

A selection of equality bodies' case work within the scope of the Horizontal Directive

Commissioner for Protection from Discrimination, Albania

The Law "On protection from Discrimination", that was approved in February 2010, regulates the implementation of and respect for the principle of equality in connection with a non-exhaustive list of grounds. It provides protection in three fields: education, employment, and in the field of goods and services. Here are some examples of discrimination cases handled by the Commissioner for Protection from Discrimination (CPD), Albania.

Example on disability:

In 2013, the Commissioner for Protection from Discrimination initiated an ex-officio investigation, following a newspaper article entitled "*She is autistic, the teacher: she must leave*", where it treated the case of a first class pupil of the artistic lyceum, suffering from autism. Admission to this lyceum was decided by competition, which the pupil had passed in order to access the school. The school, without any legal basis or evaluation as the law requires in these cases, had concluded that the pupil should not study in the lyceum because she had special requirements. After the administrative investigation, the CPD found discrimination on grounds of disability of the pupil in the field of education. They recommended the competent actors to take urgent measures to make functional the multidisciplinary commission, according to the legal provisions, for the evaluation of the educational and social needs, as well as the performance, of the pupil.

Example on religion and belief:

During 2014, the Commissioner handled the complaint of a high school student who wore a headscarf. For this reason, the student was denied the right to education in a public school, with the justification that the state is secular, thus that religious symbols are not allowed in public educational institutions. After the administrative investigation, it was established that there is a difference in treatment of the student (complainant), who, different from other students who have different religious beliefs, was denied the right of attending school, because of her headscarf. It was also decided that this restriction is not based on the law but it is based on ambiguous and controversial bylaws. Furthermore, referring to cases of the ECHR, the CPD recommended to the Ministry of Education and Sports to take appropriate measures to make the necessary amendments to the legislation on pre-university education, by providing legal acts and regulations, formulated with precision, that are clear and understandable for citizens to be aware of the behaviour that is expected of them.

Ombud for Equal Treatment, Austria

Examples on sexual orientation:

Various cases concerning persons of same sex kissing each other in places like cafes, public baths ("e.g. Romantik-Therme") or bars.
Same sex couples also report problems when they try to rent a flat together.

Examples on age:

Persons older than 70 are refused a car-rental;
Persons younger than 30 are rejected as tenants;
Older people have to pay back their loans before the age of 75.



Examples on religion:

Harassment of women wearing headscarfs;
School test on dates of religious holidays of Muslim people;
Harassment of a woman wearing a burkini in a gymnasium-shower.

Interfederal Centre for Equal Opportunities, Belgium

In Belgium there is protection provided in the antidiscrimination legislation from discrimination in the provision of goods and services (on the basis of racial criteria, disability, age, sexual orientation, religion or belief, etc.).

Example on age:

A bank refused to provide a credit card (a Master Card) to customers who are 80 years and older. After the intervention of different organizations, the bank reconsidered its decision and will no longer apply a maximum age limit for a credit card.

Example on sexual orientation:

Property-owner prefers a 'traditional couple' (Civil Court Ghent, 30.11.2003)

The owner of a property and a real estate agency refused to rent an apartment to a same-sex couple, because the owner prefers a "traditional couple".

Examples on religion and belief:

Bowling club case (Civil Court Brussels, 22.12.09)

A bowling club refused women wearing Muslim headscarves from playing on the basis of a policy that banned all hats. The claimant alleged indirect religious discrimination. The Court found safety and security reasons to be a legitimate aim as there was a general need to secure the safety of those playing at the venue. But it held the interference with the right to manifest a religion was not proportionate as the headscarf was not dangerous for the bowling machinery and that the women could be identified by the security cameras.

Headscarves in cafe case (Civil Court Brussels 25.01.11)

A café in Belgium refused to serve a female customer because she was wearing a headscarf. The owner justified the refusal on the grounds of needing to maintain security.

The claimant claimed direct religious discrimination. The civil court found direct discrimination because there was no evidence that religious symbols caused security concerns in the café and it fell outside the scope of a private company and individual to maintain public order. This highlights that some of the Member States courts may take a different approach to issues of security and public order where a private company provides that as a justification for discrimination.

Examples on disability:

Case of a blind bridge player

A blind bridge player contacted the Belgian Interfederal Centre because the bridge association refused to provide reasonable accommodations for a bridge competition (in order for him to participate equally and autonomous as other players with no disability, for example refusal to provide cards in braille, interdiction to read the cards out loud by the other players).

After the intervention of the Centre, the competition rules were adapted in a sense that the organizer will provide reasonable accommodations and a better accompaniment of blind players.

Refusal of an assistance dog in a hotel

A couple wanted to book a hotel room for 3 days. The husband specified that his wife will be accompanied by an assistance dog, because she has a physical disability. The hotel owner refused the presence of an assistance dog, because animals are not allowed in the hotel.

An attempt was made by the Interfederal Centre to negotiate, but the owner maintained his position. The Interfederal Centre will file a lawsuit on the basis of the antidiscrimination legislation.

Office of the Public Defender of Rights, Czech Republic

Examples on disability:

Complaint File Ref.: 161/2011/DIS/AHŘ

General refusal of blood-donor candidates just for reasons of disability is direct discrimination in the healthcare field. Each donor's eligibility should be assessed individually, focusing on eliminating the donors that represent an actual health risk for the blood recipient or for themselves.

Mrs. K. K. informed the Defender that she had decided to donate blood, but, when she appeared – with her carer – at the transfusion and tissue centre, she was rejected with reference to the fact that she was blind.

Within an inquiry, it was first necessary to assess whether the rejection of a blood-donor candidate could be regarded in the light of the Antidiscrimination Act (Act No. 198/2009 Coll., as amended) as unequal treatment in the area of healthcare, or in access to services (as an alternative, the case could be considered infringement of privacy rights). The Public Defender of Rights is inclined to think that the choice of an individual who can become a suitable donor of blood or donor of blood components indeed falls within the healthcare domain, and therefore everybody has the right not to be discriminated against in this type of legal relationship. Selection of blood-donor candidates as a whole can be classified under the system of healthcare, as candidates are tested through relevant diagnostic methods so that their suitability can be determined. Construing “healthcare” as procedures exclusively aiming at providing therapeutic care to a patient would be very restrictive, and would not correspond to the present definition of healthcare and healthcare services under the Healthcare Services Act (Act No. 372/2011 Coll., as amended). Therefore, in this case, the Defender concluded that discrimination on grounds of disability had indeed happened.

The appropriate healthcare provider changed its internal rules and nowadays it does not refuse people with disability as blood-donors.

Complaint File Ref.: 27/2012/DIS/JKV

A service provider is under the obligation to take appropriate measures with respect to persons with disabilities. If a person with a physical disability requests that his/her special invalid chair be transported aboard an airplane, the airline is obliged to make the transport possible. If the transport of a specific aid (e.g. invalid chair) aboard is prevented by security regulations, the airline must inform the client thereof in an adequate manner and sufficiently in advance.

Belgian Centre pour l'égalité des chances et la lutte contre le racisme (Centre for Equal Opportunities and Opposition to Racism) asked the Defender for assistance in negotiations with an airline that had transported its clients several times between Brussels and Jerevan, with a stopover in Prague. The family represented by the Centre travelled with a son having a physical disability, and complained about shortcomings on the part of the airline, as the company had failed to adapt their son's seat with respect to his disability, although this had been pre-arranged. They also complained about inadequate assistance at the airport.

Upon the Defender's intervention, the family was given compensation for the company's failure in the duty to adopt appropriate measures with respect to a person with disability, at an amount equivalent to the price of their air tickets.

Complaint File Ref.: 4282/2011/VOP/LO

Admission of a child with special educational needs for education in a kindergarten in the last year before the child begins mandatory school attendance cannot be limited to a fixed period of time, or to



a restricted number of hours per day, referring to the fact that a special kindergarten is specialized in children with a different type of disability.

The Defender was approached by parents of a child with combined disability after their child had not been admitted by the head teacher of a kindergarten specialized in children with physical disabilities. Subsequently, the head teacher enrolled the child, but only for a limited period, for a few months, while also limiting the number of hours that the complainants' son was supposed to spend at school every day. This case concerned, however, enrolment for the year immediately preceding mandatory school attendance. For this reason, the parents complained to the Defender. The head teacher justified her decision by reference to the fact that the kindergarten was specialized in educating children with somatic disabilities, while the complainants' son had a combined disability, so the teaching staff was unable to take care of him.

Such justification is inadequate. According to Section 34 (4) of the Education Act, children in the last year prior to the mandatory school attendance have priority of admission for education in a kindergarten. The law does not provide that pupils with health problems would be exempted from this right to priority of admission. Especially in a situation when the complainants' home town has only one special kindergarten, the pupil cannot be refused admission or have his stay limited with the justification that the school normally educates children with different forms of disabilities.

As a result of the Defender's intervention, the complainants' son was admitted with no limitations.

Examples on age:

Complaint File Ref.: 16/2013/DIS/LOB

Failure of a holder of a postal licence to hand over ordered goods to persons under 15 years of age constitutes direct discrimination on grounds of age. A child has a right to the protection of privacy, which includes the prohibition of arbitrary interference with correspondence. In order for the child to be able to actively exercise his or her right, it is necessary for the child to first get to the consignment. Therefore it is unacceptable if a postal licence holder sets internal rules that de facto restrict the child's right.

Minor A. M. (14 years) ordered some product online, using his saved-up pocket money. When he wanted to collect the package in person at a branch of the postal licence holder, he was rejected despite proving his identity by means of a valid passport. An employee of the branch claimed that she could not hand over a consignment to a person under 15 years of age according to postal rules. As a result, the parents of A. M. had to go to the branch to collect the consignment. Subsequently A. M. turned to the Defender since he considered the given practice unreasonable.

The arguments presented by the postal licence holder did not convince the Defender of the lawfulness of the procedure in handing over so-called recorded consignments. He came to the conclusion that the practice described above not only violated the Antidiscrimination Act but was also contrary to the right of the child to the protection of his privacy (prohibition of arbitrary interference with the child's correspondence). The Defender recommended changing the postal terms and conditions.

The postal licence holder did not agree with the Defender's conclusion and did not accept the recommendation. The Defender thus turned to the Czech Telecommunication Office, which may start administrative proceedings with the postal licence holder.

The inquiry of the Defender did not help the concerned minor because the minor had turned 15 years old before the closure of the Defender's inquiry. However, the Czech Telecommunication Office initiated the administrative proceedings against the postal licence holder and is in accordance with the Defender that the practise constitutes direct discrimination. It is expected that the postal licence holder would change its internal regulation.

Complaint File Ref. 149/2010/DIS/JKV

The exclusion of persons interested in credit cards because they exceeded the age of 70 years interferes with human dignity; such a procedure may not be justified by referring to elimination of the credit risk without also examining (in addition to age) other information relevant for making a decision on the client's credibility.

Based on information in an advertising leaflet, Mr O. showed interest in the securing of a credit card. He was denied the service with the substantiation that he had exceeded the upper age limit of 70 years. Since the exclusion of persons older than 70 years represents a considerable interference with

their dignity (the assumption that they will be unable to meet their obligation is humiliating for them), the Defender concluded that this is an unreasonable requirement. The bank did not respond to the Defender's request for elimination of the discrimination and the Defender therefore reported the bank's conduct to the Governor of the Czech National Bank. The Czech National Bank subsequently exercised its supervisory power and the bank refrained from the discriminatory practice. In the end, the bank issued the credit card to Mr O.

Office of the Ombudswoman, Croatia

Background: In Croatia there is protection/prohibition of discrimination on the basis of many grounds, including HD grounds, and in a wide number of fields, even wider than the scope of the Horizontal Directive.

Examples on religion and belief:

Case of ecology quiz for school children that included questions about religion

An ecology quiz for children, besides knowledge in biology and chemistry, demanded knowledge of religious content (religious education within schools is an optional school subject). The discrimination on the basis of religion and belief was determined and consequently, the Ministry of Science, Education and Sports cancelled the quiz.

Case of Driving License Regulation

Driving License Regulation provisions forbade head covering on driving license photos. The Ombudsman pointed to the discrimination on the basis of religion. The case was resolved by the Supreme Court judgment stating that these articles violate the right to religious freedom and that new Driving License Regulation was required.

Examples on age:

Case of Road Traffic Safety Act discriminating young drivers

The Road Traffic Safety Act stipulated that young drivers, aged 18 to 24, cannot drive vehicles with engine power above 80 kw regardless of their driving experience and consequently young drivers were forbidden to drive. The Ombudswoman pointed to the discrimination on the basis of age and the case was resolved by the Supreme Court judgment stating that Road Traffic Safety Act included articles which were not constitutional.

Case of Health Insurance Act

The Health Insurance Act stipulated that regular students until the age of 26 have the right to health insurance based on their status of regular students. This Act is discriminatory against persons who started their regular studies later than usual because it limits their right to health insurance. This criterion was changed following public pressure and the Ombudswoman's recommendations. Today the length of studies determines access to health insurance.

We also have some examples from the Croatian courts' case law.

Example on sexual orientation:

The case of the homophobic landlord

The plaintiff successfully sued her potential landlord because the landlord refused to lend the apartment due to the plaintiff's sexual orientation. The court determined discrimination and ordered a fine for the landlord.

Example on disability:

The case of the building entrance

The plaintiff, who, as an owner of an apartment, is also a co-owner of a building (including decision-making regarding entrance to the building etc.) and a person with disability, sued the building manager because she was denied proper access to the building (the court dismissed the plaintiff's claim due to procedural reasons).

Danish Institute for Human Rights, Denmark

Examples on disability:

A 25-year-old walking-impaired woman went out with a group of friends, but was rejected from entering a pub. The doorman did not allow her to enter with her walker even though she explained that she was not able to walk without support. In the article, the girl explains that this is not the first time she has been denied access to a pub because of her walker:
<http://politiken.dk/debat/ECE2327070/handikappet-pige-paa-25-vi-faar-nej-i-nattelivet/>

A man diagnosed with sclerosis was denied access to enter a restaurant:
<https://scleroseforeningen.dk/nyhed/fn-kritiserer-danmarks-handicapindsats-0>

A visually impaired man who wanted to celebrate his granddaughter's birthday at a local restaurant with the rest of his family, was asked to leave the premises along with his guide dog:
<http://gribskovlokalavis.dk/blind-mand-og-foererhund-afvist-paa-jensens-boefhus/>

An eight-year-old girl who uses a wheelchair, wanted to participate in a holiday activity in an interior warehouse, however was denied access because she needed assistance from her mother. The staff explained to the mother that only children were allowed to enter the play room and thus, the girl was not able to join the activity: <http://stiften.dk/aarhus/handikappet-pige-afvist-i-ikea>

When a man in a wheelchair entered a restaurant escorted by his wife, he was first told that no tables were available, notwithstanding that the restaurant was almost empty. Two persons dining in the restaurant offered the man and his wife to join them at their table, but the restaurant hostess then screamed that she wanted them to leave because the restaurant did not want visits from 'persons in wagons': <http://www.kristeligt-dagblad.dk/kronik/naar-overtro-bliver-helt-igennem-uetisk-og-gemen>

Defender of Rights, France

Background : With our current European and French legislation we can only resolve discrimination cases falling within the remit of the Horizontal Directive by using criminal law, except for access to housing (all criteria are protected), and discrimination in the access of goods and services based on origin, gender or pregnancy.

The main problem with that situation is that in the French legal system, discrimination under criminal law is very difficult to be established. That is why a lot of cases that we are aware of cannot be recognized as discrimination cases. Indeed the shifting of the burden of proof is not applicable under criminal discrimination law, and we also have to establish under that law the intention to discriminate which is usually very difficult to demonstrate.

Please find below a few examples of cases that we cannot resolve even by using French criminal discrimination law because they don't fall under its protection.



Example on disability:

A French bank denied access to a home loan to a claimant beneficiary of a disability pension because his earnings were not professional;

A French bank cancelled the bank account of a claimant a few days after he declared that he was placed under the protection of the “sauvegarde de justice” because he had no more complete legal capacity;

These 2 cases could have fallen under the concept of indirect discrimination based on **disability** in accessing to banking, but no provision of French law could have been helpful since indirect discrimination is not recognized by French criminal law and discrimination due to disability is not protected under civil law as far as goods and services are concerned.

Examples on age, sexual orientation and religion and belief:

All the cases of discrimination in France based on religion (head scarfs for example), sexual orientation, or age in the refusal of accessing to hotels, nightclubs, restaurants, sports, spare-time activities.

Antidiskriminierungsstelle des Bundes, Germany

Example on sexual orientation:

Just recently the country court in Cologne ruled that the owner of a rental space for special occasions like weddings was under the German Equal Treatment Act obliged to pay a compensation of 750 € each to the partners of a gay registered partnership. One of them had made a reservation for the space to celebrate a “wedding” before informing the owner that he was in a same sex relationship. In response the owner explained that he couldn’t rent the space to them. The court found a violation of Part 3 of the General Equal Treatment Act “Protection Against Discrimination Under Civil Law” (Amtsgericht Köln, 17.06.2014 - 147 C 68/14).

Example on disability:

A case referred to FADA by an almost blind woman has been much discussed even in the nationwide press (<http://www.sueddeutsche.de/bayern/diskriminierung-blinde-frau-darf-nicht-allein-ins-schwimmbad-1.2352603>; <http://www.welt.de/vermishtes/article137472166/Frau-darf-nicht-ins-Schwimmbad-weil-sie-blind-ist.html>). The woman had been able to use the municipal swimming pool for 10 years without difficulties before the owner changed and with him the general terms of usage. The new terms established a need for an assistant for blind visitors. In their reasoned statement to FADA, the owner referred to safety needs and announced to commission a detailed risk assessment which could approximately take half a year to be finished. Meanwhile the woman concerned intends to take legal action.

Example on religion:

A woman wearing a face veil and her husband were already informed of the prospect to move into an available flat when during the first meeting at the office of the housing society they were confronted with a stark downgrade on the rental conditions. Contrary to their initial statements, the housing society refused to undertake any modernization in the flat and demanded a higher rent. They added that other tenants had expressed their concerns when they had seen the woman at the premises during the appointment to view the flat. After FADA had asked the housing society for a written statement with reference to the prohibition against discrimination on grounds of religion of Part 3 of the General Equal Treatment Act the housing society agreed to offer the rental contract according to the initial terms.



This case should be seen as representative for other “head-scarf” cases (40 cases) we have in the field of goods and service. Besides the housing market, we find them frequently in medical services and access to gyms.

Research:

The Antidiskriminierungsstelle des Bundes has also produced a fact sheet in English on their research on barrier-free services:

http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Factsheets/factsheet_engl_Barrierefreie_Dienstleistungen.pdf?__blob=publicationFile

Irish Human Rights and Equality Commission, Ireland

Background: Irish equality legislation includes the Equal Status Acts 2000-2012 which prohibits discrimination on 9 grounds (gender, disability, race, religion, family status, membership of the Traveller community, civil status, age, sexual orientation) when buying goods or accessing services, in education and accommodation.

Example on age and disability:

Mr. Desmond McGreal -v- Cluid Housing; Decision No. DEC-S2011-004

Mr Desmond McGreal is a 73 year old retired bachelor with no dependent relatives or close family. He alleged that he was being harassed, discriminated against and victimised by the respondent, Cluid Housing Association, a charitable organisation that provides purpose built sheltered housing for people with low incomes. In particular it provides a service which enables older people to live independently, privately with dignity, security and fulfilment within their own home for as long as they wish and are able to do so. The Housing Acts do not directly apply to the Association.

Mr McGreal complained that he has been subjected to ongoing harassment and discrimination by local Estate manager(s) as a result of making various recommendations and complaints during the course of his tenancy. He alleges that instead of having his complaints dealt with in a reasonable manner, the estate management threatened him with notice to quit. They also failed to advise him of, or allow him complete a new tenancy agreement, which would be more favourable to him as a tenant of the property. Several other tenants were so advised and had completed new tenancy agreements which had more favourable conditions.

Subsequent to Mr McGreal having made his initial complaint to the Equality Tribunal, and prior to a District Court application for an order for his eviction, Mr McGreal informed the respondent that he had no legal representation to defend the court proceeding and was unable to represent himself due to ongoing health problems. He requested an adjournment and produced documentation from two doctors in support of this request to allow him time (a) to instruct a Solicitor to represent him and (b) to allow him to be physically healthy enough to give evidence in the District Court proceedings. The request for an adjournment was refused by the respondent who then proceeded with their case in the District Court.

Mr McGreal maintains that he has not breached any of the conditions of his tenancy agreement with the Respondent. He believes that because of an archaic clause in his letting agreement, that he is being punished by the Respondent for having voiced his concerns to the Estate Management over certain issues in the running of the estate.

The case was heard by the Equality Officer on 1st September and 6th October 2010. Correspondence continued between the parties until 8th November 2010 when the presentation concluded. The Equality Officers decision was issued on 20th January 2011. She found against the Complainant in the



matter of the complaints alleging harassment and victimisation, but in favour of the Complainant on the allegation of discrimination on the grounds of age. She awarded him the maximum amount allowed under the legislation. She also ordered the company to carry out a review of their policies and procedures to ensure that they are in compliance with the Equal Status Acts.

Examples on disability:

Daniel Fitzpatrick v Declan McCaul (Mini Bus Hire); Decision No. DEC-S2011-026

The Equality Tribunal found that Mr Daniel Fitzpatrick, who is blind and a guide dog user, was discriminated against by Mr Declan McCaul, Mini Bus driver when he stopped providing him with transport. He succeeded in his claim of discrimination on the disability ground. Mr Fitzpatrick used the mini bus service provided by the respondent to travel from his home in Carrickmacross to the Institute of Technology (IT) in Cavan from September 2007 until 21st November 2008

On 19th November 2008 the complainant was informed that the service was being discontinued and as a result Mr Fitzpatrick arranged for an alternative taxi company to provide transport to the college. The following day he spoke to the respondent and asked him to notify all the passengers that alternative transport had been arranged for the following Monday. He had also spoken to one of the other passengers who had not been aware that the service was being discontinued.

On 24th November the taxi service picked up Mr Fitzpatrick at the first pick up point, but there were no other passengers at any of the other pick up points. On arriving at Cavan IT, Mr Fitzpatrick was informed that the taxi service would not be able to continue with only one passenger availing of it. The Complainant, and his assistant at the college, met with his class tutor, who informed them that Mr McCaul was still doing the bus run. A call was subsequently made to Mr McCaul and they stated they were informed that he would not be providing Mr Fitzpatrick with any further transport. As a result, Mr Fitzpatrick was unable to attend college for the rest of the week and stayed with a friend from college the following week, until alternative transport was set up by the college.

Mr McCaul had submitted that there had been a downturn in his business and that the bus run was costing too much. It was submitted that he consulted with Mr Fitzpatrick about the use of a smaller vehicle for the run and that the Complainant declined and checked out other services instead. It was submitted that Mr McCaul contacted the College to seek further funding to no avail. It was denied that he told Mr Fitzpatrick he would be discontinuing the service. In oral evidence, Mr McCaul stated that he would be discontinuing the service and that he informed the other passengers on Friday 21st November about this alternative. The respondent stated that it was only at this point that the issue of using a smaller vehicle, at a higher cost, was raised by him with the other passengers. The respondent stated that this was arranged over the weekend and that he did not contact Mr Fitzpatrick as he had his own transport organised.

Mr Fitzpatrick denied that he had ever been spoken to about continuing the service in a smaller vehicle. He confirmed that he had travelled to college in Mr McCaul's mother's car, while Mr McCaul was on holidays.

Mr McCaul confirmed that he received a telephone call from the college but that he was unable to provide transport for that particular week as his mini bus was being used by his friend. He stated that he would "have something organised" if the college rang back later in the week. This was denied by both Mr Fitzpatrick and his assistant, who were both present when the call was made. Mr McCaul also stated that he himself did not have an issue with the guide dog but a number of his passengers had a problem because of the dog smell and dog hairs on the bus.

In his conclusions, the Equality Officer considered whether the respondent had always intended continuing with the service in a smaller vehicle and had deliberately misinformed the complainant, because he did not want the guide dog on the bus or whether he changed his mind about continuing with the service over the weekend.

Having considered all the evidence, the Equality Officer did not find that Mr McCaul's claim that he had changed his mind over the weekend to be credible. He found the evidence of Mr Fitzpatrick and his assistant to be more compelling. The Equality Officer was satisfied that the respondent did not intend to withdraw the service at the time and that he had formed this view based on the other passengers telling him that the number of people using the service was dwindling because of the presence of the guide dog. The Equality Officer found that the respondent had deliberately misinformed the

complainant that he was discontinuing the service to prevent his availing of that service because he did not want his guide dog on the bus. The Equality Officer found that by treating Mr Fitzpatrick in the manner in which he did, because of his guide dog, the respondent discriminated against him. He found that the Complainant had established a prima facie case of discrimination which the respondent had failed to rebut. He was also satisfied that the issue of nominal cost did not arise in the case. In his final comments, the Equality Officer stated that Mr McCaul was concerned at the business he might lose from certain customers, who complained about the smell of the dog. However, by taking those views on board, the Equality Officer stated that Mr McCaul had failed in his responsibility as a service provider, to comply with the provisions of the Equal Status Acts. In providing redress, the Equality Officer took into account the fact that Mr Fitzpatrick relied quite heavily on the minibus service and that at least a week of his education had been seriously disrupted and also the extent of the distress that was caused to him by what had happened. The Equality Officer found that the respondent had discriminated against Mr Fitzpatrick on grounds of his disability and by his failure to provide reasonable accommodation and awarded him the sum of €2,500 for the effects of the discrimination.

A Post-Leaving Certificate Student -v- An Educational Institution (REASONABLE ACCOMMODATION); DEC-S2009- 043

The respondent states that every effort was made in good faith to provide special facilities for the complainant to enable her to fully participate in the course for which she had enrolled. These facilities, which comprised, at the complainant's suggestion, primarily assistive technology for use by the complainant, were paid for out of the College's own funds as funding is not available in the circumstances from the Department of Education via the Vocational Education Committee until after a student has commenced the course.

Áine Wellard v Killester College (REASONABLE ACCOMMODATION); DEC-S2008-024

The complainant, who is visually impaired, states that she applied in February 2003 to attend a specific course in the respondent college in September 2003. In April 2003 the complainant attended an "open day" at the college during which she made the college aware of her specific requirements on foot of her disability. A number of e-mails were subsequently exchanged between the complainant and the College regarding the complainant's requirements to participate in the course. When the complainant attended at the commencement day of college on 11 September 2003 the facilities which she required were not in place. The complainant states that this was discriminatory on the disability ground contrary to Section 7 of the Equal Status Act 2000 in terms of Sections 3(1)(a), 3(2)(g) and Section 4 of the Act.

Ms. Erika Hendrick (deceased) -v- National Learning Network t/a Roslyn Park College; DEC-S2009-013

The complainant, a wheelchair user, was a student at Roslyn Park College between 2002 and 2004. The complainant claims that during her time at the College she was discriminated against by the respondent on the disability grounds as she was not provided with the opportunities to access the particular skills specific courses of her choice. She also maintains that the respondent failed to provide her with special measures and facilities in order to accommodate her needs during that time.

Example on age (and race):

A Student - v- City of Dublin Vocational Education Committee (RACE); DEC-S2007-089

The dispute concerns a complaint by the Student that he was discriminated against on the grounds of race and age contrary to the Equal Status Act 2000 by the City of Dublin Vocational Educational Committee (CDVEC) when one of its Colleges of Further Education held a separate ceremony for a Back to Education Initiative (BTEI) class and thus excluded him from the college's main graduation ceremony on 26 May 2004.

Office of the Equal Opportunities Ombudsman, Lithuania

Background: Lithuania has a Law on Equal Opportunities prohibiting discrimination based upon age, religion, sexual orientation, disability, gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion in areas outside employment, e.g. access to goods and services, educational system etc.

Please find below the provision of the Law on Equal Opportunities concerning the sphere of goods and services: "Article 8. Implementation of Equal Treatment in the Field of Consumer Protection.

When implementing equal treatment, a seller or producer of goods or a service provider, without regard to gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must:

1) provide consumers with equal access to the same products, goods and services, including housing, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value;

2) when providing consumers with information about products, goods and services or advertising them, ensure that such information does not convey humiliation, contempt or restriction of rights or extension of privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion and that it does not form public opinion that these qualities make a person superior or inferior to another."

Example on Disability:

A disabled man was not allowed to enter a dancing club because he was in a wheelchair. He was told not to enter the club as he can cause some inconveniences to the other clients.

Example on age:

Elderly people have been refused travel and health insurance because of their age. Insurance companies did not want to sign an agreement with people aged 75 and more and to issue travel (or health) insurance certificate even if they agreed to pay higher premiums in comparison with younger people. Insurance companies are treating elderly people as a too risky group that can bring financial loss to the company.

We are also dealing with commercial advertisements, but usually it is more about humiliation of women. However, we had some cases where people have been humiliated on the ground of religion, belief or convictions when advertising some clothes, alcohol drinks etc.

National Commission for Persons with Disability, Malta

Background: The Equal Opportunities Act 2000 covers six pillars: (i) Education, (ii) Employment, (iii) Education, (iv) Accessibility, (v) Goods and Services and (vi) Insurance under which discrimination on the basis of disability should not occur.

Below are some of the complaints we have received and we (KNPD) had to tackle:

Case 1 - Goods and Services

A blind person using a guide dog had to travel at short notice to the UK and made enquiries with the Maltese national carrier Air Malta. The company said that requests at such short notice are not accepted since the standard procedure is that a seven days' notice is required.

KNPD intervened and the request was acceded to within two days.

Case 2 - Education and Accessibility

A primary school student who uses a wheelchair missed out on two school outings because the school failed to provide accessible transportation. The child's mother contacted KNPD after realising that



accessible transport was not going to be provided for the following outing. KNPD took the matter to the Ministry for Education and accessible transport was provided.

Case 3 - Accessibility

A report was lodged by persons using the services of a government health centre which lacks a lift. After numerous attempts at finding an amicable solution, KNPD sued the Health Department for not providing the same level of access to its services to disabled persons as their non-disabled peers. During the case, it transpired that the government was not the owner of the building and it had been renting it for decades. It had bought a lift some 18 years earlier but had never installed it as the landlords had not granted their permission as is within their rights according to the Maltese Civil Code. The Court, heard how the landlords, who by court order became co-defendants in this case, withheld their permission for the installation of the lift in order to apply leverage on the government to bargain for higher rent. The Health Department was actively seeking another building, however, it is still operating from the same building. As a result the uninstalled lift was never unpacked, and lay unutilised for 18 years in a garage. Installers have certified it as being unsuitable. KNPD won the case and the government has appealed. The case is to appear before the Court of Appeals.

National Commission for the Promotion of Equality, Malta

Example on religion and belief:

Last year NCPE received a request for information from a Muslim woman who was denied access to a club's pool facilities due to her clothing (burkini). The person however, could not proceed with lodging a complaint for investigation since NCPE's remit in relation to the access to and supply of goods and services is limited to the grounds of gender and, race and ethnic origin, as provided by Maltese law. This incident was also reported in the local media – please refer to the web-link: <http://www.timesofmalta.com/articles/view/20140820/local/marsa-sports-club-denies-discrimination-over-bathing-suit.532535>

Human Rights Defender Office, Poland

Background: Polish law reflects only the minimum standards that stem from EU legislation. Even the title of our antidiscrimination law shows it: Act of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment. Currently the law provides special protection only for specific groups of victims of discrimination (in terms of ground) in areas that are covered by EU legislation. Although the Constitution says that no one can be discriminated against in political, social or economic life for any reason, the law introduced only limited protection. So, if the EU legislation is extended, national legislation will have to adjust.

The HRD receives complaints on discrimination that is not covered by the antidiscrimination legislation. In such cases we refer to the constitutional principle of non-discrimination, the ECHR or other international law instruments to change some practices. But the lack of legislation means that no effective remedy is available.

Some examples in which the Equality Body and victims are limited by law:

Examples on disability:

Access to education

Many children are not enrolled in public schools solely on the ground of their disability. Parents are encouraged to send their children to special schools.

Access to services which are available to the public

The ban on entering a shop in a wheelchair or with dog assistance; a blind person also could not get the medical treatment as dog assistant was not allowed to enter the medical facility.



Examples on sexual orientation:

Access to services which are available to the public, including housing

Property-owner refused to rent a flat when it turned out that a homosexual couple was going to be the new tenants; insurance companies sometime deny access to family insurance of same-sex partners;

Education

Bullying in schools

Medical treatment

HRD research shows that homosexual people are confronted with stereotypical opinions and bias on the ground of their sexual orientation, which may result in treatment being denied to them unless they prove they are not HIV-positive.

Example on age:

Access to services which are available to the public

Restrictions in access to certain financial services.

Commission for Citizenship and Gender Equality, Portugal

In terms of general considerations, it is important to underline the fact that Europe has one of the most ageing populations in the world, and amongst EU member states, Portugal is one of the countries with the greatest percentage of elderly people.

A recent study, from 2007, carried out by PT National Statistics Institute showed that in 25 years the number of elderly people over 65 years old will double in our country.

In what concerns healthcare we need to improve accessibility for this age range and we would like also to stress the importance of a greater visibility in the media notably emphasizing the advertising aimed at elderly people.

An immediate concern should be the need to provide responses to the development by landlords of construction works which could facilitate the adjustments of houses belonging to elderly people, aiming at providing answers to the reduction of mobility which is characteristic of such a group, as well as the prohibition of age discrimination in certain services.

All these thoughts demand political and legislative measures on active ageing.

There is a legal gap in Portugal in so far as discrimination against LGBT people is concerned, notably in accessing goods and services or in the healthcare context, with the exception of the V National Plan for Gender Equality, Citizenship and non-Discrimination (2014/2017) which is the instrument for the implementation of public policies for the promotion of gender equality.

We believe that the approval of the so-called "Horizontal Directive" may contribute to help preventing and resolving similar situations in the future and we think that it is very important to have strong antidiscrimination legislation prohibiting discrimination on grounds of religion, age, disability and sexual orientation beyond employment.

Examples on sexual orientation:

A young lesbian was a victim of domestic violence by her tutor and husband. After contacting the authorities, it was suggested to the young girl that she should return home. She refused to follow such advice and then went to a catholic foster home where she was forbidden to contact her girlfriend and only allowed to contact her tutor.

A lesbian saw her family planning appointment cancelled when she revealed that she was a lesbian.

A married lesbian couple wanted to obtain an international wedding certificate (for professional matters) from the Institute of Registration and Notary Affairs and they were asked to choose which one was the “husband”.

Commissioner for Protection of Equality, Serbia

(for detailed overview see the document ‘Towards adoption of the Horizontal Anti-Discrimination Directive: Case examples, data and findings of the Commissioner for protection of equality of Serbia)

Example on disability:

The mother of a boy with developmental disabilities filed a complaint against a primary school for discrimination against her son on the basis of developmental disabilities. In the course of the procedure it was established that the boy suffers developmental impairments and that he attends instruction following an individual education plan. He completed the fifth grade of primary school in the 2012/2013 school year, but he had received marks only in four subjects, while he had no evaluations for the rest of the subjects and he had no GPA stating the overall success at the end of the fifth grade. An individual education plan for this boy was created for the four courses for which he was evaluated at the end of the year, and he had not been attending the classes for other subjects. For this reason, the competent school administration recommended the school to observe regulations on the creation of an individual education plan, to create an individual education plan for all subjects and to create conditions which would enable the inclusion of the boy in classes for all subjects, to the extent optimal for the boy. However, the school did not create conditions to enable assessment for all the subjects in the 2012/2013 school year, thus placing the boy in a less favourable position compared to other pupils on the basis of his personal characteristic – developmental disabilities. The Commissioner issued the opinion that the school violated the provisions of the Law on the Prohibition of Discrimination because it failed to create conditions that would enable the boy to be assessed in all school subjects in the 2012/13 school year. The school was recommended to take all necessary actions and measures to create the conditions for assessment of the boy in all subjects in the 2013/14 school year; to organize trainings and education for the school employees on the topic of discrimination in education, especially in relation to pupils who need additional support in education because of social deprivation, developmental impairments, disability, learning difficulties and other reasons; as well as to take care in the future to not violate regulations on the prohibition of discrimination in the framework of their regular duties and activities. This recommendation has been implemented.

Example on age:

Persons suffering from metastatic prostate cancer above 75 years of age, as well as women suffering from breast cancer above 40 years of age are being excluded from obtaining the said medicines for the purpose of medicinal castration at the expense of the Obligatory Health Care Insurance Fund (2012)

A complainant stated that the Rules of Procedure for Medicines That Are Prescribed and Issued at the Expense of the Obligatory Health Care Insurance Fund contain certain medicines which are subject to prescription limitations in connection with the age of the insured person. Namely, persons suffering from metastatic prostate cancer above 75 years of age, as well as women suffering from breast cancer above 40 years of age, cannot obtain the said medicines for the purpose of medicinal castration at the expense of the Obligatory Health Care Insurance Fund, but must procure them at their own expense.

Example on religion and belief:

A non-governmental organization filed a complaint against a company due to the employment questionnaire posted on the Internet, which included questions related to personal characteristics of the applicants who applied for the job with this employer. Particularly sensitive questions were: a) marital status (children, plans, abroad), b) nationality; c) do you believe in God; religious affiliation (do you celebrate Saint Patron Day); d) membership in a political party; and e) previous convictions. It was established that the questions violated the imperative regulations on the prohibition of discrimination



and that personal characteristics of the persons who applied for the job did not represent real and crucial conditions to perform the job, considering the nature and characteristics of the job and the company's activity. Also, it was established that the company, after it had made the statement on the case, removed the questionnaire from its Internet presentation. The opinion was issued that this company committed an act of discrimination in the field of employment and work, based on marital and family status, national affiliation, religious beliefs, political beliefs and previous convictions. A request for initiation of a misdemeanour proceeding was also filed against a company and its director, as a responsible person. Since the questionnaire was removed from the website during the procedure, the company was recommended not to repeat acts of discrimination in future job advertisements and job interviews with candidates by asking inappropriate questions concerning their personal characteristics.

Example on sexual orientation:

A human rights organisation submitted a complaint against a professor of a Faculty of University, wherein it is stated that the professor, while lecturing to students, stated that "homosexuality is an illness, and that this is how it should be registered, just like stomach ulcer, and that homosexuality is cured by a change of sex". Following the procedure of acting upon the complaint, the Commissioner for Protection of Equality gave her opinion that, by talking about homosexuality and mentioning in the same context "illness", "cure" and "a change of sex", the professor brought into question the validity of the decision on the basis of which it was removed from the list of illnesses, whereby he contributed to creating humiliating and offensive surroundings in relation to LGBT persons. Along with her opinion, the Commissioner issued a recommendation, suggesting that the professor should take care in the future that what he tells his students about homosexuality should be quite clear and unequivocal, without leaving any possibility for misunderstanding the meaning of his words, bearing in mind that certain incorrect statements may contribute to creating and maintaining stereotypes, prejudices and intolerance directed against LGBT persons, hurt their dignity and create humiliating and offensive surroundings in relation to them.

Slovak National Centre for Human Rights, Slovakia

Since the national legislation of Slovakia protects from discrimination on the wide range of grounds in all areas (for all grounds both in the area of employment and outside employment), the Centre has in the past dealt with various cases, which it would not have been able to handle if our legislation did not cover all areas.

Example on age:

The case dates back to 2007 and 2008 and concerns discrimination on the ground of age in the area of health care. The Centre was originally contacted by the civic association Union of sclerosis multiplex Hope (OZ zväz sclerosis multiplex Nádej) alleging discrimination of patients over 45 years of age. According to the applicable legislation at the time, people suffering from sclerosis multiplex being older than 45 were not entitled to a special form of medical treatment (imunomodular treatment). The justification used was that older persons are not likely to benefit from such treatment and that this kind of treatment will not be appropriate. However, this was not grounded and it turned out that the main reason was the costs of such treatment. The Centre assessed the legislation to be discriminatory and addressed its official statement together with several questions to the Ministry of Health Care. As a result, in April 2008 the Categorisation Committee at the Ministry of Health Care decided to eliminate the age limit for provision of this treatment to patients older than 45 years with an effect from 1 July 2008. We believe that the amendment significantly contributed to the treatment of people with sclerosis multiplex regardless of their age.

Example on disability:

This case is more recent and concerns discrimination of a student with disability in education. The victim of discrimination was a disabled girl who was admitted to study at a grammar school despite her



disability. To picture the range of disability, the girl is dependent on a wheelchair and her verbal communication skills are limited to expressing agreement or disagreement (YES/NO). When she started attending the school, the school realized that the premises are not suitable to accommodate such a student and also that the school does not really have capacities to educate the girl. As a result a series of discriminatory steps followed resulting in the decision of her mother to withdraw the girl from the school and seek to find another school, where her daughter could receive education. The Centre was involved in the case, communicated with the school and following the wishes of the mother negotiated a settlement with the school. The settlement consisted of a written public apology for the caused discrimination. The case did not proceed to court since the mother preferred out-of court settlement and considered the apology for more appropriate and sufficient redress.

The Equality Ombudsman, Sweden

Background: The purpose of the Swedish Discrimination Act (2008:567) is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, religion or other belief, disability, sexual orientation or age. Outside of employment the prohibition of discrimination applies to areas such as education, social protection, healthcare and access to goods and services (including housing). Since 1 January 2015 inadequate accessibility is included in the Act as a new form of discrimination.

Link to the Discrimination Act: <http://www.government.se/content/1/c6/11/81/87/36dc60a5.pdf>

Since the Discrimination Act came in to force on 1 January 2009 the Equality Ombudsman has litigated several cases on the grounds and in the areas of the Horizontal Directive. We have also settled some cases out of court.

Example on disability:

Disabled child and her mother discriminated by insurance company

A woman applied for a child insurance policy for her daughter and was refused by the insurance company. Not having performed an individual risk assessment in the case, the company stated as grounds of refusal that the mother was entitled to a specific social benefit, which according to Swedish law is only granted to parents of children with either a disability or a serious illness. As a rule, the insurance company never granted the insurance policy to parents with the subsidy in question as the group of entitled children as such presented a substantially higher risk for notably economic invalidity. The Equality Ombudsman brought an initially unsuccessful action against the insurance company in Stockholm District Court on behalf of the mother and the daughter. The action was however successful on appeal. The Svea Court of Appeal held the rule applied by the insurance company to be directly discriminatory as it automatically excluded children with disability (including children with serious illnesses) because of their disability (as there was a causal link between the disability and the subsidy in their case). Importantly, the fact that the rule also causally excluded some sick children who would not qualify as disabled did not render the rule neutral with respect to disability. As the Ombudsman had consciously limited it's action to only pertain to the lack of an individual risk assessment, the issue whether the daughter should have been granted the insurance was not tried in the case. Finding for the Ombudsman, the court ordered the insurance company to pay a total of 150 000 SEK to the mother and daughter in punitive damages.

Should you need further information or support, please feel free to contact the Equinet Secretariat (*Tamas Kadar* – tamas.kadar@equineteurope.org, +32 2 212 3183).