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United in Equality? Citizens' Access to Effective Legal Protection and the National Equality Bodies in the Baltic Sea Region

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Abstract

In the EU of free movement and common citizenship the question of protection against discrimination and the assurance of equality of the people is acquiring more and more relevance. This is inevitably connected to the principle of effective judicial protection emphasised in the Treaty of Lisbon. According to the EU equal treatment legislation, Member States, although without any specifications provided by the EU, are obliged to assure the existence and function of independent organisations assisting victims of discrimination. Therefore, it is crucial to consider how the relationship between Article 19(1) TEU and the EU equal treatment legislation is reflected in different Member States and the work of national equality bodies. In this respect, an especially interesting case to examine is the Baltic Sea Region as there, because of different historical development of anti-discrimination policies, one might expect to find significant discrepancies when it comes to assurance of effective legal protection against discrimination also nowadays. Accordingly, by using a comparative approach this article aims at outlining how the principle of effective judicial protection has been embraced by Member States in respect to equality bodies in this region. It claims that the work of national equality bodies and accordingly the victims' access to effective legal protection against discrimination in the Baltic Sea Region does not reflect the historically determined division between the East and West and new and old Member States.

Introduction

The Iron Curtain divided Europe in many different ways. One of them was also approach to the question of equality. Thus the EU unites countries that have diverse historical experiences in this respect. Taking this into consideration a question arises of how the European equality legislation that is of a high significance for the functioning of not only the common market, but also the EU as such is reflected as a united reality on the background of this historical division. Moreover, it can be asked whether the historical division also is reflected in the light of the Principle of effective access to legal protection in respect to non-discrimination. Hence the Baltic Sea region where the Member States have been historically divided in the respect to equality and non-discrimination is a beneficial background for such a study.

The common equality legislation of the EU has developed a general requirement for the Member States to assure the existence and functioning of national Equality bodies. Taking into consideration their specific nature it seems that this development could offer a uniting link between the otherwise historically spilt region in respect to equality. Thus the aim of the paper is to discover how has the EU Equality legislation and creation of national Equality bodies contributed to overcoming the historically determined different approach to non-discrimination. Moreover, it aims at discovering how these specialized bodies are contributing to a more united assurance to access to effective legal protection.

In order to reach these aims the paper is taking an interdisciplinary view on the matter at hand. Taking into consideration the limited academic literature on the national Equality bodies the paper is an explorative study. Apart from the aims stated above, this paper also aims at contributing of filling a significant gap in the academic debate on the role of national Equality bodies which until now rarely raised, but considering the potential of these bodies ought to be much developed.

A comparative approach is at the core of this research that is based on the information provided by the homepages of the Equality bodies and the European Network of Equality bodies, as well as their reports on the current situation. The paper, however, starts by outlining the historically determined different approaches to human rights in a broader sense and equality in a more narrow sense. Although touching upon the question of history, this part of the paper will be merely a sketch of the two different approaches as they determined also the official policies and

reality in the different countries, while a detailed overview of the two different approaches is beyond the intended scope of this article.

The second part of the paper offers a contemporary view on the question of equality and access to effective legal protection in this respect in that it first of all outlines the development of the EU equality legislation in general and continuing by viewing the national Equality bodies more in detail. In this respect the aim of this part is to outline the link that the national Equality bodies can establish between the principle of access to effective legal protection on the one hand and common equality legislation on the other.

Finally, the last part of the paper is concerned with the reality in the Baltic Sea region, since united legislation does not necessarily assure a united reality. The research thus offers a comparative look upon the situation in eight EU Member States, in order to evaluate their situation in access to legal protection that is assured through the national equality bodies. The one by one approach to the Equality bodies in the eight Member States will provide a comparative overview allowing estimating the reflections of the diverse past into the reality of nowadays.

The Dividing line – history

It is undeniable that history has presented a dividing line between the East and the West of Europe in many different ways. One of them is the approach to discrimination and equality, and human Rights in a broader sense. Thus this paper will give an overview on some of the dividing aspects between the approach to fundamental rights in general and non-discrimination and equality more precisely.¹

As mentioned above, the Iron Curtain divided two areas with a contradictory view on human right and similarly also equality and discrimination. During the Cold War although still developing, the Western approach was the one which is going in line with the internationally accepted norms that the EU equality legislation is built on

¹ Equality and non-discrimination is part of the Charter of Fundamental Rights of the European Union. Article 21 of the Charter determines that „Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” (European Union 2010a). Thus non-discrimination and equality promotion cannot be fully separated from the fundamental rights.

nowadays. Thus, this will be discussed at a later stage of this paper. The Soviet approach was much more contradictory from a Western point of view; therefore some of its characteristics will be outlined here.

Human Rights watch in their reports have been especially critical about the legacy of the Soviet Union on the Human Rights situation. „The Soviet system of rule had for many years been notorious for systematic violations of human rights” (Human Rights Watch, accessed on 2014.08.08.) Although addressing the questions of equality and human rights in general, the very base of the understanding was very different.

In the Soviet interpretation the stress was put on social rights and economic rights. These included affordable food supplies, access to housing, health care, education and guaranteed employment. (Patenaude 2012) Although in theory the system was assuring equality for everyone in the society, in fact the reality tended to be different. With the state imposed atheism, it was not possible to talk about non-discrimination on the grounds of religion or the stated policy towards disabled persons left no room for non-discrimination on the grounds of disability.

A part of the Soviet approach was creating for example equality between men and women. While this included making women part of the labour market, it did not include changing the mind-set in the society. Thus it has been claimed that „Patriarchal values and structures were not eradicated, but the ‘family patriarch’ was replaced by the authoritarian state”. (Brunnbauer 2000: 152) Hence, on the one hand a system was created where women were equality part of the labour market hence also the child-care system was developed accordingly. On the other hand “domestic violence and the domestic division of labour give evidence of unequal relationships” (Pascall 2000: 240) Thus from the perspective of nowadays the Soviet system to equality offered an unbalanced approach - on the one hand assuring a level of social rights, while not referring to the concepts at the core of the western approach.

When comparing the two there are multiple levels of fundamental differences. To start with, while the Western legal theory concentrated on ‘negative’ rights of an individual, the Soviet Union was concentrating on the ‘positive’ rights of the society (Stanford program on international and cross-cultural education). Thus the positive/negative division is already a significant when trying to understand the both systems.

Another dividing point between the two approaches to human rights is that of beneficiaries from the rights. In the Soviet approach an individual was seen a part of the classless society. Thus the needs of the society come before the needs of an individual. In this respect also the society in general and not an individual is the main beneficiary of human rights. Contrary to this of course the more western approach stressed the individual as the main beneficiary of human rights. (Lambelet 1988: 66) This division hence also sets a completely different approach to equality as such. Since the needs of the society came before the needs of an individual also the understanding of equality was completely different. In this respect, one cannot refer to the understanding of discrimination as it is understood from the nowadays perspective.

Moreover, the Soviet system put an emphasis on economic rights over human rights. In this respect it was believed that without developed economic rights, civil and political rights cannot be exercised. On the other hand in the western approach political and civil rights are natural while economic achievements are not considered as having a primary importance over them. (Lambelet 1988: 65) Thus this provides another fundamental point of difference and division.

Lambelet is furthermore stressing the semantic difference in the approach to human rights from the Soviet and socialists on the one hand and western side on the other hand. Namely, the very term includes in itself a clear level of cultural, political and ideological base. Thus for the socialists and Soviets it refers to the right to shelter, the right to medical care, absolute right to work, and the right to education. On the other hand the base of western approach was not considered. Thus the Soviet Union was widely criticized on such aspects as freedom of association, religion, speech, emigration and the press. (Lambelet 1988: 62)

It is clear that in general historically the approach to equality and discrimination in Europe had been divided in two diametrically opposite 'camps'. All of these differences could of course be found within the Baltic Sea region. In spite of this, relatively shortly after the collapse of Soviet Union, the Eastern European Countries of this region joined the European Union. It is inevitable that the characteristics of the socialist approach to human rights and equality left obvious consequences in these countries. Hence, it is of interest to consider to what extent this division is still present in the nowadays approach to equality in these countries. Since the countries in question are nowadays part of the EU, here the equality legislation

Europe will be considered before viewing the national situation of the eight member states in detail.

The uniting line – the EU legislation

Non-discrimination legislation in the EU and effective access to legal protection

The beginning of a common approach to Equality in the Europe can be traced back to the beginnings of the EU. In spite of this from a legal perspective the first forty years did not include much common legal base. One of the most imperative developments for the promotion of equality and fight against discrimination in the EU was introduced in the Treaty of Amsterdam signed in 1997 thus this paper concentrates on the legal provisions from this point onwards.

In a way Treaty of Amsterdam brought the question of human rights and thus non-discrimination to new level in the EU. For example, Article 12 EC refers to the prohibition of discrimination on the grounds of nationality, Article 141 EC refers to the question of equal pay between men and women. In a way the most important one is Article 13 which significantly enlarged the list of grounds of discrimination. These included sex, ethnic or racial origin, religion or belief, disability, age or sexual orientation. Moreover, the Final Act of the Treaty put a stress on the ground of disability by stating that the EU institutions must consider the need of persons with disabilities when measures to approximate Member States' legislation are adopted. (European Union 2012) Thus the Amsterdam Treaty proved to be a significant step towards a common approach to non-discrimination at the time, as well as in respect to further legal developments in this respect.

Another step further was the European Council in Tampere in December 1999 when The Council invited the Commission to develop a proposal relevant for the implementation of the Article 13 of the Amsterdam Treaty. (The Council of the European Union 2000) With this the Council strengthened even further the importance of social dimension in the context of other policies in the EU. Moreover, at this point it was clear that articles in the Treaty without following further actions would not be able to lead towards more equality in reality.

2000 proved to be an especially significant year. The changes were brought by development of equality directives. These included Directive 2000/43 the so called

Racial Equality Directive, and Directive 2000/78 or the Employment Equality Directive. Although certain doubts were present in respect to the acceptance and implementation of these Directives by the Member States, both directives were adopted and marked a significant step towards a uniform approach to Equality. (Guiraudon 2009: 532) These Directives were followed by the Directive 2002/73 in 2002 which was related to equal treatment between women and men in respect to employment. (Witte de 2010: 1720)

In the midst of all the developments came the biggest enlargement that the EU had experienced, with ten new Member States. Most of these were from Central and Eastern Europe thus bringing their historical heritage with them. This resulted in some doubts and debates in the EU, as it was predicted that this development would result in a high level of migration in the EU. (Meenan 2007: 26) Thus it was also clear that from this point onwards the common approach to Equality promotion that in fact was still under development would face certain challenges.

This was followed by a Commission Framework Strategy in 2005. The starting point was the claim that “it is clear that implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups.” (Bell 2009: 15) Thus at the time the necessity to strengthen effective practices and change mind-sets in addition to creation of common laws was stressed. These aims were followed by actions from the side of the Commission and took the form of a consultation with social partners, as well as the ‘Roadmap for equality between women and men’ that announced the need to review the actual gender equality legislation of the EU in order to improve its effectiveness and ameliorate the situation. (The Council of the European Union 2010b) 2007 brought further significant changes to the EU equality legislation. First, the Council asked the Commission to consider the possibility of revising the Directive 86/613/EEC for safeguarding the rights of motherhood and fatherhood of self-employed workers (The Council of the European Union 2010b). Second, Commission in this year was referring to the need for developing further initiatives combating discrimination outside the labour market. (Meenan 2007: 8) Perhaps, most importantly this was the year of signing the Treaty of Lisbon.

The Treaty of Lisbon brought a row of changes to the EU equality promotion. One of the significant developments was that the Charter of Fundamental Rights of

the EU which was adopted already in 2000, became binding to the Member States. It covers a variety of grounds of discrimination² and also general provisions³ about equality before law.

In 2008 The European Commission confirmed that further provisions were needed in order to cover discrimination outside employment “At present, there is an inequality in Community legislation itself because people are protected from discrimination outside the workplace only on grounds of gender and racial or ethnic origin. We must ensure equal treatment for all grounds.” (European Commission 2009c: 21) In the same year a new ‘social package’ was called for in order to encourage renewed commitment on all grounds of discrimination. It includes Commission Communication on anti-discrimination, Directive proposal and several other documents. (European Commission 2008b: 1-2) Thus from that moment a new Directive proposal was on its way. It was supposed to tackle discrimination outside employment on the grounds of religion or belief, age, disability, and sexual orientation. (European Commission 2009b: 3) Thus at this point the EU actions were trying to adopt the changes in the society, as well as identifying the gaps in the EU Equality approach and trying to fill them. The new Directive however, was facing several problematic aspects – the need for unanimity from all 27 ministers in the Council of Ministers. (Bell 2009: 8)

In spite of the various actions from the EU side in order to develop a common approach to equality promotion, it was concluded in 2012 that in reality the situation is more complicated. After analysing the results of a conducted survey, the Commission realized that although Member States have been mostly successful in implementing the EU Equality directives, some gaps and problems are nevertheless remaining. Moreover, it was clear that still more than ten years after the issuing of the first equality directives based on the Article 13, Member States are facing problems with applying the directives in practice. (European Commission 2012a: 126) Thus when evaluating the harmonisation of equality legislation it is important to also consider how harmonised the reality is.

² Article 21 „1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.” (European Union 2010a)

³ Art 20 „Everyone is equal before the law.” (European Union 2010a)

Overall the EU equality promotion has been significantly developed over the years and gained more importance. Nevertheless, it seems that at this point further development is continued through other tools besides directives. The changing needs are more reflected in development of strategies, communications, cooperation proposals with social partners. This on the one hand can be evaluated as a positive development, as harmonisation of legal texts does not necessarily assure that the situation in reality is harmonised. On the other hand there are still many areas where a further common legal base is necessary in order to reach the common goals.

In spite of this, protection against discrimination is a crucial part of the EU legislation signifying that every citizen of the EU has the right to equal Treatment and the Member States are responsible for assuring this right. What is more, in this respect it is possible to talk about assuring access to effective legal protection when it comes to discrimination cases.

Article 19 of TEU refers to the effective legal protection.⁴ This implies that first of all the EU legislation is applied in a correct and effective way. And second of all, the Member States are responsible for providing conditions where citizens of the Union have access to these. Moreover it is also crucial to take into consideration the Article 47 of the Charter⁵. This implies that everyone whose rights have been violated have the right to effective remedy.

In this respect also the European Court of Justice has concluded that

“Since the fundamental rights guaranteed by the Charter must [...] be complied with where national legislation falls within the scope of [EU] law, situations cannot exist which are covered in that way by [EU] law without those fundamental rights being applicable. The applicability of [EU] law entails applicability of the fundamental rights guaranteed by the Charter.”(Lenaerts 2013, 1)

⁴ Article 19 (1)The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. (European Union 2010b)

⁵ Article 47 „Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.” (European Union 2010a)

This implies that the Member States have to assure that individuals have an actual access to the courts, as well as to judicial proceedings. (Lenaerts 2013: 3) However, for example in the case of equality legislation and discrimination cases it seems that assuring access to courts would first of all signify that the victims of discrimination have to be significantly informed about their rights stemming from the legislation described above, as well as about the possibilities of reaching the effective remedies called for by the EU legislation.

This is confirmed by an EU level survey made in 2012 which showed that 37% of the Europeans who were surveyed admitted that they would not know their rights, if they experienced discrimination. (European Commission 2013d: 7-8) This implies that assuring access to effective legal protection in these cases has to be commenced by informing the society and assisting the individual cases. In this respect a crucial link between Article 19 and the assuring access to effective legal protection are the national Equality bodies. Thus they have to be viewed more in detail.

National Equality bodies

National Equality bodies are amongst those institutions that offer a link to the access to effective legal protection. This is done in several ways that will be explained below. However, first of all general characteristics of the bodies will be given, in order to understand their unique nature. The European Network of Equality bodies has given a brief definition of the bodies: “Equality bodies are independent organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality” (Equinet homepage) This short definition already offers the link between the national bodies and access to effective legal protection. Namely, offering the access to protection against discrimination. This definition however does not state the exact tools and methods of doing this. For this reason a deeper insight into these institutions is needed.

As mentioned before, assuring the existence of the national Equality bodies was a requirement to the Member States by the common legal provisions in order to combat discrimination and promote equality. Thus this was a significant development in the EU equality promotion, as it assured that all Member States would have as common institution for fight against discrimination.

Generally the work of equality bodies has two dimensions – fight against discrimination and promotion of equality or reactive and proactive. Generally it has been agreed that these two dimensions cannot be separated from each other, as promotion and enforcement reinforce each other and are therefore inseparable. (Cormack 2004: 5) More precisely, Equality bodies act reactively to discrimination that has already taken place, as well as proactively in order to promote equality. On the one hand the bodies react to discrimination in that they provide information to victims of discrimination about laws and the possibilities to seek remedy or compensation, help the victims to find the necessary organisations able to help them, mediate between the discriminators and the victims of discrimination. The promotional work on the other hand include actions that encourages good practice amongst employers and service providers, organises information campaigns aimed at public in general, conduct surveys, publish reports and make recommendations in questions related to equality. (Equinet homepage) The parallel approach to these two dimensions is especially significant for a long-term improvement of the situation. Namely, it is important to combat the discrimination that already exists, however it has to be combined with equality promotion in order to assure fewer discrimination cases in future. Thus equality bodies are of dual importance for reaching Union's goals in assuring equality.

The development and functioning of national Equality bodies is stipulated in the Racial Equality Directive (2000/43/EC), Gender self-employed persons Directive (2010/41), Gender recast Directive (2006/54), Gender Goods and Services Directive (2004/113). This legislative framework is legally binding in all EU Member States and hence creates a common framework. In spite of this, the specific nature of directives offer the Member States a significant freedom to an individual approach to the Equality bodies.

The Race and ethnic origin Directive 2000/43/EC was the first stating the obligation to develop Equality bodies. It was required that these bodies have to assist victims of discrimination and promote equality, evaluate the situation and come up with solutions to problems in this respect, namely, assistance, conducting of surveys and publishing of reports and recommendations. (The Council of the European Union 2000) The directive remained vague on the exact characteristics of the Equality bodies, but a requirement for a creation of it at base was a significant step in the direction towards a common approach to equality in the EU. Similar requirements

were restated in the Gender Goods and services Directive 2004/113/EC, which however did not specify the characteristics of the Equality bodies (The Council of the European Union 2004). In both of these directives it was however clarified that a new body did not necessarily had to be created as the Equality body can be a part of an already existing human rights body. (The Council of the European Union 2000; The Council of the European Union 2004).

The following Gender recast Directive 2006/54/EC although repeated the requirements of the previous directives, also provided a further requirement for the national Equality bodies. It stated that the bodies have to assure exchange of information with corresponding bodies on the European level. (The Council of the European Union 2006) Phrased open rather than precise this Directive stresses the importance of communication between the bodies and enlarging their perspective beyond the national level.

An important aspect that is uniting the work of Equality bodies is that of independence. Independence is another aspect that is at the core of the work of Equality bodies and is stated by the EU equality directives. Namely, the Racial Equality Directive (2000/43/EC), Directive 2006/54/EC; Proposal for a Council Directive (COM(2008) 426 final) stipulate the importance of this characteristic of the specialized bodies. (Yesilkagit 2008: 18) The reality is often discussed, as all of the bodies are financially dependent from their national governments, and some are part of national ministries, that might also leave a negative impact on their independent status. (Equinet 2012: 8) In spite of this, the independent status regardless of it level offers significant chances in comparison with other organisations.

It is obvious that from a legal perspective the general requirements were very broad and vague thus allowing much differences between the individual bodies in each Member State. In this respect the directives have been widely criticized in saying that the directives are vague to such a level that it is impossible to develop any clear cut criteria to evaluate the effectiveness, exercise of all competences or in general whether Member States have complied with the provisions. (Nousiainen 2008: 27)

Thus on the one hand the vagueness of directives leads to a high level of diversity amongst the bodies and can be viewed as a significant set-back for a common approach of Equality. On the other hand, the very development of these bodies is a leap into to common direction, as they provide the common base for further developments in this respect.

As mentioned above, the common aspect of these bodies is their requirement to provide assistance to victims of discrimination and promote equality. In order to see how this contributes to the Union's access to legal protection, the activities of these bodies have to be viewed more in detail. In general according to their functions the national Equality bodies can be divided into promotion type bodies and tribunal type bodies. This leads to distinguishing between bodies representing complaints, as well as achieving settlements and bodies investigating complaints and issuing legally-binding decisions or non-legally binding opinions. (Equinet 2006: 23-24). Thus the promotion type bodies while limited in legal actions are still providing assistance to the victims of discrimination, however on a different scale than tribunal type bodies.

In general the exact tasks of the national Equality bodies can also very much depend on the Member State. In spite of that, as shown before, the EU legislation defines three broad functions. These are assistance to victims of discrimination, conduct of independent surveys, and issuing reports and recommendations. Conduct of surveys is a significant competence of the Equality bodies, as it provides insight into the developments of the application of the equality legislation, as well as gives insight into directions where further equality promotional activities ought to be developed. (Equinet 2008: 36-38) Thus the surveys are significant in monitoring the exiting situation, as well as providing a base for future actions.

The issuing of reports serves two aims. While it allows monitoring the situation in the country, it also might give the chance to influence the development of laws and policies in the state. Moreover, depending on the case some of the bodies also have the capacity to non-legally binding statements or legally binding decisions, which gives another way of influencing the equality situation in the country. (Equinet 2010: 23) Accordingly the specialized bodies are of importance for monitoring of the situation in the country, as well as future development on the national level. However, from all of these competences the one that is the most significant for effective judicial protection is that of providing assistance.

Although it is generally clear that by 'assistance' assistance to the victims of discrimination is meant, the form of assistance is not specified by the EU legislation. When looking at different national legislations, it is possible to see that the situation there is also diverse, as some have specified the tasks in detail, while other have kept the broad definitions provided by the EU. Overall the capacities can range from reaching settlements to taking cases to court and representing victims in court.

(Ammer 2010: 80) A crucial aspect is for example advising victims of discrimination or consulting suspected cases of discrimination, suggesting possibilities and solutions. Thus the capacities of the bodies include out-of-court settlements of complaints, mediation. (Salinger 2007) When it comes to legal help the European network of Equality bodies concluded in 2010 that Equality bodies have limited capacities in this respect, and thus this right ought to be further developed:

“Equality bodies should be given adequate resources to make use of their powers to participate in legal proceedings. Equality bodies should make use of strategic litigation, i.e., they should focus on cases that may test or clarify the law and create precedent, in order to ensure that available resources are used most effectively” (Equinet 2010: 32)

It still however depends on the Member State. In some cases the specialized bodies have the chance to participate in the cases where they can contribute with knowledge or experience that would otherwise not be available to the court. In other cases this is assured by giving them the power to take a legal action in their own name or to be the third party in court cases.

Overall, the capacity to assist of the Equality body depends on the Member State in question. At the same time, any assistance provided by the bodies is of importance as it assures that the victims of discrimination across the EU have the same base that they can get access to assistance in the cases of discrimination. Thus the national equality bodies are significant contributors to assuring access to effective legal protection in respect to non-discrimination in the EU.

In general the national Equality bodies have a specific nature that allows them to play a significant role in Equality promotion in the EU. These bodies are a result of harmonisation of the EU equality legislation which is an important base for a common work. This assures a certain level of independence that these bodies are enjoying and thus characterizes also their work. Moreover their specific tasks, knowledge gained from the surveys and the specific expertise assures that they can be perceived as irreplaceable in promotion of Equality. In this respect they are also to be considered of importance in assuring access to effective legal protection in the questions of discrimination.

Country overview in Baltic Sea Region

After having considered national Equality bodies as a significant development as part of the EU equality legislation on the one hand, and significant contributors to the access to effective legal protection it is time to consider whether the historical differences in the Baltic Sea region described above visible also in the work of the different equality bodies in this region. In order to reach this aim, here the general functions of the bodies will be compared. The region includes eight countries in the region – Denmark, Sweden, Finland, Estonia, Latvia, Lithuania, Poland and Germany. Since it is not stated that each country ought to have only one Equality body, some Member States have developed more.

Denmark is one of the countries that has two Equality bodies - the Danish Institute for Human Rights and the Board of Equal Treatment. The Danish Institute for human Rights is part of the Danish Centre for International Studies and Human Rights. (Cormack 2004: 23) This is a promotion-type body that is significant in providing legal support. Amongst its capacities are those of intervening before the court, promotional activities, communication, monitoring, research, publications, data collection. (Equinet 2012b) What is more the institute offers significant assistance in applying for free legal aid on behalf of the complainant (Equinet 2010: 14)

The Board of Equal Treatment is more limited in its mandate as it deals with concrete complaints about discrimination and cannot take up cases on its own initiative. As the powers of the Board include making legally binding decisions and recommendations, provisions of trainings and information materials, publications, inquiries, awareness raising it has the status of a quasi-judicial body (Equinet 2012a).

The Ombudsman in Sweden is a government agency aimed at combatting discrimination on grounds of sex, ethnicity, disability, transgender identity or expression, religion or other belief, age, sexual orientation. The tasks of the body include registration and investigation of complaints, ensuring compliance with the Discrimination Act, monitoring, informing, awareness raising and reporting on research about human rights and non-discrimination questions. While the body cannot “change court rulings, impose penalties or grant compensation itself, or change the decisions of other agencies” it can intervene in issues related to “working life, university-level education, school education and school-age childcare, and certain other areas”. (Equality Ombudsman Sweden Homepage) The specialized body has the

status of a promotion-type and legal support body. It can bring proceedings in its own name, as well as propose changes in legislation and initiate other measures that could raise the level of equality. (Equinet 2012c)

Finland is the second country in the region in question that has two Equality bodies. The powers of the Equality Ombudsman in Finland are stated in the Act on Equality and those include carrying out an inspections and in the process has the right to receive the necessary assistance form authorities, as well as imposing of penalty payment(The Act on Equality 2005, Sweden) The main tasks of the body are those of guidance and assistance. More precisely, these include the right to formally deciding on complaints and giving non-legally binding recommendations and decisions, representing in courts and giving assistance in discrimination cases. (The Ombud for Equality gender Equality Finland, Homepage) The other Equality body in Finland is the Ombudsman for Minorities that is also a promotion-type and legal support body with the capacity to bring proceedings in own name, represent in front of a court and to make non-legally binding decisions and recommendations in the cases of ethnic discrimination. (Equinet 2012h)

In Estonia the national Equality body has the name of Gender Equality and Equal Treatment Commissioner. The competences of this body include equality promotion, protection against discrimination and assistance, and advisory tasks towards the state, as well as monitoring. (Gender Equality and Equal Treatment Commissioner Estonia 2004) An important part of its work is making recommendations to the local government. (Gender Equality and Equal Treatment Commissioner Estonia) Thus in comparison to the previously described Equality bodies this case stresses much more the assisting role to the government not only the victims of discrimination. More broadly, the Office of the Ombudsman of the Republic of Latvia aims at “encouragement of the protection of human rights and promotion of a legal and expedient state authority, which observes the principle of good administration” (Equinet 2012g). It has the status of a promotion-type and legal support body that aims at promotional activities for duty bearers and potential victims, publications and communication activities (Equinet 2012g) Furthermore its activities include ensuring equal treatment and prevention of discrimination, raising the awareness of human rights, evaluation and promotion of the principle of good administration in government.(Ombudsman of the Republic of Latvia)

In Lithuania the Office of the Equal Opportunities Ombudsperson has the goal of monitoring the implementation of the Law on Equal Opportunities of Women and Men and the Law on Equal Treatment. It is a quasi-judicial body that has the capacities to make formal decision on complaints by issuing legally binding decisions and recommendations, as well as other communicational, research and promotional activities. (Equinet 2012f)

The Human Rights Defender in Poland is a promotion-type and legal support body that has the power to intervening before court, issuing formal decisions and recommendations that are not legally binding, representation in front of courts, bringing proceedings in own name. (Equinet 2012e) The body can be part of the constitutional complaint proceedings before the Constitutional Tribunal. (Human Rights Defender Poland) Similarly, the Anti-Discrimination Agency is the Equality body of Germany and its work includes research about discrimination issues, publicity activities, prevention of discrimination and as such is a promotion-type and legal support body. (Equinet 2012d)

Unity in Equality?

Overall this general overview has provided an insight into the region and the national Equality bodies there. From this it is possible to conclude that there are some differences between the bodies when it comes to their competences. At the same time these bodies also have significant common characteristics. The status of mostly all of these bodies is that of promotion-type and legal support body thus these bodies have a common status base for their actions. Moreover, this status is sufficient for guaranteeing that the bodies play a role as a link for access to effective legal protection. All of the bodies described above work with communication activities and other actions significant for equality promotion, as they assure a greater level of being informed which, as mentioned above, is significant before gaining effective access to legal protection. The possibilities of the specialized bodies to bring cases to court differs very much from country to country. In spite of this, all of the Equality bodies have the possibility of assisting the victims of discrimination in the specific cases, and about the exact way to proceed in order to bring their case to the court.

Hence, national Equality bodies in the Baltic Sea Region, even in the countries where they cannot bring cases to court in their own name, are providing a two-

dimensional link to accessing effective legal protection. On the one hand it included informing the broader society about their rights, which allows the possible victims of discrimination to be more aware of their possibilities. On the other hand, the Equality bodies are offering individual assistance through consultations thus providing chances to access the necessary legal protection. In this respect the specialized bodies can be perceived as a link between the Equality legislation of the EU and the requirement for assuring effective legal protection.

It can further be claimed that these bodies are especially beneficial in this respect because of their specific nature. Firstly, it is the unique expertise the bodies possess, that is based on their everyday work and the surveys they are conducting. Secondly, it is the independent status of these bodies, which allows external influence-free actions.

Finally, it can be claimed that to a certain level these bodies have allowed overcoming the historical division between the countries in the Baltic Sea Region in respect to equality and non-discrimination. This is due to the fact, that as shown above. All of the eight countries examined have established a specialized body for combating discrimination and promoting equality that moreover provide a link to accessing effective legal protection. Thus even in this historically divided region that for a long time experienced strictly different approaches to human right in a broader sense and non-discrimination, the Equality bodies have the potential of uniting their approach which is at the core of assuring more unity in practice.

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