polish law since 2009. This mechanism allows spending public money in a smart way – we have a contractor and social benefits, for example, work for people with disabilities. However, the knowledge of officials on the application of social clauses is still restricted and even though this tool has already been available for a couple of years, it still is not commonly used. This case shows that a good law in itself is insufficient. The promotion of this mechanism and sharing the good practice are also very important.

### **Access to public service labor market**

People with disabilities are among the groups at risk in the labor market and in accordance with the *Act on employment promotion and labor market institutions*,<sup>127</sup> they should be subject to common and additional services and supported public services. Many of these instruments and programs are supported by additional funds from the PFRON.

Activation of the disabled in the labor offices encounters a number of problems. They arise from the:

- lack of knowledge and competence of public employment service staff about the specifics of the disability and the necessary support;
- prejudices and stereotypes in the treatment of people with disabilities seeking work and directing them mainly into protected labor market;
- architectural barriers and lack of flexibility of labor offices;

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<sup>126</sup> There is also a second clause, as defined in Art. 29 of the Public Procurement Law, which stipulates that the contracting party/authority can determine the contract performance requirements referring to staffing (unemployed or juvenile persons as well as disabled people), or other provisions, such as the establishment of a training fund or an increase of payments of employers to the benefit of training fund.

<sup>127</sup> Dz.U. 2004 nr 99 poz. 1001 z późn. zmian.

- poor quality of work of public employment services, with the ever persistent high levels of unemployment.<sup>128</sup>

As a result, people with disabilities may not receive professional services in public work offices suited to their abilities and aspirations. They are sent to "useless training" or to posts on which they work far below their qualifications. This is particularly severe for disabled graduates, sent to simple manual work in sheltered employment facilities.<sup>129</sup>

Professional job placement services and career counseling are offered by some non-governmental organizations. However, their services are available only in large urban centers. In addition, there are no legal solutions enabling non-governmental or commercial organizations to take over the rights of unemployed and the services offered by the public employment service (although the legislative work is in progress).

Significant resources from the labor fund, European funds and PFRON are spent on the activity of persons with disabilities on the labor market in Poland. Due to the existing solutions, the public sector is not competent enough to support persons with disabilities, whereas the non-governmental or commercial sectors do not have sufficient power.

### **Vocational training**

People with disabilities in Poland, with the exception of the younger generation, present very low educational level and poor social competence. Before the regime transformation, a big part of young people with disabilities made it to special schools or had to give up further education due to the unavailability of educational institutions. This resulted in an understatement of educational and professional aspirations. As a result, people with disabilities did not take up work at all or exercised it in specially designed workplaces (e.g. cooperatives of disabled). Those were generally simple physical jobs, not requiring high qualifications.

Thanks to EU funds in Poland, training services for people with disabilities and their families have developed. The purpose of a substantial part of the services is to increase the professional and social competence of disabled students, graduates, unemployed and those looking for work. Training services are held by public bodies, non-governmental and commercial organizations, often establishing different kinds of agreements. The offer of

<sup>128</sup> E. Giermanowska (ed.), *Młodzi niepełnosprawni – aktywizacja zawodowa i nietypowe formy zatrudnienia*, ISP, Warszawa 2007.

<sup>129</sup> E. Giermanowska, A. Kumaniecka-Wiśniewska, M. Raclaw, E. Zakrzewska-Manterys, *Wejście na rynek pracy...*

services is so large that training service providers have to fight among themselves for the client (disabled). This is especially true for large urban centers, for example Warsaw.<sup>130</sup> However, there is a lack of evaluation of the training. The content of the training is repeated and is often not adapted to the capabilities of people with disabilities, with a particular type of disability and to the needs of the local labor market. People with disabilities, even after several training sessions, remain outside the labor market, so the training becomes a form of recreation for people with disabilities and a form of business for their organizers.<sup>131</sup> The lack of cooperation between job centers (the organizers of the training) and authorities deciding on the right to a pension and insurance institution (ZUS) was confirmed by the latest report on NIK control between 2010 and 2012.<sup>132</sup> Sick and injured have little chance to connect medical rehabilitation with vocational rehabilitation, increasing their chances on the labor market.

Enhancing professional and social competence of people with disabilities through the training services is necessary. This refers to young people with disabilities as well as to people who become disabled in adult life. However, the number of training services does not correspond with their quality and a better chance of people with disabilities on the labor market. Experts point to the need for a fair evaluation of training and assessment bodies pursuing training, as well as to the relationship of medical rehabilitation and retraining, learning a new profession; in other words, they appeal for the introduction of the integrated services of vocational rehabilitation, controlled and financed by the insurance institution.<sup>133</sup>

## **Political rights and representation of people with disabilities**

### **Political rights**

Political rights constitute the warranty of participating in political and public life on the basis of equality with others, using active and passive electoral rights and exercising public functions at all levels of governance.

In 2011, the Electoral Code was adopted, after many years of debate. It provides a few solutions that functioned in previous acts, for example the ability to add to the list of voters in

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<sup>130</sup> E. Giermanowska, A. Kumaniecka-Wiśniewska, M. Raclaw, E. Zakrzewska-Manterys, *Wejście na rynek pracy...*

<sup>131</sup> Interview with Piotr Pawłowski from the association, „Integracja.”

<sup>132</sup> *Informacja o wynikach kontroli: Organizacja systemów orzecznictwa lekarskiego ZUS dla celów rentowych oraz orzekania o niepełnosprawności*, NIK, Warszawa 2013, [www.nik.gov.pl/plik/id,4996,vp,6483.pdf](http://www.nik.gov.pl/plik/id,4996,vp,6483.pdf).

<sup>133</sup> A. Wilmowska, D. Bilski, A. Kwolek, M. Rusewicz, A. Szybkie, *Orzecznictwo lekarskie i rehabilitacja w zabezpieczeniu społecznym*, in: G. Uścińska (ed.), *Zabezpieczenie społeczne w Polsce. Problemy dorozwiązania w najbliższej przyszłości*, IPiSS, Warszawa 2008, pp. 247-248.

the voting, the possibility of proxy voting and the obligation to adapt some of the polling stations to the needs of the disabled. What is important, the possibility of absentee ballots and voting by using a card with an overlay in Braille were introduced. However, citizens' knowledge on the subject is not very vast. For a couple of weeks before the general elections in 2011, only 22% of Poles knew about the absentee ballots. It is important that persons to whom the new solutions are addressed also did not have the necessary knowledge. Only 32% of people with a disability knew their possibilities.<sup>134</sup> It is not surprising, therefore, that only 817 people reported the desire to use this procedure.<sup>135</sup> The experience of other countries shows that the new voting procedure was not more popular there, but from year to year it is gaining followers. However, there is a need for broader information campaigns about the new possibilities of voting. Although these changes are not responding to specific documents of the European Union, they are part of the process of changing the philosophy of thinking about people with disabilities as subjects of their own rights and obligations.

### **Representation of people with disabilities**

People with disabilities and their families fully enjoy the right to possession of the enlarged prefectural authority of representation of their environment. They create organizations of a local, regional and national degree in form of associations and foundations. In Poland, there is no reliable statistical data on the full number of non-governmental organizations acting on behalf of the disabled. According to the Association of Maple/Sycamore ("*Klon/Jawor*") in 2012, 1,956 non-governmental organizations (foundations and associations) of a national, regional and local level acted so.<sup>136</sup> They conducted tasks on behalf of the PFRON, the provincial and district government. Non-governmental organizations offer all sorts of support to people with disabilities in the form of services: health care, medical, professional and social rehabilitation, including among others: career counseling, job placement and cultural, sports, recreational and touristic events. They are carried out by rehabilitation clinics, professional activity centers, non-public health care facilities, schools, kindergartens and day-care centers. Number of organizations and social initiatives for people with disabilities is constantly rising.

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<sup>134</sup> A study conducted by the Public Opinion Research Center (CBOS) on September 8-14, 2011, on a representative random sample of adult residents of Poland (N = 1077) as part of a joint project by CBOS and the Institute of Public Affairs.

<sup>135</sup> Pismo Przewodniczącego PKW (POW-432-2/12) z dnia 1 lutego 2012 roku do Przewodniczącego Komisji Polityki Społecznej i Rodziny Sejmu RP.

<sup>136</sup> *Informacja Rządu Rzeczypospolitej Polskiej o działaniach podejmowanych w 2012 roku...*, p. 120.

The problems are their concentration in the large urban centers and their lack in rural and economically less developed areas.<sup>137</sup>

### **Accessibility and universal design**

A special place is taken in the activities for the implementation of the rights of persons with disabilities by the elimination of barriers in their independent functioning in society and the promotion of solutions ensuring availability. Accessibility and the removal of barriers are the first and the primary area of operations set out in the European Commission's Strategy for the next ten years.<sup>138</sup> In 2006, the European Union adopted Regulation (EC) No. 1107/2006 concerning the rights of persons with disabilities and persons with reduced mobility travelling by air, and a year later, in Regulation (EC) No. 1371/2007, there were provisions concerning the rights of persons with disabilities in the railway. Under the influence of the EU documents, many actions were taken in Poland in favor of eliminating functional barriers, including access to offices, electoral points and utilities, freedom of movement and general use of the means of transport, access to information and opportunities of interpersonal communication. In 2010, the representative of the Government for People with Disabilities initiated the activity of spreading the rule of universal design.<sup>139</sup> The implementation of this principle will create real possibilities for people with disabilities to use (on an equal footing with other citizens) the objects and services, physical environment, transportation, technology, information and communication systems.<sup>140</sup> Several activities are carried out to increase the access of people with disabilities to e.g.:<sup>141</sup>

- residential buildings and other buildings, including those housing public institutions, polling stations, insurance, postal services;
- television programs (those with sight and hearing organ dysfunction);
- sales outlets and the restaurants with an assistance dog;

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<sup>137</sup> J. Bartkowski, *Młodzi niepełnosprawni a instytucje i struktury wsparcia*, w: E. Giermanowska (ed.), *Młodzi niepełnosprawni. Rodzina...*

<sup>138</sup> *European Disability Strategy 2010-2020...*

<sup>139</sup> Universal design is a departure from the design of selective elements of the environment for people with disabilities towards the design universally fit for all users. The aim is to prevent the emergence of new barriers and to provide an environment accessible for all. See: E. Kuryłowicz, *Projektowanie uniwersalne: udostępnienie otoczenia osobom niepełnosprawnym*, Centrum Badańczo-Rozwojowe Rehabilitacji Osób Niepełnosprawnych, Warszawa 1995.

<sup>140</sup> *Informacja Rządu Rzeczypospolitej Polskiej o działaniach podejmowanych w 2012 roku...*, p. 88 et seq.

<sup>141</sup> Ibidem.

- public transport, public information, telecommunications services.

Anna Błaszczak from the Office of the Ombudsman points out that the impact of the European Union on the situation of people with disabilities in Poland is particularly visible in the area of infrastructure, thanks to the directives and regulations in the field of transport by air, rail, bus, and even the sea. The Union has introduced such requirements and standards that were not previously used in Poland, and probably would not be used for a long time, because they are too expensive.<sup>142</sup> If the requirements of the Union concerning bus or air transport are complied with, those relating to railway transport are still waiting to be realized.<sup>143</sup>

The elimination of barriers in communication of the deaf and hard of hearing is defined in the Act of August 19, 2011, about sign language and other means of communication, which sets out the principles to handle individuals who have difficulty in communicating.<sup>144</sup> The Act about sign language is an example of a new quality in public sphere. This document was prepared in order to assure the same level of service for people with disabilities.<sup>145</sup>

Actions improving the availability of goods, services and assistive devices to people with disabilities are often initiated by non-governmental organizations representing the interests of the whole environment, as well as selected categories of persons with disabilities and their families. Removing barriers is a process whose growth rate has been shown to accelerate after Poland's accession to the EU and the lobbying environments of persons with disabilities. Increasing availability is considered a prerequisite for full participation of disabled persons in social life on an equal basis with others.

## Conclusions and recommendations

Poland's policy on people with disabilities was for many years based on the model of acting "in favor of people with disabilities," which made people with disabilities subject to the impact of different institutions and specialized bodies. Polish accession to the EU, including aligning the legislation to the "Convention on the rights of persons with disabilities" and the implementation of recommendations arising from the "European Disability Strategy 2010-2020: a Renewed Commitment to a Barrier-Free Europe," contributes to changes in the

<sup>142</sup> Interview with Anna Błaszczak, policy expert.

<sup>143</sup> The cost of the replacement of railway equipment adapted to the needs of disabled people is extremely high.

<sup>144</sup> Dz.U. z 2011r. Nr 209, po1243 z późn. zm.

<sup>145</sup> Interview with Marek Plura, politician.

existing model towards the subject approach and integrated model based on the rights of persons with disabilities. In the opinion of numerous experts, these changes are the most important ones. In the opinion of Marek Plura, Poland's accession to the EU "accelerated multiple industrial processes in the domain of active lives of people with disabilities." Expert of the Office of the Ombudsman, Anna Błaszczak, connects the impact of the Union with the "change in the philosophy of thinking about disability [...] that we stop thinking about the handicapped as the subject of care and we begin to think about people with disabilities as a subject of rights and obligations." Paweł Kubicki, Ph.D., education expert, speaks of the "start of a discussion" on the introduction of new solutions and "raising standards" in education, social welfare and rehabilitation.<sup>146</sup>

EU legislation has a big impact on the changes of the national law concerning the rights of persons with disabilities. In accordance with the concept of disability mainstreaming, we can observe the gradual inclusion of disability in mainstream policy at different levels of state management and moving away from creating structures, programs and other instruments only for disabled persons (special schools, special establishments like ZAZ and ZPCH) in favor of making the effort to solve problems of the people in the main policy areas.

The Polish legal system is in compliance with the concept of disability mainstreaming, but this does not fully protect the rights of persons with disabilities, particularly in the domain of equal access to many areas of functioning: to work, education, information, communication, health, culture and sports. This is confirmed by the statements of experts.<sup>147</sup> The most worrying trend is the persistence of low employment of people with disabilities. The Polish system of vocational rehabilitation and employment is hardly efficient, which results in the illusory realization of the right of persons with disabilities to work. In 2012, more than 70% of people of working age left the labor market. The majority of people with disabilities of this age continued on benefits pensions or other social benefits, which are low and condemn people with disabilities to poverty and social exclusion. There is no guiding vision about the model of the system of professional rehabilitation and employment for people with disabilities. The system is in transition and is specified as a hybrid. It has some elements of the quota system, but changes under the influence of the EU recommendations, gradually pushing it towards a system based on civil rights.<sup>148</sup>

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<sup>146</sup> Interviews with experts.

<sup>147</sup> Ibidem.

<sup>148</sup> M.A. Paszkowicz, *Realizacja prawa do pracy osób z niepełnosprawnościami w świetle Karty Praw Osób Niepełnosprawnych*, „Niepełnosprawność – zagadnienia, problemy, rozwiązania”, Nr III/2013 (8), p. 157.



Another worrying trend is the realization of the right to education at all levels – above all, inclusive education and vocational training to the labor market. Disabled people are much worse educated than those in working order. The availability of schools within the area of residence is limited. Public schools are not always open to students with disabilities, and vocational schools, including special ones, poorly prepare their students to enter the labor market. They often teach professions for which there is no demand on the local labor market.

The changes are not easy, because they violate interests or organizational practices rooted in already existing solutions. For example, there are special schools and sheltered companies that lose their privileged position in the education system and employment if changes are introduced. New solutions, hurriedly introduced, often poorly prepared, without financial support and professional guidance or the information campaigns that promote the changes, cause unfavorable effects, such as a continuing high percentage of youth in special schools. The current legislation is inconsistent and the analysis of expected effects of the changes is lacking.

It is impossible to isolate the right to work from other rights, such as the right to treatment and comprehensive rehabilitation, the right to education and the right to social security.<sup>149</sup> People with disabilities do not take up jobs because they are afraid to lose the right to a pension or the refund of rehabilitation equipment. Combination of medical and vocational rehabilitation is difficult to implement into the present organizational system. Experts and representatives of non-governmental organizations of persons with disabilities increasingly often report postulates for the preparation of the new law on people with disabilities, in accordance with the spirit of the “Convention on the rights of the disabled” and EU policies. This new law based on the rights and freedoms of persons with disabilities, their individual opportunities and place in society could speed up the implementation process of the expected changes and become a modern instrument of public policy for people with disabilities.<sup>150</sup>

The analysis conducted in the present paper confirms that the process of breaking down the barriers, increasing the availability of services and the participation of disabled persons in social life on an equal footing with others and the fight against discrimination in Poland has a strong legal basis. It does not mean, however, that it is necessary to make further

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<sup>149</sup> M.A. Paszkowicz, *Realizacja prawa do pracy osób z niepełnosprawnościami w świetle Karty Praw Osób Niepełnosprawnych*, „Niepełnosprawność – zagadnienia, problemy, rozwiązania”, Nr III/2013 (8), p. 157.

<sup>150</sup> K. Mrugańska, *Sytuacja osób niepełnosprawnych w Polsce w opinii organizacji pozarządowych – potrzeba narodowej strategii*, [in:] *Niepełnosprawność – nowe spojrzenie*, publikacja pokonferencyjna. Materiały z międzynarodowej konferencji nt. „Węzłowe zagadnienia wdrażania Konwencji Narodów Zjednoczonych o prawach osób niepełnosprawnych i oraz Europejskiej strategii w sprawie niepełnosprawności 2010-2020”, Polskie Forum Osób Niepełnosprawnych, Warszawa 2012, p. 24.

amendments, as for example a modern law for people with disabilities mentioned above. The process of social inclusion, the integration of people with disabilities and disability in mainstream social and economic life are still in their infancy. In the implementation of new solutions, an important role is played by: 1) organizational practices and mental barriers persisting in the society; 2) the existing organizational-financial context and the willingness of organizations (local governments, schools, businesses, labor offices, etc.) to adapt to new solutions; 3) procedures and the relevance of acquiring and using EU funds; 4) the representation of the interests of the disabled people and lobbying for the benefit of specific solutions.

The recommendations emerging from the present analysis show three areas of activities that may increase the effectiveness of the introduced solutions and that should be taken into account by new and future EU members. It would be beneficial to:

- conduct information campaigns, disseminate knowledge and promote good practices among employers, educators, representatives of local authorities and other stakeholders, as well as people with disabilities and the society as a whole;
- monitor and evaluate marketed solutions (including checking the relevance of the use of EU funds) by independent experts and institutions created for this purpose;
- engage the representatives of various walks of life, representing the various categories of disabled persons and organizations not only at national, but also regional and local level, in the debate and consultation of the proposed changes.