

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Poland

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1. Demographic background

Poland has a population of 38m and only 2% are national minorities. The largest groups of ethnic minorities are now Silesians, Germans and in smaller numbers Belarusians, Ukrainians and Roma. This apparent homogeneity is new. Before World War Two, about one third of Poland's population were national minorities – Ukrainians (16%), Jews (10%), Belarusians (6%) and Germans, Lithuanians, Russians and others. After the war, the situation changed dramatically. The majority of the Jewish community had been killed in the Holocaust and then in 1968 most of those remaining were forced to emigrate. The Jewish population is now only 25,000 compared to 3 million before the war. After 1945 the Ukrainians were relocated to the western part of Poland, the Roma were forced to settle down and travelling was forbidden, and the Germans were forced to leave the country.

After 1989, a form of diversity policy was introduced. A law was introduced which made organising a national minority organisation easier, and made provision for freedom of national identity and its language, culture and tradition, freedom of founding schools, teaching language and broad cultural – economic – social activity. Despite these steps ethnic discrimination and racism are perceived as accidents by public institutions and the police. Ethnic minorities and migrants are seen as an extraordinary attraction who may provoke racist behaviour. An NGO – Nigdy Wiecej (Never Again) - that monitors the situation of ethnic minorities and migrants in the context of discrimination and hate speeches, presents statistics that are always significantly higher than those provided by the police or other public institutions. There is a visible vocabulary problem in Polish press – journalists still regularly use the word Negro ('murzyn'), and those who are more up to date use the word 'black skinned' (when nobody uses the words 'white skinned'), and almost no-one uses the word 'black'. After 1989 Poland experienced a revival of nationalist and anti-Semitic organisation (Łodziński 2005).

After the EU accession, there have been more migrant workers from the East coming to Poland, while Polish workers migrated to UK. However, their status and their problems are not fully recognised either by public institutions or by trade unions and employers' organisations. Instead, they are treated as marginal workers. According to a representative of the Stowarzyszenie Interwencji Prawnej (SIP – an NGO that deals with problems of migrant workers and refugees), national minorities are today very much assimilated and do not face any significant problems of discrimination. The only vulnerable national minority are Roma who do not have access to NGO help and face major social biases that keep them out of the labour market. The NGO respondent also described the situation of migrant workers as quite difficult: *'Migrants have a different status than other groups in Poland. Discrimination is a part of their status – they are treated in a different, worse way. The construction of the law almost encourages employers to commit discrimination. Migrant workers have work permits for only one employer so they cannot freely choose a job. Employers may treat them in a worse way because those workers do not have choices – losing a job means being expelled from Poland.'*

Employers and trade unions admit that sometimes migrant workers experience discrimination without even knowing about it: their knowledge and access to legal advice is very low, they usually work in the secondary labour market where work and pay conditions are worse. The number of migrant workers in Poland is still very low - although there are no statistics estimating their number in the informal economy, a sector increasing in size prior to the global crisis.

2. Industrial relations background

Trade union density in Poland is 14% for all workers, and 6% of the total labour force. Three representative trade union peak organisations have seats on the union side of the Tripartite Commission – NSZZ Solidarnosc (750,000 members), OPZZ (750,000 members) and Forum Związków Zawodowych (FZZ) (400,000 members). All the employers' organisations interviewed (Lewiatan, ZRP, KPP) are also representative, which means they operate at the national level and represent employers that employ at least 300,000 people. Trade unions are located mostly in the public sector and in some former public-owned companies, which are now privatised.

Since 1990 trade union density and the number of collective agreements and branch level agreements has continuously declined even in the public sector. Employers' organisations, formed in the mid-1990s have started to get more influence. All the trade unionists interviewed underlined the unlawful practices of employers in the private sector who lay off union activists. Employers are quite reluctant to recognise trade union membership. A very revealing answer came from one of employers interviewed: she *'chooses clients who don't have trade unions who don't have this problem. The trade unions usually create a bad atmosphere and do not want to go into details, do not want to admit that migrant workers work extra hours without contract because they want to. Trade unions may threaten the idea of alternative forms of employment. They do not understand that temporary workers are a support for regular workers, that they won't take the jobs of Polish workers. And usually it ends up in a way that the migrant workers work for a subcontractor and the trade unions accept it because formally they are not employees of the company anymore.'*

3. Trade union and Employer awareness

In Poland the Racial Equality Directive was only partly implemented in the Labour Law in January 2004 following the EU demand that Poland prepare a Labour Law before accession. The racial and ethnic discrimination is covered in one paragraph along with other types of discrimination. The law also introduced the general idea of discrimination and the ideas of sexual harassment and bullying, which appeared most interesting to most trade unions.

Both employers' organisations and trade unions point out that the amendment of the Labour Law changed consciousness and generally introduced the idea of discrimination at work as a problem – before it was very much hidden. *'Before the labour law amendment the problem of discrimination was rather hidden in the place where it happened and after the amendment people are more conscious. Some of*

them never realised before that they were actually discriminating against other people,' said a participant of ZRP, the employers' organisation.

All the trade unions and employers' organisations interviewed took part in consultations before the amendment of the Labour Law but racial issues were never discussed. It seems that they treated this kind of discrimination as a part of a 'Western Europe package' along with sexual orientation, 'exotic' issues that are marginal in Poland according to certain interviewees.

In the interviews with trade unionists one problem kept being repeated: *'In Poland there is mainly discrimination on the basis of trade union membership. The employers forbid their employees to be organised in a trade union (which is illegal) because they are afraid of their (employers') obligations to a trade union like consultations, trade union protection etc.'*

However, in the case of other types of discrimination, some of the participants (ZNP and OPZZ) point out: *'The greatest advantage of the Labour Law amendment was that it showed some problems. It showed the phenomenon of racial and ethnic discrimination as a problem, that is it should be treated as something wrong. It is still hard to prove discrimination but at least the law states that it is a problem.'*

The rest of the Racial Equality Directive should have been implemented a long time ago, around 2005, in the Equal Treatment Law. Consultations also took place with the trade unions. However, they were mostly focused on employees' situation in the project, and not much concerned with racial issues. The problem is that the equal treatment law has still not been implemented, and the content of the project has changed because there have been three completely different governments since its inception (post-communist, nationalist right-wing and conservative-liberals). The European Commission has already pointed out this situation to the Polish government and reminded them about the financial consequences of not having a proper law. Three EU directives, two on gender issues and the Racial Equality Directive, are thus not yet fully implemented.

There are two dimensions to the problem of awareness. The first is knowledge of the law – which is widespread among participants, and they all know the precise paragraph about racial and ethnic discrimination. The second is experience and understanding. None of the respondents had come across a situation of discrimination on race and ethnicity. Most of the interviewed participants were not sure what the scope of such discrimination would include. It is clear that there is a problem with understanding the idea of indirect discrimination.

4. Comments on the Equality Body

There are two government institutions that deal with equality and anti-discrimination. One is the Department for Women, Family and Anti-Discrimination at the Ministry of Labour, founded in 2006. In addition, a new institution – the Equal Treatment Plenipotentiary - was set up supposedly to deal with 'all kinds of discrimination', unlike the Department, which mainly has a gender focus. After more than a year of its existence, it is clear that the institution was called into existence only to fulfil the demands of the European Commission. The current Plenipotentiary is not active in

any field of discrimination and slows down work on the equal treatment law – in her view the current solutions in Labour Law are sufficient and there is no need create a new law to further implement the Racial Equality Directive and other directives (access to goods and services, social security, education, health care). This view was already commented and protested against by Equinet, the European Network of Equality Bodies, and by the Human Rights Helsinki Committee in Poland, as well as by several women NGOs. The Plenipotentiary is a member of the Citizen Platform, the ruling political party which is rather anti-trade union.

The Department for Women, Family and Anti-Discrimination mostly focuses on issues connected with women and family policy. It is also preparing a project called 'Ethno Bus' which deals with racial and ethnicity issues. Ethnic and racial issues come under the responsibility of the Ministry of Internal Affairs which launched a National Programme Against Racial Discrimination, Xenophobia and Intolerance over the years 2004 – 2008. None of the participants interviewed knew anything about this initiative.

Trade unions do not have any contacts with the Equal Treatment Plenipotentiary. The participants from KPP (employers' organisation) and OPZZ (trade union) were engaged in cooperation with the Department for Women, Family and Anti-Discrimination but mostly in relation to gender or age; racial issues were treated as not being so important.

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

None of trade unions have changed their policies in relation to racial/cultural/ethnic discrimination. All participants admit that they have almost no contact with migrant workers or representatives of ethnic minorities, and that is why they did not support any cases at court. None of them have supported any anti-racist campaigns in any way. The only exception to this is the organisation of an Equality Committee by ZNP (the teachers' union).

None of the unions conducts any information policy campaigns, or has a special unit for discrimination cases. Some of the participants emphasised that discrimination cases are very difficult to prove (even if it is the employer who has to prove that discrimination did not take place). This opinion is probably based on very limited experience in dealing with any kind of discrimination cases. There is very little in the way of positive provision to, for example, migrant workers who seek legal advice.

It seems that a lot depends on personal attitudes towards the issue of discrimination. Additionally, in the case of OPZZ, a quite controversial opinion was presented by the president of the union, a couple of months earlier, when he argued that Poland should protect jobs for Poles. Very different interpretations of the statement were made by two OPZZ representatives:

The OPZZ statement about closing the market to foreigners was misunderstood because the President of OPZZ used a shortcut. What he meant was that OPZZ does not want to accept social dumping – they want to protect all employees and all jobs, so that nobody will be exploited. People

who are coming to Poland to work should work under the same conditions as Polish workers.

This was just a slogan to check if there is social demand for such ideas, without any essential solutions. It turned out that there was no significant positive reaction for such a message.

This suggests that OPZZ is not yet prepared to challenge racial and ethnic discrimination, neither in terms of its own procedures, nor in the language it uses.

An interesting and important situation was described by the teachers' union ZNP: *'There is a problem in the ZNP about the Roma minority. We did not have any signals of any form of discrimination and then we read in newspapers that in many schools there is ethnic segregation and Roma children have to attend different classes, in worse conditions. We were shocked that nobody had reported that, none of our members. The same happened when a former Minister of Education wanted to lay off homosexual teachers. We protested but many of our members think that the trade union is not responsible for such cases and we had to explain that this is very much trade union issue.'* However, ZNP is the only union that decided to do something more in formal way. *'We want our members to know that they should protest whenever the rights of their colleagues or pupils are violated. Now we are working on a Teachers' Ethical Code with the Ministry of Education so that all the teachers would have access to that.'* ZNP also organises an Equality Committee that will deal with different kinds of discrimination including racial and ethnic.

NSZZ Solidarnosc pointed out that the main problem for unions in making contact with migrant workers is that, according to Polish law, unions cannot unionise workers who work in the informal labour market. This is because Poland still has not ratified ILO Conventions no 143. When the ILO convention is ratified, Solidarnosc will immediately change its statute and try to organise everyone, including those working in the informal labour market. In the Solidarnosc representative's opinion, there will not be any problems or tensions on an ethnic and national basis. However, it is not clear why Solidarnosc is not interested in migrant workers who work legally. There are 'grassroots initiatives' in Solidarnosc – they help migrant workers from Ukraine who work in the informal market. One of the members who takes part in such actions says: *'Can we say that it is a marginal issue? Well, employers would say that because they do not want to have problems, trade unions do not have much time for it - especially as it is difficult to organise people because of legal barriers and because of their low inclination towards trade unions. They start to be interested when they have a knife at their throat. Solidarnosc does not provide a special unit for immigrants but the problem is known and understood.'*

It seems that the key word 'marginal' is interpreted by unionists in different ways. There are three attitudes: the first is most reluctant, not interested in new discrimination issues in an active way, argues that members of the union are not interested and that is why the union is not interested (OPZZ). The second is still passive but interested, without an idea what more they can do – the interview had been an inspiration to discuss any kind of antidiscrimination policy within the union (FZZ). The last one is active: even if the members of the union are not interested in discrimination issues, the union should deal with it in a professional way because the problems of minorities (ethnic, racial but also sexual) are not a 'Western Europe package' but happen in Poland as well (ZNP).

There might be several reasons for that – 50 years of the ‘homogeneous Poland’ policy have made ethnic issues look very marginal and unimportant. The recruitment strategies of Polish trade unions are focused on Polish employees, because migrant workers seem to treat work in Poland as a temporary activity. On the shop-floor level, there were incidents where trade unionists were against migrant workers because of wage dumping. The initiatives to help migrant workers in the informal sector also arise on the shop-floor level.

5.2 Employer policies and measures

Employers’ organisations did not introduce any racial and ethnic anti-discrimination policy in response to the partial equality law, and for employers there is no such problem. An employer who employs migrant workers says: *‘We did not conduct any official action before employing the first foreign workers. However there were many individual discussions with line managers. It is important that many Polish workers have experience of working abroad, on building sites in other countries. They know the problems that may happen and they know what to notice while working with the “newcomers”.’*

This approach may be viewed as employers’ organisations waiting for the things to happen. They only recently started to be interested in other dimensions of discrimination – mostly gender - and they admit that first they want to get more experience in one subject. They do not see any reason to place ethnic issues on their agenda – they do not have any statistics about migrant workers employed by their members, and they never came across any situation of racial discrimination at work. They treat the lower wages of posted workers as a result of global competition. *‘Neither employers’ organisations nor trade unions treat racial issues as a mainstream problem so none of them is really interested in running any specific policy,’* says a representative of an employers’ organisation.

Employers also do not want to invest more than is needed in employees who come only for a year to Poland. However, they are prepared to solve problems individually, without any official procedures. The key lies in frequent contact with the employees, helping them with the problems of everyday life (renting a flat, opening a bank account). Employers also choose more experienced migrant workers to help them in contacts with others, even in the recruitment procedures. None of those actions were a result of the Racial Equality Directive – rather, this is a result of global changes in labour markets which make employers seek workers abroad. Employers treat ethnic and race issues as marginal because the number of migrant workers is still very low. The other reason is that these are usually employees in the secondary market who are never a priority in HR policies. Employers are aware that migrant workers have low legal knowledge and accept lower conditions at work because their work in Poland is temporary. This temporary status results in lower engagement of employers with antidiscrimination policies.

6 Views on how to tackle discrimination better

All the employer respondents agree that the law is fine. The problem is elsewhere. First, the migrant workers are not conscious that they are discriminated against – their rights awareness is very poor. Then, there is poor access to legal help which is very expensive. There is the role of the National Labour Inspection – as one of the employers says: *‘Currently it is clear that the employers are afraid and therefore provide better working conditions. They are afraid of controls from Labour Inspection so they even contact the agency and ask for help with getting work permission for their employees who used to work illegally.’*

There are also social attitudes that may be discriminatory, especially for people who are visibly different (like black migrant workers or students). All of those factors may be improving. Social attitudes are changing – many negative stereotypes about Ukrainians vanished because of more frequent contacts. The most important problem is the temporary status of migrant workers, who do not feel able to seek justice and they have very low access to legal help; instead, they suffer and then go home with what they earned. This is a serious obstacle. Currently employers’ organisations are starting to work on equal opportunities for women and for elderly people – both topics are quite new in their agendas.

All trade union participants agree that the law is sufficient. They all see the problem in practice – Polish courts are not experienced in such cases and, also, migrant workers or minority representatives do not want to go to court. This reluctance is first, because migrant workers have temporary status and second, because they are afraid of having problems with employers. As an OPZZ representative said: *‘The legal solutions about discrimination are understandable when we read them but when it comes to implementing them in real life, it seems very difficult. Probably cases and verdicts would be a good solution because then people would know what discrimination really means.’*

Only the ZNP participant pointed out that equality could be improved institutionally through its new Equality Committee. Most of the participants from the union side focused largely on discrimination on the basis of trade union membership and they did not perceive other types of discrimination as important. Only two of the union interviewees pointed out that there is a problem with understanding the idea of equality based on gender or age or ethnicity within unions.