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**Strengthening anti-discrimination policies**

**Document 8**

**Analysis of the current organisational structures  
for the implementation of anti-discrimination  
policies in Poland**

**Conducted in the framework of the  
Twinning Project Poland – Austria  
“Strengthening Anti-discrimination Policies”  
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## 1. Present institutional framework

### 1.1. The Ombudsperson

Article 1 Para. 3 of Act on the Ombudsperson says: “In cases of protection of human and civil rights and liberties, the Ombudsperson examines if due to action or desisting from action by organs, organisations and institutions obliged to observe and realise these rights and freedoms, law – as well as principles of social intercourse and social justice – were not infringed”.

Therefore, it seems that powers of the Ombudsperson are limited to public institutions or ones that perform tasks from public sphere, and do not cover issues like refusal of service by an individual or a private entity. (The labour-related sphere is a different issue, as it is subject to control by the Labour Inspectorate).

Under Article 11, the Ombudsperson may take a case and launch explanatory procedure but may also refuse to take up a case only on the basis of a complaint. Such a decision is not subject to any supervision (which is consistent with the model of the Ombudsperson as an independent body).

From Act on the Ombudsperson it stems that the only powers which may be applied directly against an individual are:

- filing – to a municipal court – a motion for punishment (provided in the Code of Minor Offences), and
- demanding a public prosecutor to launch a criminal procedure, if – in Ombudsperson’s opinion – a crime (prosecuted *ex officio*) was committed.

However, considering the scope of powers of the Ombudsperson set out in Article 1 Para. 3 of Act on the Ombudsperson (“organs, organisations and institutions obliged to observe and realise these rights and liberties”), it is questionable if these powers can be used in case of a discrimination committed by an individual or by a private entity.

In Report of the Ombudsman, Prof. Andrzej Zoll, for 2002, several interventions concerning discrimination have been mentioned in the following issues:

- lack of access of non-Polish nationals to farmers' social insurance
- attempt to mediate in conflict between the Border Guard and local Lithuanian community in Pusk (location of new local headquarters of the Border Guard)
- discrimination of deaf people during media campaign on EU accession (as public TV channels did not provide interpretation into sign language)
- intervention on unequal rights for part-time employees in receiving severance pay (which affected a large portion of disabled persons, as many of them work part-time)
- discrimination of elderly people – especially those over 70 – by banks (refusals to give loans, allegedly only on the basis of the age of the applicants).

## **1.2. The Working Group on National Minorities**

The Working Group on National Minorities was established on 6 February 2002 as an advisory body of the Prime Minister. It continues the work of Inter-Ministerial Working Group on National Minorities that worked in the period 1997–2001.

The Working Group on National Minorities is composed of representatives of ministries responsible for: internal affairs and administration, finance, education, labour and social policy, justice, foreign affairs, and of National Statistical Office, Council for the Protection of Memory of Struggle and Martyrdom, the Committee for European Integration and Chairperson of the Foreigners' and Repatriates' Office. A representative of National Minorities Division (within the Ministry of Interior and Administration) attends the Working Group as well.

Vice-Minister of the Interior and Administration is *ex officio* the Chairperson of the Working Group, a vice-minister in the Ministry of Culture is the Vice-Chairperson, and the clerk in the Ministry of the Interior and Administration is the Secretary.

Within the Working Group, there are: Sub-Team on Education of National Minorities (since 2001) and Sub-team for Roma Issues (since 2002).

The Working Group's main responsibilities (as listed on the website of the Ministry of Interior and Administration) are:

- to develop government measures to be taken with a view to creating adequate conditions for national minorities;
- to coordinate activities pursued by the government administration bodies dealing with national minority issues;
- to assess and propose solutions aimed at ensuring the rights and satisfying the needs of national minorities;
- to prevent any infringement of national minority rights;
- to prepare studies on the situation of national minorities in Poland;
- to publish and promote national minority issues and problems among the Polish public opinion.

The Working Group operates as an advisory body of the Prime Minister, so has no influence on individual cases. However, it plays an important political role (e.g. in drafting the Pilot Government Programme for Roma Community in Malopolska Province).

### **1.3. The Government Plenipotentiary for Disabled Persons**

The Government Plenipotentiary for Disabled Persons was established on the basis of Act of 27 Aug. 1997 on Vocational and Social Rehabilitation and Employment of Disabled Persons. Office of the Plenipotentiary is a separate unit within the Ministry of Economy, Labour, and Social Policy.

As laid down by Article 34 of the Act, tasks of the Plenipotentiary include: work on government programmes, drafting or providing opinion about legislative documents concerning disabled persons, coordination of activities for empowerment of disabled persons, supervision over actions listed in the Act etc.

The list shows that the Plenipotentiary is primarily an advisory body (does not make decisions in any field of government's policy) with certain supervisory powers over decisions of provincial commissions on deciding on the extent of disability and over "enterprises of protected labour". Counteracting discrimination of the ground of disability is not mentioned explicitly among the tasks of the Plenipotentiary (only Article 34 Para. 3 point 6 sets up a general task of "carrying out activities aiming at

reduction of effects of disability and at reduction of barriers which impede functioning of disabled persons within the society”). Therefore, it seems that the Plenipotentiary has no power to consider individual complaints on discrimination on the ground of disability.

## **2. Course of events**

**25 June 2002:** The Ordinance of the Council of Ministers from 1999, by which the Government Plenipotentiary for Equal Status of Women and Men has been created, was amended by enlarging the powers and tasks of the Plenipotentiary - now including in § 2 subpara. 2 the following obligation:

“making arrangements for establishing an office for counteracting discrimination based on race, ethnic origin, religion or beliefs, age and sexual orientation, including development of a schedule of measures aimed at creation of the office and preparation of legal acts drafts, pertaining to the office functioning” (for the updated text of the Regulation refer to Annex I).

At the same time, § 4 was introduced into the Regulation, empowering and obliging the Plenipotentiary to perform her functions related to the grounds of discrimination covered by § 2 subpara 2 until the establishment of a new office; however, the budget of the Plenipotentiary was not increased.

**22 September 2002:** the Council of Ministers decided to charge the Plenipotentiary with the preparation of a draft resolution on establishing an institution for counteracting discrimination on the grounds of race, ethnic origin, religion and beliefs, age, and sexual orientation. The deadline was set as to December 2002.

**December 2002:** the Plenipotentiary submitted draft “Act on Inspector General for Counteracting Discrimination” to the Head of the Prime Minister’s Chancellery and started consultations with government institutions and with social partners. An outline of this draft is included as Annex II.

**27 January 2003:** Due to substantial discrepancies of views as to the establishment of the Office for Counteracting Discrimination, the work on the draft was suspended.

**22 April 2003:** The Council of Ministers *noted*, that “*the system of effective counteracting discrimination will be based on work undertaken by institutions adequate for various kinds of discrimination*”. However, a formal decision was not taken.

**10 July 2003:** The Government decided to charge the Plenipotentiary with the elaboration of assumptions for a draft act on the establishment of an office. These assumptions were elaborated and distributed among the ministries, who sent their comments to the Plenipotentiary.

**31 July 2003:** The guidelines were discussed by the Committee of the Council of Ministers; the Plenipotentiary was asked to present new guidelines that would include arguments for and against both a centralized and a decentralized model.

**2 October 2003:** A consultation meeting on the organisational two models was held by the Plenipotentiary. However, the discrepancies persisted.

**November 2003:** The monitoring report published by the European Commission early November 2003 on pages 41f stated: “Moreover, the non-employment aspects of the Race Directive need to be transposed and the Equality Body required by the *acquis* needs to be established. ... Enhanced efforts are also required to ensure the full transposition and implementation of the anti-discrimination *acquis*.”

**24<sup>th</sup> February 2004:** the Government made the decision that „due to realisation of programme of cuts in public expenditures, incl. those for government administration – establishing a central governmental body for equal status of women and men and for counteracting discrimination should be seen as a target solution. At the moment, tasks which the Government Plenipotentiary is responsible for should be assigned to existing state organs and offices, leaving the tasks in the field of equal status of women and men with the Plenipotentiary”<sup>1</sup>.

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<sup>1</sup> [http://www.kprm.gov.pl/441\\_11022.htm](http://www.kprm.gov.pl/441_11022.htm)

### 3. Basic issues under discussion

The basic issues under discussion were the following:

- **Centralised versus decentralised model**

The centralised model would be based on one separate administrative body established to counteract all kinds of discrimination. In the Plenipotentiary's opinion (reflected in the guidelines), the "*Office for Counteracting Discrimination*" [which is the name currently suggested] would consist of three departments: for equal status of women and men, for discrimination on grounds other than sex, and for providing legal aid.

The decentralised model would divide the tasks between the Ombudsperson as the main responsible body, which would provide legal aid to individuals, and other government institutions, implementing the Directives in their fields. This model would require changes in the Act on the Ombudsperson and in addition legislation related to other authorities. In addition, a separate body to deal with discrimination on grounds of sex would be established. However, until now the details of this model have not been elaborated.

- **Location of the Head of the office within the structure of administration**

It should be noted that the "Beijing Platform of Action" (Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), chapter H) would require that a body responsible for the advancement of women should be located within the Government ("Cabinet minister"). Indeed, the Beijing Platform of Action states:

**"Strategic objective H.1. Create or strengthen national machineries and other governmental bodies**

Actions to be taken

205. By Governments:

(a) Ensure that responsibility for the advancement of women is vested in the highest possible level of government; in many cases, this could be at the level of a Cabinet minister; ..."

- **Regional branches of the Office**

One question under discussion was whether the new institution should have regional branches, one of its tasks being to provide legal aid to persons discriminated against, which would be illusory if there was only one office in the capital city so that persons would have to travel from all over the country in order to get legal aid.

## Annex I

# REGULATION OF THE COUNCIL OF MINISTERS of 25 June, 2002

on the Government Plenipotentiary for Equal Status of Women and Men

“On the grounds of article 10 item 1 and 4 of the Law of August 8, 1996 of the Council of Ministers (*Official Journal of Laws* 1999, No. 82, item 929, 2000 No. 120, item 1268 and 2001 No. 102, item 1116 and No. 154, item 1799 and 1800) it is ordered what follows:

### § 1.

1. A Government Plenipotentiary for Equal Status of Women and Men, hereinafter referred to as the „Plenipotentiary”, is established.
2. The Plenipotentiary is the Secretary of State in the Chancellery of Prime Minister .

### § 2.

The duties of the Plenipotentiary include:

- 1) accomplishment of government policy within the scope of equal status of women and men,
- 2) making arrangements for establishing an office for counteracting discrimination based on race, ethnic origin, religion or belief, age and sexual orientation, including development of a schedule of measures aimed at creation of the office and preparation of legal acts drafts, pertaining to the office functioning.

### § 3.

The duties of the Plenipotentiary within the scope of equal status of women and men shall specifically include:

- 1) making analysis and evaluation of the legal and social situation with respect to equal treatment and equal opportunities of women and men, initiating and coordinating actions aimed at achieving equal treatment and equal opportunities for women and men as well as protection against discrimination based on sex in all the areas of social life,
- 2) incorporating the principle of equal status of women and men into all the fields and scopes of the government policy,
- 3) analysing and evaluating the legal solutions in respect to equal treatment and equal opportunities of women and men, also in view of the regulations of international law, and submitting to appropriate bodies proposals to issue or



modify the legal acts within the scope of the matters which fall within the Plenipotentiary competence,

- 4) expressing opinion on legal acts and other governmental documents drafts, affecting the situation within the equal status of women and men,
- 5) developing legal acts and other governmental documents drafts, affecting the situation within the scope of equal status of women and men,
- 6) promoting, disseminating and propagating the issues related to equal treatment and equal opportunities of women and men, including the awareness of discrimination based on sex as well as undertaking informative and educational actions aimed at raising the social awareness in this respect. ,
- 7) co-operation with appropriate units of public administration, non - governmental organisations and institutions – within the scope of their responsibility for implementation of programmes promoting equal status of women and men and counteracting discrimination based on sex,
- 8) inspiring and supporting the activities of groups, organisations and circles, promoting equal status of women and men and counteracting discrimination base on sex,
- 9) initiating and implementing or co-ordinating and monitoring the implementation of governmental programmes aimed at achieving equal status of women and men and counteracting discrimination based on sex,

#### § 4.

1. Until the office in charge of counteracting discrimination is established, the duties of the Plenipotentiary include promoting, initiating, implementing or co-ordinating the implementation of governmental programmes aimed at counteracting discrimination on the grounds, referred to in § 2 subparagraph 2.
2. The Plenipotentiary exercises the duty, referred to in item 1, specifically through:
  - 1) spreading the knowledge about discrimination and its manifestations as well as about the methods and strategy of counteracting discrimination,
  - 2) co-operation with appropriate units of public administration, non-governmental organisations and institutions – within the scope of their liability for carrying out educational programmes related to counteracting discrimination,
  - 3) initiating, evaluating and drafting legal acts and other governmental documents, aimed at counteracting discrimination,
  - 4) inspiring and supporting the activities of groups, organisations and circles to combat discrimination,
3. Until establishing the office in charge of counteracting discrimination, the Plenipotentiary is authorized to access the Community programmes, aimed at combating discrimination on the grounds referred to in § 2 subparagraph 2 and to their implementation.

#### § 5.

In addition, the duties of the Plenipotentiary, executed in agreement with the Minister of Foreign Affairs, include:

- 1) co-operation in the matters related to equal status of women and men and discrimination on the grounds referred to in § 2 subparagraph 2, with foreign countries, international organisations and institutions,
- 2) preparation of reports on realisation of international agreements binding the Republic of Poland and pertaining to equal status of women and men and combating discrimination based on sex, as well as presentation of opinions about the possibilities of binding the Republic of Poland by other similar international agreements.

#### § 6.

- 1) The Plenipotentiary shall fulfil his duties in co-operation with appropriate units of governmental administration, which are obliged to co-operate and support the Plenipotentiary, specifically by providing all the information and documentation necessary for implementation of his duties.
- 2) The Plenipotentiary may apply to appropriate bodies of governmental administration, indicating the problems within the scope of his responsibility, the solution of which falls within the competence of such bodies, with a motion to consider the matter and to take a stand on it.
- 3) The Plenipotentiary shall undertake co-operation with local self-government units and non-governmental organisation in order to realise the tasks entrusted to him/properly.

#### § 7.

The Plenipotentiary may submit, with the consent of the President of Council of Ministers, the drafts of governmental documents, related to the scope of his responsibility, under the consideration of the Council of Ministers.

#### § 8.

1. The Plenipotentiary shall submit to the Council of Ministers:
  - 1) the analyses, evaluations and conclusions, pertaining to the sphere of his activity,
  - 2) periodic information about his work.
2. The Plenipotentiary informs the President of Council of Ministers about all the threats to the implementation of the tasks entrusted to him.

#### § 9.

The Plenipotentiary may set up groups of experts and advisors as well as order research studies and expertises related to the scope of tasks entrusted to him.

§ 10.

The Chancellery of the Prime Minister shall provide all content-related, organisational and legal as well as office service of the Plenipotentiary.

§ 11.

The Regulation becomes effective as from July 1, 2002.”

## **Annex II**

### **Summary of draft act on Inspector General for Counteracting Discrimination**

1. Inspector General for Counteracting Discrimination – appointed by the Sejm by absolute majority of votes (on motion from Marshal of Sejm or 35 member of Sejm and upon approval of the Senate) for 5-year term;
2. The draft contained guarantees of independence for the Inspector (immunity from arrest and prosecution without approval of Sejm, possibility of dismissing by the Sejm only on determined grounds), and requirements to ensure his/her impartiality (prohibition of membership in political parties, trade unions, or organizations working in the field of anti-discrimination; prohibition of other occupations except one of a university professor);
3. The draft contained definitions of direct and indirect discrimination;
4. Tasks of the Inspector:
  - Promoting the rule of equal treatment and counteracting discrimination,
  - Providing assistance to victims of discrimination in filing complaints and claiming their rights,
  - Conducting independent research on the phenomenon of discrimination,
  - Publishing reports and formulating recommendations in the field of counteracting discrimination.
5. The Inspector would not be able to impose any sanctions. The only “hard” power of the Inspector would be one to demand public administration bodies to provide information and to present case files and other documents.
6. The Inspector would be assisted by the Office which would have regional branches.