



Guide to Equal Treatment in the Private Sector

Leitfaden für Gleichbehandlung im privaten Sektor

*Handleiding voor gelijke behandeling
in de particuliere sector*

*Przewodnik Równego Traktowania
w Sektorze Prywatnym*

Final Conference - Documentation -

Cologne, 31st October 2006

With the contribution of the European
Community Action Programme to combat
discrimination 2001-2006

Conference funded by:
Ministerium für Generationen, Familie,
Frauen und Integration
des Landes Nordrhein-Westfalen



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Welcome address

Theresia Wunderlich

Head of Department for Social and Health-Care Affaires, Caritas Germany, Freiburg

Ladies and Gentlemen,

I would like to warmly welcome you all to today's closing ceremony for the "GET in – Guide to equal treatment in the private sector" project and at the same time to thank you on behalf of the Deutscher Caritasverband [German Caritas Association] and all the other project partners for the very strong turn-out.

Above all, I would like to welcome the speakers who are with us today, who will be enriching the proceedings with their contributions and will certainly provide a great deal of inspiration so that our discussions will be fruitful.

I would also particularly like to thank the guests who have travelled specially from the "GET in" partner countries – from Poland and the Netherlands – and who took it upon themselves to make the long journey in order to take part in this event. Please accept our sincere thanks for coming and our warm welcome to you.

It has now become commonplace in politics as one of THE big political challenges of the 21st century to talk about the global escalation of - and escalating - migration. What fails to be mentioned here is the question of what consequences this has for the course of our everyday political life.

It means that the integration of people of immigrant background is one of the central socio-political tasks that faces us today and to which we feel an obligation.

There is an important aspect to this so-called integration work, or the integration of people into our society, which is the fight against discrimination and the unjustifiable ostracism of people of immigrant background.

Mutual regard, respect and tolerance are indispensable principles in this process of integration, for which the Deutsche Caritasverband and other social agencies provide targeted support and initiatives to drive it forward.

However, when mutual regard, respect for each other and tolerance are not granted to others, when these indispensable principles in the process of integration, as I referred to them earlier, count for nothing in our daily contact with each other, this process of integration is doomed to failure right from the start.

This idea that the integration process already appears to be a failure or a forlorn hope from the start sometimes overcomes many of us, when we see pictures of dark-skinned footballers in the media who have left the pitch because of xenophobic insults and abuse from the crowd, or when some parts of town are too dangerous for foreigners to go out onto the streets at particular times of day, because of the threat of harassment and even violence by rightwing xenophobic groups.



We have to remember though that the path to integration is a long and difficult process. The irresponsible behaviour of individuals must not be allowed to demotivate us. Whether the perpetrators of this kind of behaviour are just a few in number or a larger number of individuals, we who are set on making this process a success must rally to confront them.

These incidents simply show us that our work continues to be necessary and vital, specifically in the area of anti-discrimination, as xenophobic attitudes and violations unfortunately still are not the exception, not only in Germany but also in the rest of Europe. Therefore the development of effective counter-measures to conquer xenophobia and racism as well as the constant support for a society free of discrimination is still one of the central socio-political tasks.

One of our declared goals is that people of an immigrant background, as well as those who do not, should have equal access to all important services in society. This is an important requirement for participation in social, political, cultural and religious life. Only when all members of our society are able to participate equally in all the sectors that constitute life in society can the essential process of integration of immigrants succeed.

Foreigners, Germans with a migrant background and ethnic minorities who live in Germany and form part of our society are confronted with structural and individual ostracism in many sectors of society.

In this respect, we welcome initiatives in legislation at European and at national levels which regulate this type of ostracism and discrimination. The European Union's Equality Directives from 2000 are certainly an important step towards a society free of discrimination in this respect and are intended to guarantee protection against discrimination based on ethnic origin, gender, religion and ideology, disability, age and sexual orientation.

These directives come with the obligation for all EU member states to incorporate this into national law within a three-year period. The political authorities in Germany have found it difficult to incorporate these EU Equality Directives, as we have been able to witness daily in the media for some time now.

Even though some of the points in the General Equal Treatment Act which came into force in Germany on 18th August 2006 can certainly be criticised, nevertheless the Deutsche Caritasverband welcomes its adoption – it does after all represent an important and necessary step towards fighting discrimination and the unjustified ostracism of a great number of people.

But legislation alone is not enough to achieve lasting and effective protection from ostracism and discrimination. Therefore, the Deutsche Caritasverband continues to campaign against xenophobia using conceptual and practice-based measures. This is intended as a contribution to awareness-raising and openness in society - people of immigrant backgrounds should no longer be reduced to their strangeness and differences but should be appreciated for the people we are convinced they are: an important part of our society who give society its identity and of course enrich it.

In the course of this anti-discrimination work, in the spring of 2004 the Deutscher Caritasverband "GET in – Guide to equal treatment in the private sector" project was initiated and conceived.



The project was supported as part of the EU's programme of action to combat discrimination throughout the European Union. It is a transnational joint project involving the Deutscher Caritasverband (DCV), the Anti-Rassismus Informationszentrum ARIC-NRW (in Duisburg), the Landelijk Bureau ter bestrijding van Rassendiskriminatie LBR (in Rotterdam), Caritas Poland as well as the Caritasverband for the Diocese of Cologne and the Caritasverband for the City of Cologne.

The European anti-discrimination initiative covers practically all relevant spheres of life. A particular burden for those affected is discrimination in civil law proceedings, as well as dealing with the authorities and in the workplace. In this field, however, there is still little in the way of experience as to how to tackle discrimination, as in most member states there is still no legislation to prohibit all discrimination involved.

The "GET in" project concentrates therefore on discrimination in "public goods and services", primarily in the private sector. This refers to access to basic provisions, such as housing, sale of basic everyday goods and use of transport. Furthermore, the term "public goods and services" includes the fulfilment of other personal needs such as leisure activity, access to restaurants and food establishments and access to cultural offerings. Discrimination in the financial services sector is also incorporated into the work of the project.

As part of the project, assessment guidelines were developed not only for those who might become affected as well as for advocacy staff in advice centres. These guidelines should allow us to identify whether there is a case of discriminatory treatment or practice as defined by EU policy. By reconciling the EU Equality Directives and the respective national legislation in the various partner countries, indicators were developed to determine the facts of the case.

At the same time, guidelines were developed for those offering public goods and services so that their dealings with their customers are free of discrimination. This includes the formulation of criteria through which progress towards a customer policy based on the principle of equal treatment can be measured.

The creation of this partnership within the parameters of the project provided a combination of decades of experience of working with immigrants and of lobbying on their behalf with an expertise in discrimination which has been tried and tested both in research and in practice.

As the biggest charity in Germany, **the Deutscher Caritasverband** can call upon decades of experience in its work with immigrants. Its commitment to immigrants goes beyond national borders by virtue of its membership of Caritas Europe. The organisation has spoken out in the past through its communiqués and in relevant statements for the acceptance of immigrants and the fight against discrimination.

The **Diocesan Caritasverband for the Archdiocese of Cologne** coordinates immigration and integration work in the diocese, working very closely with Caritas' Specialist Services for people of immigrant background in Germany. Anti-discrimination work is currently being implemented as one of the main areas of activity for all the migrant services in the diocese.

The **Caritasverband for the City of Cologne** is a provider for the biggest Caritas Specialist Service nationwide for migration and integration. In 2000, an anti-discrimination office was integrated into the service as a pilot project, which is involved in individual cases of

discrimination as well as in prevention with those who might become affected and provides advocacy work with groups and institutions that are accessible.

The **Anti-Racism Information Centre ARIC-NRW e. V.** in Duisburg specialises in the development of quality standards for anti-discrimination work in Germany. Particular regard is given to tools for the analysis of acts of discrimination. Since 1997, ARIC-NRW has been given responsibility by the State Government of North Rhine Westphalia for networking among anti-discrimination projects. One important task it also actively undertakes is the monitoring of the implementation of the EU Directives in Germany.

The Dutch **National Office to Combat Racial Discrimination (LBR)** in Rotterdam is one of the biggest non-governmental organisations in Europe with many years of experience in analysing discrimination and the development of interventionist strategies at a legal, political and institutional level. The LBR is the main contact for the Dutch Government for equality policy issues.

As one of the first Eastern European providers, **Caritas Poland** has ten years' experience in migration work. Since then, it has been involved in professional exchanges within the European network of Caritas Europe. Within Poland, Caritas has access to a growing network of advice centres for immigrants and therefore has contact with those affected.

The six projects partners have come together on the basis of existing bilateral collaborative links. This means that there are synergies to be achieved by combining specialist knowledge with years of practice across the board, as well as a strong lobby representing immigrants' concerns. Furthermore, it was possible to differentiate the processing of areas of discriminatory practice by investigating using different avenues for those affected and for those offering goods and services who might discriminate.

Therefore the project represents an innovative alliance for the ongoing development of anti-discrimination work on a broad professional level in anti-racism work on the one hand and immigrant social work on the other.

I would like to thank all the project partners in advance for their work and commitment in this vital area of anti-discrimination work and look forward to a successful conference, full of fascinating discussion.

Thank you very much for your attention.



Opening address

Thomas Kufen

Integration Officer for the State of North Rhine Westphalia, Düsseldorf

Ladies and Gentlemen,

Thank you very much for inviting me to the closing conference of the "Get in" transnational project. I would like to convey to you greetings from our Minister for Inter-Generation and Family Affairs, Women and Integration, Armin Laschet.

More than a year ago, North Rhine Westphalia set a course to bring forward integration. We do not operate our integration policy as an add-on to social policy. On the contrary, we incorporate it into intergenerational and family issues in our central department that looks at future questions. Therefore the State Government has drawn up an action plan, so that we can be proactive in our integration work in North Rhine Westphalia. In brief, integration is to be achieved by

- balancing out migration-related deficiencies
- highlighting and recognising the full potential
- dismantling and combating discrimination

North Rhine Westphalia takes the issue of "anti-discrimination" seriously, and not without reason. This year, our state celebrated its 60th anniversary. More than 25 per cent of people – that's one in four – have a history of immigration - they've come into the Federal Republic of Germany to North Rhine Westphalia in the last few years or decades. We need to harness the full potential of all the people who live in our state. Our population is steadily ageing and fewer and fewer children are being born. We simply can't afford any more to neglect the contribution of millions of inhabitants. And especially with regard to young people of immigrant background, we need a change of attitude - we need to recognise much more that as a result of their immigrant background, and the attitude to life and socialisation requirements that go with it, young people hold real potential for German society and for the future of Europe. In my role as Integration Officer, I am campaigning for just such a change in attitudes.

What's important to me is that we don't need these children and young people for demographic reasons only but for themselves. These are after all children and young people in our society and from our country.

Investigations do however show clearly that acts of discrimination are still a reality. For example, immigrants experience greater difficulty in obtaining credit from banks or taking out insurance.

But there are positive developments as well. Almost all companies have recognised that diversity has a positive effect on sales figures. This realisation is not new. What is more recent though is the understanding that their customer groups are anything but homogenous. So now there aren't just phone customers: several companies now focus on the diversity of their customers. Today for example there are different phone tariffs (e.g. Ay Yildiz, subsidiary of E-Plus, aimed at the Turkish community living in Germany) which are specifically oriented towards the individual needs of every single person.



In North Rhine Westphalia, a network of five anti-discrimination projects exists – in Duisburg, Dortmund, Aachen, Cologne (working with Caritas) and Siegen - on the one hand, advising victims of discrimination, but more and more in the last few years working together with the police, local authorities and services to identify and dismantle structural disadvantage which results unintentionally or subconsciously in discrimination. Today, you'll find out about the legal relevance of this as well.

However, in terms of de facto legislation, the AGG [General Equal Treatment Act] is also an indication that the realities of immigration are being recognised on a broader level in Germany and that equality of opportunity is also part of integration. It's the opportunity for those immigrants who live here to be integrated, but also an opportunity for the whole of society. That's why fighting discrimination is not just important for the protection of individuals but also for the democratic structure of our society and the achievement of its social and cultural, creative and economic potential. For it's not enough to simply proclaim equal opportunity and to pass laws so that we abide by it. Equally, there has to be a change in behaviour and mentality.

Recognition and appreciation of the diversity of people, of the different cultures and respective lifestyles is part of the self-image of every democratic community. Europe and Germany exist on the basis that people relate to each other as partners, regard each other with respect and do not see diversity as a problem but as a strength. We need to become much more aware of this. The "European Year of Equal Opportunities for All" that the European Union has ordained for 2007 will contribute further to both points of view – appreciation of diversity and diversity as a strength - permeating into the consciousness of our society. I am sure that today's conference will create a real impetus.



**Equal treatment in accessing goods and services
– insights and perspectives –**





“From law into the field”: the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz or AGG) and its implementation in private business transactions”

Patrick von Braunmühl

Deputy Director and Head of Economic and Legal Affairs Department of the Federation of German Consumer Organisations (vzbv), Berlin

Before I address the topic itself, please allow me briefly to introduce the Verbraucherzentrale Bundesverband e. V. [Federation of German Consumer Organisations – registered association]. The Verbraucherzentrale Bundesverband (vzbv) is an umbrella organisation of 16 consumer centres and 24 other consumer-oriented organisations. Our statutory tasks include reinforcing the status of the consumer in the social market economy and contributing to the realisation of sustainable development. This involves representing consumer interests in politics, economics and civil society. At the same time, the vzbv has the authority to take legal action as an association in accordance with legislation against unfair competition and the Injunctions Act. Almost 90% of the vzbv’s funding is received from the Federal Budget. The registered office is in Berlin.

Position and assessment: Allgemeines Gleichbehandlungsgesetz - the General Equal Treatment Act

After many years of considerable political controversy and a great deal of delay, the **Allgemeine Gleichbehandlungsgesetz** (AGG) or General Equal Treatment Act finally came into force on 18.08.06. A decision had been urgently needed, as Germany was threatened with action by the European Court in the form of penalty fine proceedings for failure to implement a Directive.

The Verbraucherzentrale Bundesverband basically welcomes the introduction of the Act. It will enable consumers to defend themselves better in future against discrimination. We do not share the perception that Germany will now be engulfed in masses of lawsuits based on alleged discrimination.

In particular, we welcome the fact that the Act goes beyond the EU requirements for implementation, in that it incorporates not only aspects of discrimination based on ethnic origin and gender but also sexual orientation, religion, ideology, age and disability according to Art. 13 of the EC Treaty for application in the private sector.

However, according to the Act, discrimination is still possible for other than the reasons cited. Consumers are disadvantaged at least just as often in economic life if they are put in an economically or socially weaker position, as a result for example of having large families, through illness, debt problems or personal status. For example, more provisos are imposed on large families today when renting an apartment than on a married couple without children.

Customers from reputedly poorer residential areas or districts who would like use mail-order are not allowed to pay on invoice per se. It's much more the case that they are only able to pay cash on delivery, which involves higher charges.



In our judgement, the acceptance and effectiveness of an Equal Treatment Act rests first and foremost on four factors:

1. Protection must include forms of discrimination which are typically found in modern civil society.
2. Any instance of unequal treatment has to be penalised appropriately and those affected must be able to bring their case without great difficulty.
3. The restraint on personal freedom is limited only as essential.
4. Implementation of Equal Treatment legislation must be possible in the private sector and must not impose unwarranted costs.

We are of the opinion that the first and second points are not adequately addressed in the Act.

Aspects of discrimination which have been omitted

Protection must include forms of discrimination which are typically found in modern civil society. I will give you two examples to illustrate more precisely how this aspect has not been fully accounted for in the new Act:

(1)

In 2004, the Verbraucherzentrale Bundesverband identified an extensive variety of forms of discrimination against consumers on low incomes, especially in setting up and operating bulk businesses.¹ Particularly serious was the exclusion of consumers on low incomes from cashless payment transactions. A random sample survey by the Arbeitsgemeinschaft Schuldnerberatung der Verbände (AG SBV) [Federation of Debt Advice Agencies] carried out between October 2002 and July 2003 showed that in 976 cases credit institutions had refused to open a current account because of low income or because of a negative credit-rating with SCHUFA [credit information agency]².

This represents discriminatory behaviour.

A giro account is an essential requirement in today's society in order to be able to take part in economic life. Employers, for example, request bank details from their employees, as wages and salaries are now only paid on a cashless basis. For landlords, proof of bank account details is a contractual requirement and the tenant has to provide a direct debit instruction for their account, so that the monthly rent is guaranteed to be paid on time. Participation in e-commerce is inconceivable without electronic payment transactions. Ordering from the internet can only be accessed when you have an account. Similar procedures are also typical for other service providers (e.g. telecommunications service providers, insurance companies). The Federal Supreme Court deems the relevant contract clauses to be admissible, noting that today a giro account is now a matter of course.³

¹ Verbraucherzentrale Bundesverband (publ.): Weltverbrauchertag 2004 – Verbraucher, die außen vor bleiben ..., Berlin: March 2004 (http://www.vzbv.de/mediapics/dossier_verbraucher_aussen_vor_maerz_2004_copy.pdf)

² BGH, NJW, 1996, 988

³ BGH, NJW, 1996, 988, (989)

In fact, the refusal to issue a giro account in the form of a current account for everyone cannot be justified by either low income or a negative credit rating with SCHUFA. As the account holder cannot overdraw on the account, this removes a significant amount of administration and risk of default for the credit institute. The refusal to issue a giro account involves even greater financial disadvantage for consumers who are already on low earnings. As a result, they have to bear above-average charges for their unavoidable cash payments and cash transfers.

(2)

Similar discrimination exists in the consumer credit sector.

Borrowers on low earnings have to bear disproportionately high borrowing fees in comparison to other customers. The level of borrowing fees is simply the result of a borrower's assignment to a customer category, to which - theoretically - the highest risk of default is ascribed. The borrower has no influence on how they are assigned; as a rule, they do not even know the risk factors for this customer category nor will they be assigned a customer category with a lower risk of default if their payment record gives no cause for concern. This imprisons them by virtue of their economic and social status in a customer category which carries inescapable price premiums.

In such cases of discrimination, consumers do not enjoy any legal protection. In Germany, there is, for example, no right to a giro account - in contrast to other EU member states such as France, Belgium and Portugal. Although all German banking federations have signed up to a voluntary commitment to open a giro account on request for all sections of the population, in realising this commitment, there are still considerable difficulties, as not all banks and savings banks keep to it and to some extent refuse to open an account or close the account as a result of an attachment order. Even the Federal Government picked up on this in its current report on their "giro accounts for everyone" proposal. The Government suggests in its report the adoption of a new commitment to contain a legally-binding basic right to a giro account. The extent to which such a commitment would actually change the current situation is unclear. It would in any case be preferable for there to be legislation, which currently however has not been proposed.

The consumers affected would be granted protection by means of the Equal Treatment Act - as long as no separate right to a giro account exists. They find themselves suffering the same plight as those consumers, who for example cannot obtain a giro account because of their race or ethnic origin, their gender, their religion or ideology, disability, age or sexual orientation. However, as they are in the same distressing situation but are not covered by the protection afforded by the Equal Treatment Act, the Act tends to contribute more to discrimination against low-income consumers.

From the point of view of the legislative aim of preventing unequal treatment, we are campaigning for an extension of the listing of aspects of discrimination either in general or at least for the relevant sector areas. The solution we favour would be a ruling which makes clear that the listing is not exclusive but includes discrimination based on other equally valid aspects. An open ruling would also account for the fact that typical aspects of discrimination can change over time as a result of social change.

Bulk businesses

Even the incorporation of an aspect into the Act in the private sector does not guarantee full protection against unequal treatment. In civil law, it's still necessary to demonstrate a "bulk business" for possible injunctions or claims for damages. Bulk businesses are civil law obligations which arise typically without respect of person in comparable circumstances in the majority of cases. This requirement can result in the collapse of cases which we believe to be justified, as the following example shows:

From the end of 2002, media reports were piling up that a few German banks were refusing to approve credit for the elderly. In a few cases, banks were setting an age limit of 65 and in other cases of 70 or 74. The Verbraucherzentrale Bundesverband criticised in particular credit refusal for small personal loans, hire purchase for example, and demanded at the time anti-discrimination legislation, in order to eliminate this sort of practice in future.

Whether the introduction of the General Equal Treatment Act will change current practice at all is unclear. The grounds for the Act do not provide any information as to whether credit refusal is a bulk business issue. It's often argued that the loans business is not a bulk business issue, as it rests for the most part on an individual risk assessment. In our opinion, this line of argument is too sweeping and bypasses the reality. With consumer credit, and especially with hire purchase, it's more the case that these are typical and standardised banking services, which are sold as bulk business and are not tailored to the individual consumer. Not without reason is the term "credit factories" used.

We are afraid that in spite of this Act discrimination against older consumers in refusing credit will continue.

Objective reason for unequal treatment

As an exception, the aspects of discrimination which are listed in the Act can be justified by an objective reason. This ruling makes sense, for example, when providing priority car parking space for women or with concessions on entry fees for particular groups. However, we are afraid that the exceptions have been considered too widely. I'd like to give you an example of this:

The General Equal Treatment Act permits that the "gender" aspect is now admissible when private health insurance companies calculate their premiums. The insurance companies argue that groups of men and women have different liability profiles, which they would not be able to ignore where no other investigations such as genetic testing or blood tests had been carried out. It is true that currently there are no other liability-per-head profiles or mortality tables as such, which separate men and women. The same applies to life insurance, which has mortality tables separated by men and women. Unfortunately, insurance companies are not required in the grounds for the Act to build up these types of liability statistics, which support ratings criteria for liability other than gender in calculating premiums.

Enforcement of cases

The acceptance and effectiveness of an Equal Treatment Act depend as well – point 2 – on any instance of unequal treatment being penalised appropriately and that those affected must be able to bring their case without great difficulty.

This is where the Act falls short as legislation. EU requirements insist that those involved only have to establish the probable validity of a claim of discrimination, but don't have to prove it, in order to bring an action. The alleged offender must then prove that they did not discriminate. The type of reversal of the burden of proof was also originally provided for in the Act. However, following an amendment, the requirement to establish the probable validity of a claim was removed from the Act. Instead, the alleged victim now has to "prove indications" that "lead to the assumption" of discrimination. This woolly formulation does nothing to contribute to simplifying the law or to legal certainty. Rather, it begs the question as to whether or not this formulation of the EU Directive is still at all legal.

Experience in anti-discrimination regulations that were already in existence in the workplace, in building law and in individual equal opportunities rulings before the General Equal Treatment Act came into force, show that those affected by discrimination call on the courts only very seldom. Often, they have no idea of their rights or they shy away from the open conflict which is involved in court cases. They are worried about the expense involved in hiring lawyers and bringing an action. Furthermore, they are afraid of the lengthy process, which in the end they might lose. In addition to this, claims for damages as a result of discrimination have to be put forward within the relatively short time limit of two months.

It would have been more sensible to have introduced into the Act the right for legal action to be taken by an association. This would allow larger organisations to proceed with discrimination actions instead of individuals. They have access to greater resources and are less easily put off or intimidated. Unfortunately, the right for legal action to be taken by an association is not a ruling in the General Equal Treatment Act.

Support from anti-discrimination agencies for those affected is no substitute for the right for legal action to be taken by an association. Agencies can do little more than provide advice and representation. Even the Government's newly created Anti-Discrimination Office will be little help. Its mandate covers public relations and the prevention of discrimination. However, in specific cases, it can at best offer advice or bring the parties together to reach an amicable agreement.

A report by the Verbraucherzentrale in the State of North Rhine Westphalia entitled "The General Equal Treatment Act and consumer advice" describes consumer associations as being able to do the following: according to the Injunctions Act, a case for injunction exists where the general terms and conditions are ineffective due to a violation of mandatory law. Should general terms and conditions violate the General Equal Treatment Act, an injunction case would be brought in accordance with the Injunctions Act. The same applies to unfair competition - consumer associations can put forward violations of rights here as well.

Conclusion

The experience of our European neighbours shows that comprehensive protection from discrimination does not unleash an avalanche of lawsuits. For example, in the Netherlands, there has been comprehensive legislation since 1994 for equal treatment regardless of a person's religion, ideology, political persuasion, race, nationality, sexual orientation, gender or age without any negative consequences for the country's politics, economy or society.

From the consumer's point of view, in spite of its weaknesses, the Act is better than the previous "lawless" situation. Nevertheless, it should be revised. In many cases, the Act – as it stands – does not live up to its claims – those affected still do not have any rights and the offenders still go unpunished. Numerous forms of unequal treatment are not included in the Act or are not adequately penalised by the Act. If for example a disabled or a black person is not served in a restaurant, there would be no claim. At best, there might be a ruling to pay compensation for non-pecuniary damages. As the level of compensation paid in Germany is usually very low, it won't stop people or companies from discriminating.

Contributing remarks from the European Network Against Racism

Pascale Charhon

Director of the European Network Against Racism (ENAR), Brussels



**Contributing remarks from the
European Network Against Racism**

european network against racism



Content of presentation

- Issues of discrimination: Findings from ENAR Shadow Reports 2005
- State of implementation of the Equality Directives: ENAR membership views
- Why do we need protection to combat discrimination?
- Promoting equal treatment in the private sector the way forward



Issues of discrimination: Findings from ENAR Shadow Reports 2005



Employment

- Discrimination in access, conditions, exploitation, and retention and employment
- Particularly vulnerable are:
 - Women and older workers
 - Seasonal employees
 - Undocumented workers
 - Asylum seekers
 - Roma, Sinti and Travellers
- Employment continues to be a site of much racism and religious discrimination in Europe.





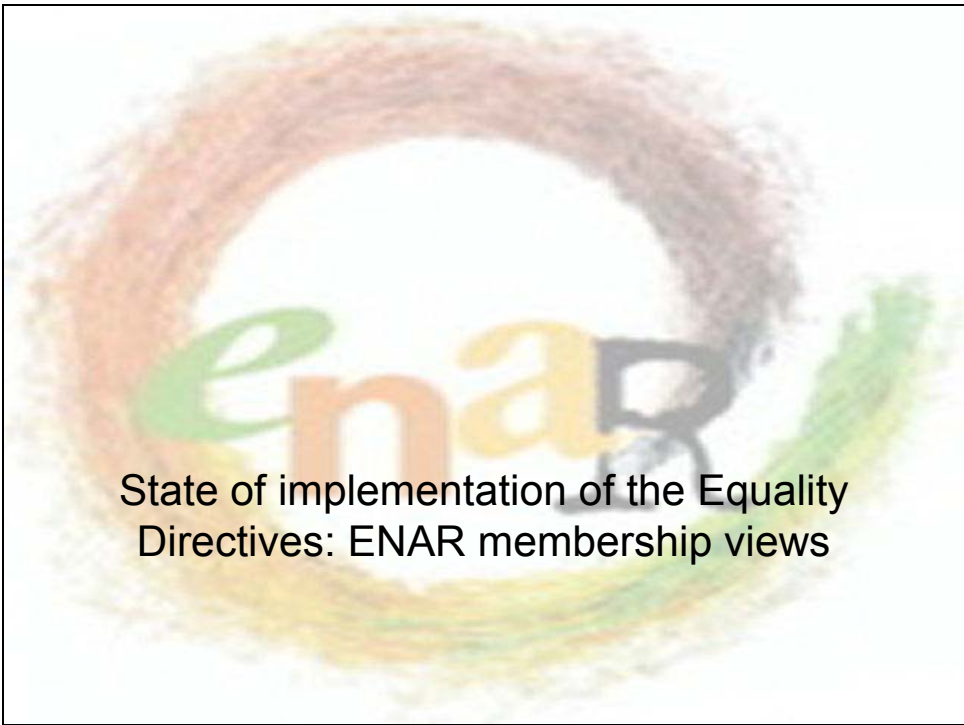
Accommodation and Housing

- Highlighted by some as the main site of racism:
 - Reception centres for asylum seekers
 - Detention of undocumented migrants
 - Lack of social housing
 - Lack of intercultural planning and segregation
 - Substandard accommodation and overcrowding
 - Exploitation in the private rented sector
 - Residential racism
- Impact of poor or inadequate accommodation on other areas such as health.



Goods and services

- Provision of goods and services in both the public and private sectors:
 - Financial services
 - Hospitality sector
 - Language difficulties
- Particularly problematic is public service provision, often basic services aimed at those groups at particular risk of poverty



Article 13 - Directives

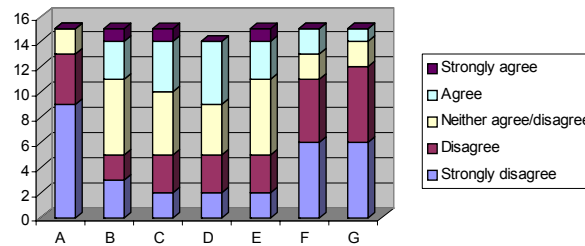
Racial Equality Directive 2000/43/EC	Employment Equality Directive 2000/78/EC
Equal treatment irrespective of race of ethnic origin	Religion or belief, disability, sexual orientation and age
Employment and training, education, social security, healthcare, and access to goods and services	Employment and training
Direct and indirect discrimination, harassment and victimization	Employer reasonable accommodation for people with a disability
Right to make a complaint to judicial or administrative both with appropriate penalties	
Shares burden of proof in civil and administrative cases	
Equality bodies	





Directive 2000/78/EC - Equal treatment in employment and occupation

- Directive 2000/78/EC - Equal treatment in employment and occupation
- Questionnaire to the members
 - **Part 1: Overall assessment of the impact of Directive 2000/78**



Directive 2000/78/EC - Equal treatment in employment and occupation

- **Statements**
 - There has been a decrease in discrimination in employment.
 - There is greater awareness that discrimination in employment is illegal
 - The Employment Directive has increased protections against discrimination
 - The Employment Directive has made the work of NGOs easier
 - There is more dialogue between the government and NGOs concerning discrimination in employment
 - Anyone who wants to take an employment discrimination case can find the support and resources they need
 - There are adequate sanctions and redress for cases of discrimination in employment



Directive 2000/78/EC - Equal treatment in employment and occupation

■ Key findings regarding the implementation of Directive 2000/78

- Enhanced protections against discrimination in employment
- Gaps in implementation and the existing legal framework:
 - institutional discrimination
 - application of protections
 - nationality exclusion and non-application of the Directive to immigration
 - hierarchy of protection



Directive 2000/78/EC - Equal treatment in employment and occupation

- Jurisprudence and burden of proof
- Enhanced NGO activity
- Support and assistance in bringing anti-discrimination cases





General Assessment of implementation of article 13' - Directives

- Quality of transposition
 - Direct and Indirect discrimination
 - Burden of Proof
 - Civil dialogue
 - Information and awareness
 - Equality bodies
- Gaps in protection
 - Structural discrimination
 - Positive action
 - Exemption on the base of nationality
 - Multiple discrimination

A large, faded version of the ENAR logo is centered in the background of this slide, serving as a watermark. It consists of the 'enar' text and the circular brushstroke graphic.

Why do we need protection to combat discrimination?





Why do we need equality legislation to combat discrimination?

- The « ethical » case
 - ‘ Everyone has an ethical obligation to combat discrimination and racism ‘
- The regulatory framework
 - For many companies legal compliance is a crucial reason for adopting equality and diversity practices and policies, hence it is always useful to stress the legal imperative when encouraging businesses to take action



Why do we need equality legislation to combat discrimination?

- The « business » case
 - Business case for diversity suggests that equality policies are financially lucrative - they are, as the title suggests, good for business. The key elements of the business case suggest that diversity policies are beneficial in:
 - Recruiting and retaining highly skilled and talented staff
 - Enhancing productivity and morale of existing staff





Why do we need equality legislation to combat discrimination?

- Improving the external image of a company.
- Enhancing innovation and creativity.
- Meeting the needs of an increasingly diverse customer or client base.
- Facilitating new products and opportunities.
- In a recent survey of the European Business Test Panel (EBTP), when asked whether diversity initiatives have a positive impact on their business 83% of the 495 companies that replied agreed that they did. In short, promoting diversity will give a company or business a competitive advantage.



Why do we need equality legislation to combat discrimination?

- While diversity can bring benefits, it is also important to point out that racism and discrimination have significant costs to a business or organisation, including:
 - Sickness absence.
 - Premature retirement.
 - Replacement costs – high turnover.
 - Grievance and litigation costs.
 - Reduced performance/productivity.
 - Loss of public goodwill and reputation.



Promoting equal treatment in the private sector the way forward

3 approaches need to be pursued:

- 1) Accommodating diversity in service provisions
 - Ethnic and religious minorities as customers
 - Ethnic and religious minorities as employees





Promoting equal treatment in the private sector the way forward

- Particular consideration should be given to:
 - Conducting an audit of the needs of all employees. This can be supplemented by consulting with local NGOs and organisations.
 - Promoting employee networks which can serve as a support network and a visible manifestation of a company's commitment to diversity.
 - Facilitating flexible leave and holiday arrangements, such as allowing migrant workers to take all their holidays at once so that they can travel to their home country.



Promoting equal treatment in the private sector the way forward

- Facilitating religious requirements including dress codes, dietary requirements, prayer facilities, religious festivals and holiday arrangements.
- Providing any necessary translation and interpreting, such as for safety signs.
- Providing practical supports such as transport to areas that are badly serviced by public infrastructure, particularly where ethnic minorities are over represented in a particular area.
- Where appropriate providing practical assistance to employees concerning administrative or other requirements such as opening a bank account or finding accommodation.





Promoting equal treatment in the private sector the way forward

- 2) Data Collection
 - Conduct employee surveys to assess attitudes and levels of satisfaction.
 - Consult with employee or client groups such as through an anonymous survey.
 - Include equality perspectives in all business or performance reviews.
 - Monitor the number of complaints.
 - Monitor appraisal outcomes and exit interviews.
- 3) Develop equality guidelines



Presentation of the “GET in” – project





Introduction

Isabell Zwania

Project coordination, German Caritas Association, Freiburg

Dear guests,

Now we, as the partners, who are involved in the “GET in” – project, would like to take the chance to present the project to you and in particular present the actual results of the last two years of the common project work.

I will give a short transnational introduction and some organisational remarks. Then the partners from the different partner countries will elaborate their approaches in developing the main objectives of the project regarding their specific national contexts.

The project “GET in – Guide to equal treatment in the private sector” deals with racially motivated discrimination committed in the area of publicly offered goods and services in the private economy sector. Within this sector, it concentrates on different branches like retail trade, housing, public means of transport, discotheques and financial services (banking and assurances). The types of discriminatory acts on the grounds of the EC Directive for Equal Treatment 2000/43/EC range from unequal treatment in sales talk, by customer services, while drawing up and placing contracts, up to denial of access to certain premises.

The measure is supported by the European Community Action Programme to combat discrimination. This programme has a duration from 2001 to 2006 and was established to support the effective implementation of new EU antidiscrimination legislation. It targets all stakeholders who can support the development of appropriate and effective antidiscrimination legislation and policies across the EU. The Action Programme has three main objectives. These are:

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

The project “GET in” is worked on in the term of two years: from December 2004 to November 2006. the project’s task is to contribute to the realisation and spreading of the EC Equal Treatment Directives 2000/43/EC and 2000/78/EC in the field of private services.

“GET in” aims to rise awareness on the EC Equal Treatment Directives with a special focus on the antidiscrimination of migrants and ethnic minorities in the field of publicly offered goods and services. Target groups have been suppliers, (potential) victims, and counselling services: Victims of racial discrimination were intended to be enabled to stand up for their rights, counsellors to support them, and suppliers to agree on binding arrangements of equal treatment practice.

During the two years of the project cooperation the partners have been confronted with various personal changes, which includes also the part of the project coordination. Elisa Rossi conceived and initiated the project and therefore she was the project coordinator for the first



year of the retention period. In April she had to leave the project due to maternity and therefore I took over her role as the project coordinator in May this year.

But personal changes were not the only difficulties the partners saw themselves confronted with.

As already mentioned, the main objective of the project activities was to develop useful products to support the target groups in their engagement for equal treatment. So guidelines for potential victims of discrimination as for counselling services have been developed and produced and there will be a so called recommendation letter be produced for suppliers of goods and services.

Speaking of suppliers of public goods and services, there is one of the main difficulties we had to deal with during the project work.

The cooperation with suppliers of public goods and services remained very difficult for all partner countries. As it turned out during our project work the suppliers seemed to be quite interested in the project results, but not in participating actively in its process. Due to the late implementation of the EC Equal Treatment Directives into German legislation and the still on-going controversial public and political discussion on its contents made it very difficult for the German Partners to create a binding contact or cooperation with suppliers of public goods and services. In the Netherlands and in Poland the circumstances have been different, but as it turned out, unfortunately not more advantageous as in Germany. In view of the suppliers' refusal towards cooperation, the project partners had to react flexible to this fact and to think of other ways to integrate the suppliers into the project work. But the partners themselves will refer to this subject later on.

However, another central objective of the project, which was successfully prosecuted by the partners, was developing guidelines for potential victims as for counselling services.

The guideline for potential victims reclaims to serve the needs of persons affected by racial discrimination. With the help of these guidelines victims are to be enabled to categorize the unequal treatment they have experienced first hand and to seek litigation based on the EU Equal treatment policy on one hand and of course on national legislation on the other hand.

The partners also developed specific assessment guidelines containing detailed information about the political and juridical impact of the EC Equal Treatment Directives and possible legal courses of action. These guidelines reclaim to assist victims of discrimination in a competent way. Both types of guidelines pursue the same objective: the empowerment of discriminated persons, i.e. the strengthening of their self-help potential and their feeling of self-esteem, by rising awareness and developing individual and structural strategies to overcome discrimination. Finally the guidelines were to quote addresses of relevant contact partners, like counselling services, antidiscrimination bureaus etc.


The German guideline for potential victims has been translated into English, French, Russian and Turkish. The Polish guideline for potential victims has been translated into Russian.

And now I will pass on the word to the "GET in" – partners and I thank you very much for your attention.

Germany

Hartmut Reiners

Anti-Racist Information Centre (ARIC-NRW e.V.), Duisburg





Guide to
Equal
Treatment
in the Private Sector

Final Conference – Cologne - Project results (German Partners)-

Political situation/Preconditions

- No antidiscrimination culture
- Antidiscrimination work not well established
- Little public awareness about the existence of the EU-Directives
- Rejecting public debate on an antidiscrimination law
- Implementation of EC-Directives in August 2006 (Allgemeines Gleichbehandlungsgesetz)





Guide to
Equal
Treatment
in the Private Sector

Final Conference – Cologne - Project results (German Partners)-

Exploration/analysis - 1/7


1. Case documentation

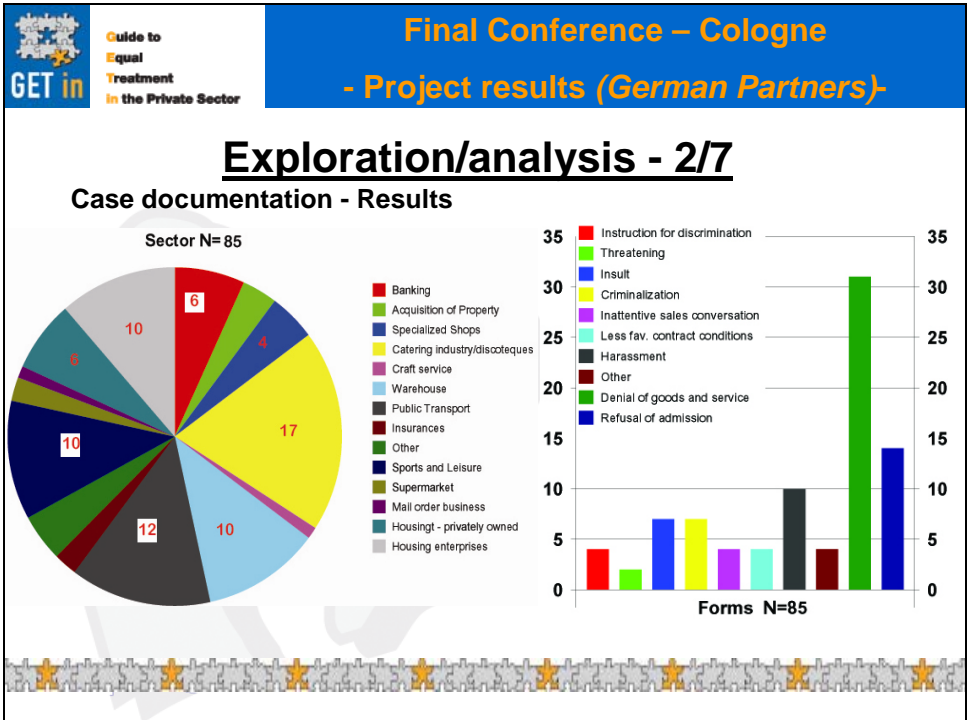
Objectives

- Gaining Knowledge on discriminatory practices in the private (business) sector

Implementation:

- Registration of past (from 2001 to 2005-03-31) and current (until 2005-12-31) discrimination cases by:
Antidiskriminierungsbureaus (Köln, Aachen, Siegen, Berlin (ADNB, BDB), Antidiscrimination bodies: Regional state Brandenburg, City of Frankfurt





Final Conference – Cologne
- Project results (German Partners)-

Exploration/analysis 3/7

2. Group discussions

Objectives

- Exploring
 - the day to day discriminatory experiences
 - individual intervention strategies
 - Disposition for legal action
 - the knowledge about EC-Directives
 - assesment of existing counselling facilities

Implementation

- Design of a draft questionnaire Gesprächsleitfaden,
- Group interviews on discrimination with different groups at Caritasverband für die Stadt Köln e.V., Caritas Neuss, Rom e.V., ADN B, Black Germans
- Transcriptions and analysis of contents by the German project partners

Exploration/analysis 4/7 - Group discussions

Results

- Experiences of discrimination in the private service sector focussing in the fields of housing, public transport, access to disotheques and gyms

Individual accomplishment

- Individual Strategies:
 - Avoiding situation and places
 - Direct complaints adressed at the perpetrator
 - Hardly consultation of counselling services



Exploration/analysis 5/7

4. Study Consumer Service NRW

Objectives

- Exploring day to day experience of Consumer services with migrant clientele
- Effect of equal treatment law on consumer counsellinging

Implementation

- Survey in selected local consumer services
- Expertise by law department Consumer Service NRW



Exploration/analysis 6/7

Results:

- Relatively high quota of migrant clientele (15-20%) at local services
- Specific discrimination problems:
 - Rejection of complaints
 - Disadvantages in door-to-door-sales
 - Worse conditions in financial services
- Needs/Requirements
 - More cooperations with ADBs and Migrant services needed
 - Raise awareness at local level concerning the Equal treatment Law
 - Adapting legal advice in accordance with Equal treatment law



Exploration/analysis 7/7

4. Research of the existing codes of conducts:

- Only few customer oriented codes of conduct-c.o.c. (security firms, hairdressers, retail industry, and temporary employment companies)
 - Mostly exist in big (international) companies (metal industry, car manufacturers, Deutsche Bahn) and are - as being part of company agreements - mainly working place oriented
 - Mainly promoted by trade unions and influenced by European developments
 - Customer oriented c.o.c. stress the global principle of equal treatment of customers
 - Concrete experiences with application still missing



Developping the Guidelines

- Transnational draft structure
- 1st drafts for guidelines with German partners
- Presentation at Workshop

Evaluation phase

- Participants: ADBs, Migration Services
 - Presentation and discussions with colleagues and clientele
 - Feedback via Questionnaires and meetings in Cologne and Berlin
- Editing and translating of final versions



The Netherlands - Discrimination in the financial sector

Leyla Hamidi

Dutch National Bureau against Racial Discrimination (LBR), Rotterdam

The Dutch anti-discrimination infrastructure

In order to understand the context of the Dutch part of Get in project, it is first of all important to explain a little about the rather well-developed Dutch anti-discrimination infrastructure.

The Netherlands has build its anti-discrimination framework on 3 pillars:

1. Extensive legal framework consisting of:

International law

- CERD (UN Convention on the elimination of all forms of racial discrimination)
- EU-legislation

National law

- Constitution
- Criminal law
- Civil law

Government bodies

- Equal Treatment Commission
- National Expertise Centre on Discrimination Cases - Public Prosecutor
- National Expertise Centre on Discrimination Cases - Police

2. Concerned government

There are many examples for the commitment of the government to anti-discrimination work:

- Subsidies for NGO's and projects (structural and temporarily)
- The existence of a national action plan on racism
- Commitment to anti-discrimination work and a gradual awareness that discrimination plays a considerable role in society, e.g. in employment
- The latest development in the anti-discrimination field is the fact that in 2007, a new organization in the Netherlands will be established, whose objective it is to combat discrimination on all grounds. The new organization is the result of a close cooperation between the Dutch National Bureau against Racial Discrimination (LBR) and the National Federation of anti-discrimination agencies (LVADB). This new 'association against discrimination' will be active on all grounds of discrimination as defined in Dutch equal treatment laws. LBR and LVADB will cease to exist, but the association keep its current activities in the field of racial discrimination, racism and xenophobia.

In a related development, the Minister of Immigration and Integration has announced that from 2007 on, the network of local anti-discrimination agencies will be strengthened and



professionalized. It is envisaged that in all municipalities a non-discrimination provision will be established.

Another example of the commitment of the Dutch government regarding anti-discrimination is the following.

The Association of Mortgage Financiers included in 2006 on advice of the Dutch Equal treatment Commission a ban on discrimination mortgage lending after a meeting with this Commission and at the insistence of the Minister of Finance, Gerrit Zalm. This minister threatened earlier in 2006 to introduce legal measures if the banks themselves failed to take action.

3. Network of NGO's

One of the key-players in this field and the Dutch partner of the GET in project is the LBR.

The tasks of this organisation are amongst others:

- Comments on political, legal and other developments
- Legal advice
- Extensive documentation
- Training courses and workshops

The LBR works together with partners like:

- National expertise centres on discrimination on age, handicap, gender and sexual orientation
- Equal Treatment Commission
- Local and regional Anti Discrimination Bureaus

The GET in project – the Dutch experience

The “Get in” project - Guide to equal treatment in the private sector - focuses on the area of discrimination involving “publicly offered goods and services” in the private sector. In the Netherlands, the project concentrates on the financial services sector (banks, insurance companies and credit institutions). Given the fact that there are many differences between Germany, Poland and the Netherlands regarding the (implementation of) anti-discrimination policies and practices, the Dutch part of the GET in project focused first of all on research and organizing meetings with representatives of Anti Discrimination Bureaus, Equal Treatment Commission, associations of insurers and banks, consumer organizations and migrant organizations.

The LBR had decided to concentrate on the financial sector because of the fact that there was very little know about the mechanisms in this sector that could lead to discrimination and the organisation in the past had received signals about discrimination in this sector. LBR therefore was already curious to find out what was going on.

Questions came up like: are there many discrimination complaints about this form of service provision? Is there evidence of structural forms of discrimination? How are discrimination complaints tackled and which organisations are involved with this?



LBR researched different tools to handle discrimination like legislation and self-regulation (codes of conduct).

Legislation

Most transactions within the financial services sector involving private individuals are consumer transactions, and therefore fall within the scope of property law and law of obligations within the Civil Code. In addition to the Financial Services Act and the general regulations in the Civil Code, administrative law and criminal law also contain specific anti-discrimination provisions.

Self-regulation

In addition to the legislation the Netherlands is also trying to stimulate self regulation of sectors by means of codes of conduct. Self regulation concerns regulations drawn up by organisations containing measures which affiliated members are required to implement to combat racial discrimination. These regulations are often codes or rules of conduct. There are no fixed rules for drawing up a code of conduct. General principles, such as a clear set of standards and a good complaints procedure, are however applicable as the basis for an effective code of conduct.

Banks

For instance looking at important service-providers like banks research showed that there aren't a great many complaints concerning discrimination/racism in the services provided by banks. The complaints that do arise are mainly handled by the Equal Treatment Commission (CGB), operating under the provisions of the Equal Treatment Act (AWGB). The AWGB came into force in 1994. This legislation bans a.o. discrimination in the field of goods and services, including financial transactions.

In terms of combating discrimination, little use is made of the complaints procedure operated by the banks themselves, and in any case, this does not lead to decisions in which a bank can be condemned for discrimination.

Insurance sector

A successful example of research which led to a code of conduct in the insurance sector is the following.

In 1986, in response to complaints, the LBR carried out an investigation of the car insurance sector. This led to a code of conduct specifically for this sector. Because discrimination complaints had also been received in other areas of insurance, a consultation process took place in the nineteen nineties with the Dutch Association of Insurers. This resulted in a code of conduct to prevent discrimination in the insurance industry. This code of conduct offers a wide range of options for making complaints. Later, the Institute for Insurance Complaints was set up, where consumers can file complaints.



Victims

Research registered two specific groups that faced most of the problems concerning discrimination in the financial sector.

The first group is the group of residence permit holders.

Persons with a temporary residence permit are by definition foreign nationals and, because of the extra demands placed on permit holders, only persons of non-Dutch nationality are affected. The Equal Treatment Commission has concluded that there is then a case of indirect discrimination on the basis of nationality.

The second group is the group of travellers.

Most complaints relating to insurances and discrimination concern the exclusion of travellers from household contents insurances. This affects a group of 35,000 Dutch nationals living in 9600 caravans/mobile homes. The majority of travellers do not have household contents insurance.

Conclusions

The analysis of all complaints and jurisprudence shows that relatively few discrimination complaints are filed concerning the issues investigated. There is little jurisprudence, and what there is often predates the introduction of the AWGB (Equal Treatment Act).

Barely no discrimination complaints are filed with the complaints organisations and arbitration boards. One reason for this is that citizens as well as specialists in the field are unfamiliar with the complaints procedures. In addition, the readily accessible procedure of the CGB means that many discrimination complaints are filed there.

The general conclusions of the research in the Netherlands were firstly that the various codes of conducts and complaints systems are rarely used for discrimination complaints and secondly, that the majority of complaints procedures serve as a good alternative to civil or criminal proceedings.

Awareness

Problems arose from the fact that it was difficult to find concrete cases and (therefore) to establish contacts with interested partners in the business sector.

Another problem was the fact that there was a lack of awareness among all stakeholders as to what is discrimination. Many forms of indirect discrimination were not recognized as such, e.g. discrimination on the basis of postal code (so-called redlining) or the demand to speak the language in the case of opening a bank account.

Source research GET in: Discrimination in the financial sector, LBR Rotterdam 2006, Mr. J. van der Vlist.

Poland

Mirosław Bieniecki

Caritas Polska, Warsaw

In order to present you a specificity of the “Get in” - project work in Poland, I have to introduce you to the topic of immigration in Poland.

In comparison to other countries involved in the “Get in” – project, Poland has considerably smaller numbers of minorities and immigrants and moreover, the members of these groups are dispersed and “racially” indistinguishable. Because of the specificity of immigrant groups and their relatively small numbers, Polish specialists in the field of discrimination, in most cases, focus on problems concerning specific minority/immigrant groups rather than all minorities/immigrants.

In contrary to most other EU countries, immigrants in Poland are not so numerous and they are most often quite well situated (especially that legal immigration considers mostly highly skilled professionals). Legal employment of foreigners has hardly any impact on the economy in terms of the labour market. On the other hand, migrants from post-Soviet countries who come to Poland on tourist visas and work in a shadow economy choose shuttle migration and leave the country after completing their work.

The number of immigrants living in Poland, although growing steadily since 1989, is still very small especially when compared to other European countries, i.e. United Kingdom or Germany. Even in comparison to other CEE countries such as the Czech Republic or Hungary this number appears relatively low. The national census carried out in 2002 indicated that only 40.200 foreigners resided in Poland. Nearly half of them were nationals of post-Soviet states.

For the past 16 years immigration to Poland has been dominated by people coming from Ukraine, Russia and other post-Soviet states. Two other categories are: foreigners coming from highly developed countries such as Germany, France and UK and immigrants from Asia, among whom Vietnam remains the dominating country of origin.

Besides these groups of foreigners settling/residing in Poland mainly for economic reasons, two other categories should be mentioned: immigrants looking for legal protection and repatriates. They account, however, only for a few hundred every year.

Another important note for the specificity of the Polish case is that for the majority of immigrants, Poland is not a place to settle. Therefore, they would never become clients of Polish social services or become a burden for social security or the education system. Those who settle in Poland usually do it because of family ties, a lack of contacts or resources to migrate further or because of stricter immigration policies in other countries. The situation that seems to cause the most problems is this decision not to settle in Poland, but to stay temporarily.

Considering the cases of racial or ethnic discrimination, the situation reflects the overall number of immigrants. The accidents of direct (e.g. behaviour of the civic servants, uninformed or having negative attitude towards migrant clients) or indirect discrimination (e.g. limited access to the workplaces) occur sporadically.

Poland is not a country where xenophobic behaviour and statements are popular. There is no feeling of strong anti-immigrant hostility nor any visible anti-immigrant protests. The actions of right extremists against foreigners are sporadic and are publicly condemned. The incidents of intolerance are rather connected with ignorance and prevailing stereotypes. They are present in everyday life but not in the activities of mainstream parties. Such a situation is determined not only by the minor scale of immigration, but also by a specific character of these processes and additional weight of other important social problems. For instance: high unemployment social exclusion that concerns so many immigrants in Western Europe in Poland concerns first of all those people who live in rural areas that used to be dominated by collective farming or post-industrial regions. Considering the fact that this situation changes very slowly, it may be concluded that immigration is not going to become a significant social problem in Poland in a predictable future.

Having on mind the present situation, I divided my "Get in" - work in two major parts: gaining information concerning the existing cases of discrimination and codes of conduct in Poland and building a network of contacts with other institutions involved in research and action against discrimination in Poland. I have been collecting and systematizing data concerning the subject, that is: studying the existing reports/publications on the subject of discrimination (especially racial/ethnic) and its specificity in Poland. Additionally I have been meeting and interviewing people who experience(or have experienced) such discrimination themselves and experts in this field who study this subject.

Gaining the information is also related to the networking part of the project that was continued throughout all time of its functioning. As a part of building the network of contacts, I met with several representatives of organizations dealing with the subject of discrimination (i.e. Institute of Public Affairs, Proxenia, Helsinki Foundation, UNHCR, Legal Advice Association, Association of Asylum Seekers, Ministry of Internal Affairs, Office for Immigrants and Repatriates, Ministry of Social Affairs,), as well as academics who deal with the subject (Warsaw University, Polish Academy of Sciences, Rzeszow University, others). Also, I have participated several conferences on the issue of migrations and discrimination in Poland, where I met members of other NGOs, academics and representatives of governmental institutions concerned with the issue.

In November 2005, I have organised (in collaboration with a Tradition and Social Change Research Team of the Institute of Philosophy and Sociology, Polish Academy of Sciences) a workshop on *Politics towards migrants and discrimination in Poland*. The workshop aimed an exchange of experiences and information among practitioners (representatives of ministries, and state institutions dealing with immigrants and the problem of discrimination), experts (representing organisations providing i.e. legal help to discriminated people) and academics who study the topics related to discrimination and migrations.

At the end of the first year of the project, some final conclusions concerning the issue of racial and ethnic discrimination in the private sector in Poland were put together in a form of an expertise written in collaboration with an expert from the Institute of Public Affairs.

The book was titled, *Non-Poles on the Polish labor market. Problems and challenges. An overview of the issue of racial/ethnic discrimination in the private sector in Poland*. Its goal was to gather the experience of Polish specialists in the field of migration, anti-discrimination, ethnic and minority studies in Poland and synthesize it into a comprehensive report that would be

adequate for the central purpose of the Get-in project. As such, the report focused predominantly on visibility and awareness of discriminatory acts committed in the area of “publicly offered goods and services” involving private sector and an evaluation of the specialists’ practical assessment of the political and juridical impact of the EU equal treatment policy and their future development.

The sources of data for the expertise includes materials collected through interviews with specialists as well as reports and studies conducted on this subject in recent years. Altogether it is an excellent description of the mechanisms of racial/ethnic discrimination in Poland and on its private labour market. This is also an useful material for future references.

The second year was a continuation of work conducted in the first year, with an additional focus on research and preparation of the guidelines – the final products of the project.

The mini-research was conducted in three cities: Lublin, Łuków and Białystok. I tried to find the application for the “GET in” - work in the local communities that have greater chances to interact with immigrants. The conclusions were similar to the ones gathered at the national scale. The antidiscrimination legislations that exists in Polish law seems to be good enough for the present situation, and the major task is to built up an awareness of the problem now, before it may consider the greater number of people.



Criteria for the comparability on the transnational level

Codes of conduct (c.o.c)	Poland	The Netherlands	Germany
In which areas codes of conducts do exist?	As far as it was observed in Poland, there are no c.o.c. concerning racial discrimination in Poland, besides general statements that "no one will be discriminated against because of sex, national origin race, etc..." It is related to the fact that there are very few people who are 'racially different' than the rest of the society.	In the Netherlands in almost every sector there are codes of conduct. In the financial sector there are also a lot of codes.	Only few customer oriented c.o.c. Security firms (branch) Hairdresser (branch) Retail industry Temporary employment companies
How far is the development of c.o.c.? (just single firms, whole branches of trade covered, ...)	If the c.o.c. exist, they are implemented as a standard in international companies, that treat them as a part of their policy. No such codes – since racism is not an important social issue, they are not being developed.	Most codes are far in their development. Most codes cover entire branches or parts of it. The Dutch government wants to have less legislation so they have been promoting coc for a long time. As a result of this most codes are far developed. After they asked the Equal treatment Commission for advice, the Contactorgaan Hypothecair Financiers (CHF - mortgage lenders) included in 2006 in its code of conduct a ban on discrimination in mortgage lending. The CHF introduced a ban on discrimination in mortgage lending after a meeting with the Equal Treatment Commission and at the insistence of Gerrit Zalm, the Dutch Minister of Finance. He threatened earlier that year to introduce legal measures if the banks themselves failed to take action.	c.o.c.s mostly exist in big (international) companies (metal industry/car manufacturers, Deutsche Bahn) and are mainly working place oriented. They are part of company agreements.
Why were the c.o.c. introduced? (certain difficulties encountered, corporate social responsibility, legislation, marketing or influence of pressure groups ...)	They were not, because the racism is not an important social issue in Poland (there are hardly any immigrants of different racial origin than most Poles).	In the Netherlands the government sees an importance for self regulation. So it has been promoted for branches to have a code of conduct.	The c.o.c. where mainly promoted by trade unions and influenced by European developments. There were insults within some companies and surveys showed racist attitudes of trade union members.

<p>How do the c.o.c. work? (regulations for behaviour of sales and security personnel, special treatment of minorities complaint management, evaluation)</p>	<p>If any, they refer to general statements that “no one will be discriminated against because of sex, national origin race, etc...”</p>	<p>Most of the codes are for a large part regulations for behaviour. Only a few codes have some arrangements for the treatment of minorities. Almost every code has some sort of complaint procedure but it depends whether it is a good procedure or not.</p> <p>The general conclusions of the research in the Netherlands were firstly that the various codes of conducts and complaints systems are rarely used for discrimination complaints and secondly, that the majority of complaints procedures serve as a good alternative to civil or criminal proceedings.</p>	<p>The c.o.c (customer oriented) stress the global principle of equal treatment of customers.</p>
<p>Mainstreaming equal treatment issues concerning access to goods and services</p>	<p>Poland</p>	<p>The Netherlands</p>	<p>Germany</p>
<p>What are the methods used to raise awareness? (Campaigning – mass media, minority media-, empowerment trainings...)</p>	<p>Although there is a great awareness of racial discrimination and antisemitism in the media, and every incident is always presented and publicly condemned, the racial discrimination itself is not a subject of public debates. The issue appears in media sporadically, i.e. in relation to racist behaviours of football fans, or in case of single cases of abuse of people of different races. The underlining statement for this point should be that an awareness of the issue is growing, since introduction of many EU sponsored programs concerning the topic and growing number of non-Slavic immigrants (though, it must be stressed that the growing number means <i>tens or hundreds</i> rather than <i>thousands</i>, please refer to the “Non-Poles on the Polish labour market.” ...).</p>	<p>There is a lot of attention in the media to raise awareness. Organisations like the LBR en ADBs play an important role in spreading information through their network. Also the Dutch national TV reserves time for broadcast organisation witch focus on ethnic minorities</p>	<p>Discrimination is not a big issue in the media and federal policy. The transposition of the EC Directives was not accompanied by a broad campaign. The media’s and press’ feedback on AD-Legislation was dominated by sharp rejection. Some pressure groups started campaigns to promote the AD-legislation which attracted not much attention</p> <p>On regional level there are some political initiatives raising awareness and TV and (local)radio programs focused on minority issues. Certain NGOs spread information about equal treatment issues via mass media and seminars for pupils and professionals</p>

<p>How many and which organisations are involved in the field? (ADBs, migrations services, pressure groups, minority organisations, NGOs or GO?...)</p>	<p>It is difficult to assess the total number of such organizations, since the issue of racial discrimination appears in Poland mainly on a margin of a broad topic of migrations to Poland (which itself is dominated by people of Slavic origin, predominantly Ukrainians). Also, the scientific institutes or teams that are parts of such institutes and deal with issue of migrations, minorities, discrimination, etc. appear practically at every public university...</p> <p>The examples are: Proxenia, Never Again, Poradnia Prawna dla Cudzoziemców, The Helsinki Foundation, Legal Advice Association, Ave-nir, Caritas, The Institute of Public Affairs and research and scientific institutes that conduct research on situation of foreigners in Poland (i.e. Traditions and Social Change Research Team at Institute of Philosophy and Sociology of the Polish Academy of Sciences, Centre of Migration Research at Warsaw University, and others).</p> <p>These organizations and institutes publish research reports, exercises and recommendations concerning issues of migrations in general (including discrimination because of race, national origin, etc.).</p>	<p>In the field of equal treatment there are a few key players in the Netherlands. The ADBs and NGOs like the LBR (race discrimination) en equality (gender discrimination). Also the commission for equal treatment is an organisation which is very important in this field.</p>	<p><u>NGOs:</u> There are only few (15-20) organisations which focus on AD counselling. There are many migration services run by welfare organisations where discrimination is not the main issue</p> <p><u>G.Os:</u> Ausländer/Integrationsbeauftragte (Authorities/Governmental Representatives for foreigners) on local, regional and federal level</p>
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<p>How do complaint procedures look like? (low level access for victims, possible legal courses, mediation...)</p>	<p>AS the discrimination is regulated by higher laws, each case can be reported directly to the police, to the court or to the prosecutor office. The prosecuting organ is obliged to initiate and conduct a preparatory procedure, and the public prosecutor is obliged to bring charges against and support the charge – prosecuted <i>ex officio</i>. In a case when constitutional rights were violated, a complain to the Ombudsman's Office can be filed. These institutions cannot refuse to accept the report on the crime.</p> <p>As the discrimination is persecuted <i>ex officio</i>, in case of a repeated issuance of a refusal to initiate proceedings or of discontinuance of the case, the victim can independently lay charges in court. The charge sheet lodged by the victim must be prepared and signed by a lawyer. In such situation it is recommended to ask for assistance and/or a legal advice from institutions that deal with anti-discrimination (the list is presented below).</p>	<p>It is not yet possible to speak about every code of conduct. Some codes have good complaint procedures while other don't have any at all. Sometimes you have more than one code in a sector and it depends against which organisation you want to lodge a complaint whether a good complaint procedure is available.</p>	<p>For victims of discrimination it is very difficult to find a nearby counselling service. There are almost no legal courses regarding discrimination cases. Mostly the cases are solved via mediation or public pressure. In addition to the target group oriented consumer services – mainly Verbraucherzentrale with bureaus all over Germany – offer legal advice for people having conflicts with suppliers. Though their approach is colour-blind and not focussed on the discrimination issue</p>
<p>How is the level of cooperation between the key actors (counselling services, pressure groups especially dealing with complaints from the private sector) regarding</p> <ul style="list-style-type: none"> • Individual complaints • Structural change 	<p>There are no counselling services, some NGOs fulfil their function providing a legal assistance to victims of racial discrimination.</p>	<p>In 2007 a new organization will be established, whose objective it is to combat discrimination on all grounds. The new organization is the result of a close cooperation between the Dutch National Bureau against Racial Discrimination (LBR) and the National Federation of anti-discrimination agencies (LVADB). This new 'association against discrimination' will be active on all grounds of discrimination as defined in Dutch equal treatment laws. LBR and LVADB will cease to exist, but the association keep its current activities in the field of racial discrimination, racism and xenophobia. In a related development, the Minister of Immigration and Integration has announced that from 2007 on, the network of local anti-discrimination agencies will be strengthened and professionalized. It is envisaged that in all municipalities a non-discrimination provision will be established.</p>	<p>There is a sufficient level of cooperation concerning discrimination in the housing sector . (ADBs, Migrant services and bureaus of the German Tenants' Association Deutscher Mieterbund)</p> <p>Complaints concerning access to other goods and services are handled by parallel infrastructure with hardly any cooperation:</p> <ul style="list-style-type: none"> - ADBs, and Migration services Not dealing with Antidiscrimination approach: - Consumer Services Verbraucherzentrale - Ombudsmen in the financial sector - Mediation bureaus of Chambers of commerce

<p>How is the level of juridical expertise at NGOs</p> <ul style="list-style-type: none"> - to support victims to take legal action - to file lawsuits on behalf of the alleged victim 	<p>The level of juridical expertise in NGOs such as Poradnia Prawna dla Cudzoziemców, The Helsinki Foundation, Legal Advice Association seems fine.</p>	<p>Legal action is not the focus of the ADBs, but depending on the size and professionalism of the organisation there is considerable juridical expertise at the ADBs. If legal action is considered important then the case is brought before the Equal Treatment Commission or court. The ADBs support the victims by advising them which course to take.</p>	<p>For there has been no explicit AD legislation and therefore legal action is not the main focus when handling complaints most of the counselling services (ADBs, Migration services) did not develop much legal expertise. Again the consumer service Verbraucherzentrale</p>
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Workshops





Forum 1

Protection against discrimination in the area of goods and services – the Netherlands

Dick Houtzager
LBR, Rotterdam

Introduction

The legal protection in the field of goods and services falls under the scope of the general non-discrimination laws. The legal protection is covered by both penal and civil legislation and in some cases, administrative law can be used. Apart from this 'hard law', also 'soft law' exists, in the shape of policies, regulations and codes of conduct, most often produced by entities in the private sector themselves.

In my presentation, I will first give an overview of the hard law, the legal provisions, and secondly, of the soft law.

Legal provisions

Criminal legislation

In The Netherlands, *criminal legislation* makes certain manifestations of racial discrimination liable for criminal prosecution. Discrimination in the context of a business or a profession¹ are punishable acts. The Criminal Code distinguishes between a criminal offence (*misdrijf*) and a misdemeanour (*overtreding*). For the former, intention needs to be proven, for the latter, intention is not necessary.

In practice, however, few cases are being prosecuted on the basis of the relevant articles. One of the reasons is the existence of civil legislation, which appears to be quite effective. Therefore, criminal law remains the *ultimum remedium*.

Civil law

Equal Treatment Act

The advantage of *civil* law provisions over criminal law lies for the victim of discrimination in the ownership of the case. Using civil litigation, the complainant can decide which steps s/he wants to take, whereas under criminal law, the police and the public prosecutor handle the case. Discrimination in access to and the supply of goods and services is forbidden under the Equal Treatment Act (ETA).

The ETA came into force in 1994 and covers a number of discrimination grounds: religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation or civil status. In the light of implementation of the EC-Directives 2000/43 and 2000/78, several changes have been introduced in the Act.

The scope of the ETA is wide. It includes employment, education, housing, health care, welfare, goods and services and it is aimed at both the public and the private sector.

As far as the public offer of goods and services is concerned, a general prohibition to discriminate exists in the course of carrying on a business or exercising a profession; by the public service; by institutions which are active in the field of housing, social services, health care, cultural affairs or education or by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

In order to enforce the ETA, in 1994, the government has established the Equal Treatment Commission (Dutch abbreviation: CGB). Its legal task is to investigate breaches of the equal treatment legislation and to give an opinion whether a case submitted before it is in breach of the law or not. Because the CGB is not a judicial body, its opinions are non-binding. If a victim wants to claim damages, s/he has to take the case to court in order to ask for financial or other kinds of compensation.

With regards to goods and services, the CGB has dealt with a wide range of cases.

Example: 2003-49:

Applicant has the Turkish nationality and has been living legally in NL, but for some period has not had a valid Dutch aliens document. He possesses a valid Turkish passport. A Dutch bank refused to transfer money to a bank in Turkey, because, apart from his Turkish passport, he could not show an additional identity document.

The requirement of identification with a Dutch aliens document does not directly refer to the nationality of the applicant, but the CGB concluded that there is indirect discrimination on the ground of nationality, because the requirement to identify with an additional document, is not required from native Dutch clients. This requirement is not proportional to the reducing the bank's operational risks and the final opinion is that there has been a violation of the law.

2006-05:

Applicant lives in a caravan and belongs to the so called traveller community. She has applied for a theft and fire insurance, but was refused by the insurance company.

In her complaint with the CGB she stated that caravans as far as insurance risk is concerned nowadays are similar in most ways with houses (construction materials etc.) The defence of the company is that they only offer three simple products through the internet and that the risk of a caravan is not the same as of a regular house.

According to the Commission, there is indirect discrimination, which is objectively justified. The offer through internet is not the same as an offer on paper through an insurance agent would be.

In order to give a picture of the number of complaints dealt with by the ETC:

*Number of opinions ETC relating to goods and services:
(race/nationality/religion)*

2001	21
2002	26
2003	24
2004	22

This is just a tip of the iceberg; data collected by the local anti-discrimination agencies show that the no. of complaints is higher:

Complaints goods and services ADAs (all grounds – percentage of total)

2001	337	(10%)
2002	306	(11%)
2003	281	(8%)
2004	284	(8%)

It is clear that only a fraction of the complaints with the ADAs result in an opinion of the ETC.

Research in the framework of a Dutch monitor project has shown that many people do not file a complaint because they think that complaining has no use. In the case of a rejected application for financial services, people will often not know there may be a discrimination case (especially in cases of indirect discrimination), others will apply to other service providers. Others, as often is the case with members of the traveller community, refrain from applying for theft and fire insurance at all.

Civil Code

Which articles of the Civil Code can be used for a procedure? Discrimination is contrary to the law as well as to general standards of reasonableness and fairness, which article 2 of book 6 of the Civil Code deems applicable to the conduct between creditor and debtor. In addition, an unlawful act as defined in article 162 of book 6 of the Civil Code can also constitute grounds for civil proceedings. A major difference compared with criminal law is that plaintiffs in civil law must win the case themselves. In criminal law the proceedings are taken over by the public prosecutor, after a charge has been made, while in civil law the plaintiff needs to engage a solicitor and initiate legal action personally. The high expense of doing this is one of the disadvantages of a civil action. Where criminal law is concerned, the State prosecutes the case; but where a civil action is concerned, it is the plaintiff who must bear all the expense. On the other hand, the plaintiff does retain control over the case, in contrast with criminal proceedings whereby after making the charge, one can no longer influence what happens.

The decisions of the civil court are binding and can be used in the event that losses need to be recovered.

The victim has the choice to start civil proceedings at the regular court, apart from the procedure at the CGB. The court will not only take the ETA into account, but it can also apply other civil laws. Discrimination is a special type of tort, and damages can be claimed under tort law.

Administrative law

Financial Services Act

The Financial Services Act came into force on 1 January 2006. This Act lays down rules for providing, brokering and advising on financial products for consumers and - in the case of insurances - also for businesses. The Act sets out requirements that financial service providers must meet in terms of integrity, expertise, sound business operations, financial security, transparency, and duty of care towards their clients.

The Financial Services Act contains no specific anti-discrimination provisions nor a clear complaints procedure. The Act does, however, appoint the AFM [Netherlands Authority for Financial Markets] as the industry supervisor.

The AFM cannot mediate between a consumer and the financial institution, but does attach great importance to complaints from consumers, as signals from the market play a major role in the supervision process. The AFM can therefore decide to set up an investigation into the institution concerned. On the grounds of its statutory duty to maintain confidentiality, the AFM cannot make any statement about whether or not an investigation into the findings will take place.

Depending on the outcome of such an investigation, the AFM is empowered to impose a fine or penalty, or even revoke licences. A repeat of the violation can be prevented by means of such measures. In the case of structural or serious complaints, it is therefore important that the AFM is informed.

Soft law: policies and regulations

Self regulation

In addition to the legislation mentioned in the previous chapter, the Netherlands is also trying to stimulate self regulation of sectors by means of codes of conduct. Self regulation concerns regulations drawn up by organisations containing measures which affiliated members are required to implement to combat racial discrimination. These regulations are often codes or rules of conduct. These codes generally include a clear set of standards and a good complaints procedure. They have been introduced in the banking sector, the credit institutions and the insurance sector.

The Banking Sector

Recent research, conducted on behalf of the Dutch Ministry of Finance, has shown that migrants in the Netherlands do not often use Dutch banks to transfer money to their country of origin. It is too expensive or they do not trust banks and use alternative channels: travelling family members or informal banking systems. Regular banks are not able to provide sufficient services to people living in a cash economy.

Although this may not illustrate severe forms of discrimination, it indicates there is a mismatch between groups of customers and service providers.

In the Netherlands, all banks are members of the Netherlands Bankers' Association. This Association does not have its own code of conduct, but does have an integrity code and applies general banking terms and conditions. It has also signed the General Declaration Against Racial Discrimination. The integrity code states that members must adhere to this Declaration.

In the integrity code, members of the Netherlands Bankers' Association declare that they will adhere to certain rules of conduct and guidelines with regards to privacy, the General Declaration Against Racial Discrimination. They do not contain any specific provisions relating to discrimination or racism.

Example: Arbitration Board for Banking Affairs



When complaints exist, these are initially submitted to the bank against which the complaint is directed. If the bank fails to deal with the complaint to the satisfaction of the complainant, the opportunity exists to engage the Arbitration Board for Banking Affairs. When a complaint is submitted directly to the Arbitration Board, it will be passed on to the bank concerned. Besides involving the Arbitration Board, a complainant also has the option of, as we have seen, filing a complaint with the Equal Treatment Commission. The traditional judicial options of criminal and civil law also remain open. The Arbitration Board is authorised to settle disputes only insofar as these concern the formation or the execution of contracts. The procedure operated by the Arbitration Board is readily accessible. The associated cost is 35 euros and the complainant does not require legal representation. In comparison with normal legal proceedings, the complaints procedure of the Arbitration Board is relatively quick (7 months) and the decisions are binding. It is not possible to appeal against a decision by the Arbitration Board. The only legal option then remaining is to lodge an appeal with the court within 2 months of the decision by the Arbitration Board.

Conclusion

The analysis of all complaints and jurisprudence shows that relatively few discrimination complaints are filed concerning the issues investigated. There is little case law. In the past two years, hardly any complaints on this issue have been filed with the Equal Treatment Commission.

Research among people from the complaints organisations, shows that barely any or no discrimination complaints are filed with the complaints organisations and arbitration boards. One reason for this is that citizens as well as specialists in the field are unfamiliar with the complaints procedures. The readily accessible procedure of the CGB means that the small number of apparent cases of discrimination are filed there.

Can we therefore conclude that discrimination hardly occurs in this sector? Unfortunately, this conclusion cannot be drawn so simply. Groups always exist who are more vulnerable than the average citizen and who require extra protection. Jurisprudence shows that in the past, a great deal of the policy that led to discrimination was aimed at foreign nationals with a residence permit. And at present, members of the traveller community still face structural problems when it comes to obtaining insurance coverage (in connection with their form of dwelling). There are, moreover, several signals indicating that this group encounters difficulties in other areas as well.

What can be said about the various codes of conducts and complaints systems? Firstly, that they are rarely used for discrimination complaints. Secondly, that the majority of complaints procedures serve as a good alternative to civil or criminal proceedings, given the inexpensive nature and short timeframe of the complaints procedure.

When filing a complaint with a complaints organisation, it is important to find out what consequences this has. For example, a complaint filed with the Institute for Insurance Complaints can be combined with a different procedure, such as that of the CGB.



2002-29:

Verzoekster heeft de Turkse nationaliteit. Zij beschikt over een (tijdelijke) verblijfsvergunning, namelijk een D-document (thans document I).

Verzoekster heeft een studentenrekening bij verweerder, een bank. Haar verzoek om een kredietfaciliteit is door verweerder afgewezen omdat zij niet voor onbepaalde tijd in Nederland mag verblijven. Verweerder stelt deze voorwaarde omdat hij het bedrijfsrisico bij het verlenen van krediet wil beperken.

De Commissie heeft reeds eerder geoordeeld dat het uitsluiten van houders van een D-document (thans document I) zonder nader onderzoek naar de daaraan ten grondslag liggende verblijfstitel of andere relevante omstandigheden een verboden indirect onderscheid op grond van nationaliteit kan opleveren. Indirect onderscheid dat niet objectief kan worden gerechtvaardigd.

2001-58

De wederpartij (een bank) stelt in de door haar gevoerde acceptatieprocedure voor het openen van een betaalrekening de aanvullende voorwaarde dat potentiële klanten die in het bezit zijn van een vreemdelingendocument of een buitenlands paspoort, ook een uittreksel uit het bevolkingsregister moeten overleggen. Aan personen die zich legitimeren door middel van een Nederlands paspoort of een Europese Identiteitskaart wordt deze voorwaarde niet (standaard) gesteld.

Verzoekster is van mening dat dit in strijd is met artikel 7 lid 1 sub a van de AWGB.

In het geding is de vraag of de wederpartij in haar acceptatiebeleid voor het openen van een betaalrekening onderscheid naar nationaliteit maakt, zoals bedoeld in de AWGB.

De Commissie stelt vast dat de wederpartij door de uitvoering van haar beleid direct onderscheid naar nationaliteit maakt. Immers, de buitenlandse nationaliteit van potentiële klanten zoals blijkt uit de bedoelde identificatiedocumenten, is op zichzelf reeds aanleiding om een zwaardere acceptatievoorwaarde te hanteren dan bij andere potentiële klanten. Er is niet gesteld of gebleken dat voor het onderhavige directe onderscheid een wettelijke uitzondering van toepassing is, zodat de Commissie van oordeel is dat de wederpartij in strijd handelt met art. 7 lid 1 sub a de AWGB en derhalve handelt in strijd met de wet.

1999-17

Verzoekster heeft via een verzekeringsagent verzocht een autoverzekering af te sluiten. Dit is door de verzekeraar geweigerd vanwege het feit dat verzoeksters echtgenoot in het verleden een ontzegging van de rijbevoegdheid heeft gehad. Verzoekster heeft van de verzekeringsagent vernomen dat zigeunerfamilies vaker door deze verzekeraar geweigerd worden. Zij is van mening dat onderscheid naar ras, geslacht en burgerlijke staat wordt gemaakt. Uit de verklaring van de verzekeringsagent valt niet af te leiden dat zigeuners vanwege hun afkomst verzekeringen worden geweigerd. Nu hiervoor ook overigens geen aanwijzingen zijn, acht de Commissie niet aannemelijk dat onderscheid naar ras is gemaakt. Evenmin is gebleken dat onderscheid is gemaakt naar geslacht of burgerlijke staat. Geen strijd met de wet.

Article 137g

1. A person who, in his official capacity, profession or business, intentionally discriminates against persons on the grounds of their race is liable to a term of imprisonment of not more than six months or a fine of the third category.
2. If the offence is committed by a person who makes a habit thereof, or in association with one or more persons, a term of imprisonment of not more than one year or a fine of the fourth category is imposed.

Article 429quater

1. A person who, in his official capacity, profession or business discriminates against persons on the grounds of their race, religion, personal beliefs, their sex or their hetero- or homosexual orientation, is liable to a term of detention of not more than two months or a fine of the third category.
2. The same punishment is imposed on a person whose actions or negligence in his official capacity, profession or business, without reasonable grounds, are intended to or can have the effect of negating or infringing the acknowledgement, the enjoyment or the equal opportunity to exercise the human rights and fundamental freedoms in the political, economic, social or cultural sphere, or in other spheres within society, of persons with a physical, psychological or mental disability.





Forum 2

How to establish strategies towards equal treatment of customers in the private sector?

Nils Pagels

Zoom – Society for Prospective Developments (Gesellschaft für prospektive Entwicklungen),
Göttingen

How to establish strategies towards equal treatment of customers in the private sector?

Nils Pagels,

zoom – Gesellschaft für prospektive Entwicklungen e.V.,
Göttingen

Input Forum 2 at the conference: „Vom Gesetz zur Praxis“ – Das
Allgemeine Gleichbehandlungsgesetz und seine Umsetzung im privaten
Geschäftsverkehr



Gesellschaft für prospektive Entwicklungen e.V.

Leading Questions

Three leading questions

- Which arguments seems to be able to convince private sector enterprises to establish e.g. codes of conduct or complaints management procedures?
- Which sectors could be convinced best?
- Are there some European examples of good practice?



Gesellschaft für prospektive Entwicklungen e.V.

Main arguments against active strategies

- Discrimination in private business connections are „private“. The freedom of contract must not be questioned
- There is no discrimination in the private business
- Some discrimination does exist, but not in our company
- There is no need for specific strategies, if there is a single case of discrimination we are able to handle it with our normal management procedures.
- Perhaps it is a problem, but there are more serious problems for us.
- The effort to establish active strategies is too big for such few cases
- There are some cases of unequal treatment, but the other costumers ask for.

Example UK (Commission for Racial Equality)

- In Uk as well much more activities towards equal treatment at the workplace
- Arguments of CRE towards private enterprises:
- More Profit
 - Advertisement („There is no discrimination in our enterprise“)
 - Market access to other target groups
 - Consumer Satisfaction = Enhancement of internal team spirit = higher motivation of employees, less illness, higher effectiveness
- Less risk of business
 - Avoidance of conviction in the ground of antidiscrimination laws
 - The public sector ties down the tender procedures to the existence of comprehensive equality strategies more and more

Main factors to convince Enterprises

Three main factors

- More profit
- Benefit or loss of image
- Fear of sanctions

Transferibility towards the situation in Germany

Basic Problem

- No tradition of antidiscrimination policy
- Because of the discourse on AD-legislation AD-policy in Germany has a very negative image

In which sectors discrimination is most common?

- Example „Get In“ – Intermediate Report:
 - Catering/Discotheques
 - Public Transport
 - Housing Companies

Are the three main factors applicable?

Transferability towards the situation in Germany

	Profit	Image	Sanction
Catering/ Discotheques	???	???	Yes
Public Transport	???	???	Yes
Housing Companies	???	???	Yes

Transferability towards the situation in Germany

Which sectors could be convinced most easily?

- Not specific, depends on costumers, local environment etc.
- Some criterieas:
 - Enterprises in keen competition to get migrants as costumers or to get international costumers
 - Enterprises with strong connection to anglo-saxonian area and being experienced with diversity and AD-concepts
 - Enterprises with a „bad“ image

Strategies for Germany

- Win good practice enterprises as examples
 - Create a positive image of antidiscrimination strategies
 - Use European Initiatives to convince enterprises in Germany
- Public bodies have to help to create better general conditions
 - Linking of public tender procedures to the existence of active antidiscrimination strategies
 - Support in composing Codes of Conduct/Practice
- Use of the „Allgemeine Gleichbehandlungsgesetz“ to „threaten“ enterprises

Forum 3


The General Equal Treatment Act in the field – opportunities and limitations for consumers

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General Equal Treatment Act in practice

© Michael Wrase




The General Equal Treatment Act in the field

Opportunities and limitations for consumers

1

General Equal Treatment Act in practice

© Michael Wrase



Prohibition of discrimination in accessing and supplying goods and services

Legal basis:

- European Law:
 - Anti-Racism Directive 2000/43/EC: “Race” and ethnic origin
 - Gender Directive RL 2004/113/EC: Gender
- National Law:
 - central: §§ 19 – 21 AGG General Equal Treatment Act: “Race”, ethnic origin, gender, religion (not ideology), disability, age, sexual orientation (documents at <http://baer.rewi.hu-berlin.de/wissen/>)
 - subsidiary: blanket clauses (§§ 138, 242, 307 BGB German Civil Code) in relation to Art. 3 II, III GG Basic Law=> as good as useless up to now

2





“Race” and ethnic origin

- According to § 19 II in relation to § 2 I Nr. 8 AGG: comprehensive protection against discrimination in all goods and services, provided by the public sector
- According to the Directive, basically no possibility of justification for acts of direct discrimination
- In the AGG however:
 - § 19 III: Creation and maintenance of socially stable population patterns and balanced settlement patterns and well-balanced economic, social and cultural conditions
 - § 19 V 1, 2: Obligations which establish a particularly close or confidential relationship (esp. in tenancy relationships on the same land)



Gender

- Gender Directive to be implemented by 21st December 2007
- But: member states may not undertake any measures which run counter to the aims of the Directive (see judgement Mangold C-144/04, November 2005: unlimited time-limits for contracts for employees over 52 in accordance with TzBfG Part-time Work and Temporary Employment Contracts Law violated framework directive)
- Application in accordance with Art. 3 Directive: Goods and Services, provided by the public sector without distinction of person
- Supposedly already covered in §§ 19 ff. AGG
- But: implementation remains clearly below Directive standard (e.g. grounds for justification in § 20 AGG)



Gender, religion, disability, age and sexual orientation

1. Application

- limited protection against discrimination – only for bulk business and private insurance
- legal definition in § 19 I No. 1:
Obligations
 - 1) which typically result without distinction of person in comparable conditions (bulk business) or
 - 2) for which distinction of person has a lesser significance according to the type of obligation and the conditions to be compared result in a great number of casesWhat does this depend on: the “typical obligation” or the service provider?
When does distinction of person have lesser significance?
Consumer credit? Pubs? Renting accommodation?

5



- Rent for accommodation, § 19 V 3 AGG:
“The renting of accommodation not just for temporary use is as a rule not business as defined in paragraph 1 No. 1, where the landlord rents out no more than 50 apartments.”

Justification of differentiated treatment:

- Basically only: “material reason” (§ 20 I 1 AGG)
- Test of proportionality (?):
legitimate objective => listed in § 20 I 2 No. 1 – 4 AGG
Measure is...
appropriate => objective can be achieved
necessary => no mitigating non-discriminatory means
reasonable => consideration

6





Private insurance

- falls under ban on discrimination according to § 19 I No. 2 AGG (but only from the end of 2007!, § 33 IV AGG)
- § 20 II 1 AGG: permits differentiated treatment based on gender, where consideration “is a determining factor in a risk assessment based on relevant and precise mathematical and statistical data as employed by the insurance industry”
- § 20 II 2 AGG: maternity costs associated with pregnancy and motherhood may not lead to differences in premiums or services under any circumstances
- § 20 II 3 AGG: “Differentiated treatment due to religion or ideology, disability, age or sexual orientation is ... only permitted, where this is based on recognised principles of risk-adequate calculation ...” => no blanket dismissals

7



Penalties - § 21 AGG

- Failure to act & elimination of continuous discriminatory practice
- Compensation for damages incurred
- Basically no right to enter into a contract which is (so-called “obligation to contract”)
- Reasonable monetary compensation for non-material damages (in accordance with Directive and European Court of Justice: effective, proportionate and a deterrent)
- § 21 V AGG: “A case ... must be put forward within a period of two months. When this period has expired, the case can only be put forward if the disadvantaged person was prevented from observing the time-limit without fault on their part.”
Violation of EU legal principle of equivalence?

8



Legal mobilisation

The affected persons are afraid of calling on the assistance of lawyers.

Reasons:

- Internalised experience of discrimination
- Poor evidence
- Inadequate information
- Shy of legal debate/risk of lawsuit
- Financial reasons (legal protection insurance?)

=> Anti-discrimination groups and offices + consumer organisations have an important role in mobilising legal protection



Anti-discrimination groups' strategies:

1. Information and counselling (e.g. guides): consumers, consumer organisations – advice centres
2. Networking, exchanges, collaboration – inter-agency as well as with lawyers
3. Strategic conducting of cases

Problems:

1. Staff and actual resources
2. Inadequate power of representation (in court case)
3. Deadline for submission: 2 months is much too short





Case Study 1 Pub

A goes into a pub in Kreuzberg. The bar manager refuses to serve him, as it's a "private party". Mr. A clearly believes that this is a pretext not to serve him, as he is black. He then goes out of the pub and talks to the guests who are sitting outside the pub. They confirm to him that the pub is open to the public.

A goes back into the pub to complain. Again, the bar staff ask him to leave the pub, as there is no place for him, and inform the police.

After this incident, A delays doing anything about it. After seeking advice from an anti-discrimination group approx. three months after the event, he wants to put forward a claim for compensation against the owner of the pub in accordance with the AGG.



Case Study 2 Scoring

(see also <http://www.datenschutzzentrum.de/scoring/>)

Mrs. B wanted to take out a loan for more than €4,000, which was available to all customers from the Bank C. B's parents are from Turkey; she has a Turkish surname. B lives in the Neuköln District of Berlin.

The loan application is refused without giving any reasons, although as a cleaner B receives a regular monthly income of €950. B assumes that the loan was refused on discriminatory grounds.



Case Study 3 Mail order

G, a student of Vietnamese origin orders a notebook which is a bargain (€ 500) from a large German mail order company and applies to pay by installments, which he is refused.

His partner who is of German origin orders on the same basis from the mail order company, however, she receives approval for payment by installments as a student.



Case Study 4 Housing

K is HIV-positive and has a disabled pass. He wants to move into flat-share accommodation as a sub-tenant for someone who has moved out. He shows the property manager his unemployment benefit advice and his disability pass.

The property manager, who manages more than 50 apartments for different private owners, then calls his previous flatmate as well as K and asks what type of disability he has; both refuse to provide this information. The property manager then refuses to conclude the rent contract.

Reason: the landlord he represents fears that in the case of a sale or refurbishment K will make a case for redesigning the building or the installation of a lift or similar.





Case Study 5 Insurance

J was born in Berlin in 1962 and is mother of two children aged 15 and 17. She suffers from neurodermatitis as well as allergic rhinitis and has continuous treatment with antihistamines and occasionally with cortisone-containing external therapy.

The health authorities award the claimant a degree of disability of 40 due to an externally-visible gradual loss of freedom of physical movement.

Since 1995 J has been employed full-time by Company R as sales assistant on a double-shift system and since 1998 part-time (7 hours a day). Up until now she has never been unfit for work or off sick because of the neurodermatitis.

J would like to take out insurance against incapacity to work with the R Insurance Company. The insurance company refuses the application.



Annex





Evening programme

Monday, 30th October 2006

18.00 - 20.00 English language tour of Cologne focussing on anti-discrimination issues

20.00 Evening meal and programme of entertainment

Daytime programme

Tuesday, 31st October 2006

09.30 Arrival and coffee

Moderation of the conference: Dimitria Clayton

10.00 Welcome adress

- Theresia Wunderlich, Head of department for social and health-care affairs, Caritas Germany, Freiburg

10.15 Opening address

- Thomas Kufen, Integration Officer for the State Government of North Rhine Westphalia

10.30 – 12.00 Equal treatment in accessing goods and services

– insights and perspectives -

– Mario Ohoven, President of the National Association of SME Businesses [Bundesverband mittelständische Wirtschaft]

– Patrick von Braunmühl, Head of Economic and Legal Affairs Dept. at the Federation of German Consumer Organisations [Verbraucherzentrale Bundesverband]

– Pascale Charhon, ENAR

12.00 Project outcomes

– Isabell Zwania, Project coordination, Deutscher Caritasverband

– Hartmut Reiners, ARIC-NRW e.V.

– Leyla Hamidi, LBR Netherlands

– Miroslaw Bieniecki, Caritas Poland

13.00 – 14.00 Lunch

14.00

Forum 1: **Legislation and self regulation related to equal treatment in goods and services**

➤ Input: Dick Houtzager, LBR Netherlands

➤ Moderator: Leyla Hamidi, LBR Netherlands

➤ Language: English (simultaneous translation into German)

Forum 2: **Establishing equal treatment strategies for customers in the private sector**

- Input: Nils Pagels, Zoom – Gesellschaft für prospektive Entwicklungen [Society for Prospective Developments]
- Moderator: Hartmut Reiners, ARIC-NRW
- Language: German (simultaneous translation into English)

Forum 3: **The General Equal Treatment Act in practice – opportunities and limitations for consumers**

- Input: Michael Wrase, Law Faculty at Humboldt University in Berlin
- Moderator: Jennifer Pfeffer, OCV Köln
- Language: German

15.15 Break

15.30 Plenary - presentation of results

16:00 Social gathering with music and a celebratory drink



List of Participants

Nr.	Vorname	Nachname	Geschäftsstelle	Ort
1	Roberto	Alborino	Deutscher Caritasverband e.V.	Freiburg
2	Julia	Althoff		Berlin
3	Nina	Dr. jur. Althoff		Berlin
4	Gudrun	Bahr	Haus der Kulturen	Herten
5	Mirek	Bieniecki	Caritas Polska	Polen
6	Ilse	Biesewinkel	Rom e.V.	Köln
7	Vlatka	Blagaic	Caritas Wuppertal	Wuppertal
8	Jolanta	Boldok	Stadt Köln interkulturelles Referat	Köln
9	Barbara	BOS	Guest of LBR	Niederlande
10	Roy	BUDJHAWAN	Guest of LBR	Niederlande
11	Stephanie	Bulkowski	Dolmetscherin	Heidelberg
12	Pascale	Charhon	European Network against Racism	Brussels
13	Dimitria	Clayton	Moderation	Köln
14	Mito	CROES	Guest of LBR	Niederlande
15	Kenneth	Cuvalaj	Guest of LBR	Niederlande
16	Michael	Dälken	DGB Bildungswerk	Düsseldorf
17	Kai	Diekelmann	DiCV Köln e.V.	Köln
18	Heike	Fritsche	Antidiskriminierungsbüro e.V.	Leipzig
19	Leyla	Hamidi	LBR	Rotterdam
20	Dick	Houtzager	LBR	Rotterdam
21	Fatoş	IPEK-DEMIR	Guest of LBR	Niederlande

22	Sonsoles	Jimenez Lopez	CV Kreis Mettmann	Langenfeld
23	Anke	Kirchner	Verbraucherzentrale	Düsseldorf
24	Eva	Krause	Büro für sozialwirtschaftl. Beratung	Köln
25	Doris	Krieger	DiCV Köln e.V.	Köln
26	Sheila	Kroes	Guest of LBR	Niederlande
27	Thomas	Kufen	Landesregierung Nordrhein-Westfalen	Köln
28	Monika	Kuntze	CV Köln e.V.	Köln
29	Irmina	Kurtiuk	Guest of Caritas Polska	Polen
30	Heike	Lammertz	DiCV Köln e.V.	Köln
31	Jan	Lamontain	Ministerium f. Generationen, Familien, Frauen und Integration des Landes NRW	Düsseldorf
32	Ulrike	Levertz	Caritas Neuss e.V.	Neuss
33	Doris	Liebscher	Antidiskriminierungsbüro e.V.	Leipzig
34	Eben	Louw	Bund gegen ethnische Diskriminierung	Berlin
35	Kornelia	Meder	CV Köln e.V.	Köln
36	Marion	Müller	Ministerium f. Generationen, Familien, Frauen und Integration des Landes NRW	Düsseldorf
37	Heinz	Müller	DiCV Köln e.V.	Köln
38	Behshid	Nayafi	agisra Arbeitsgemeinschaft gegen intern. Rassistische Ausbeutung	Köln
39	Mario	Ohoven	Bundesverband mittelständischer Wirtschaft	Berlin
40	Nils	Pagels	Zoom-Gesellschaft für prospektive Entwicklungen e.V.	Göttingen
41	Mikolaj	Pawlak	Guest of Caritas Polska	Polen
42	Susanne	Rabe- Rahmann	CV Köln e.V.	Köln
43	Hartmut	Reiners	ARIC	Duisburg



44	Elisa	Rossi	Deutscher Caritasverband e.V.	Freiburg
45	Beata	Samoraj	Guest of Caritas Polska	Polen
46	Karola	Schmorde		Rangsdorf
47	Constanze	Schnepf	IBIS-Interkulturelle Arbeitsstelle e.V.	Oldenburg
48	Petra	Schroeder	Deutscher Caritasverband e.V.	Freiburg
49	Rainer	Schumacher	DiCV Köln e.V.	Köln
50	Katarzyna	Sekula	Guest of Caritas Polska	Polen
51	Katharina	Serka	Bund gegen ethnische Diskriminierung	Berlin
52	Bartlomiej	Smoter	Guest of Caritas Polska	Polen
53	Patrick	von Braunmühl	Verbraucherzentrale Bundesverband	Berlin
54	Hermann-Josef	Wienken	Caritasverband Düsseldorf	Düsseldorf
55	Anna-Livia	Wörner	Dolmetscherin	Wuppertal
56	Michael	Wrase	Humboldt-Universität Berlin	Berlin
57	Theresia	Wunderlich	Deutscher Caritasverband e.V.	Freiburg
58	Isabell	Zwania	Deutscher Caritasverband e.V.	Freiburg
59	Anke	Zwink	Antidiskriminierungsstelle Brandenburg	Potsdam