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Warsaw, 18 August 2006

Mr. Jarosław Kaczyński
President of the Council of
Ministers of the Republic of
Poland

Dear Mr. Prime Minister,

On 29 June 2000, the Council of the European Union adopted Directive 2000/43/WE, which aims to establish a framework for combating racial and ethnic discrimination and implement the principle of equal treatment in Member States. Each state of the union has an obligation to implement the provisions of this Directive, as with any other, into its legal order and practice. In our opinion, Poland is disregarding the provisions of Directive 2000/43/WE by implementing them only to a negligible extent.

1. The requisite legal changes have only been introduced into civil procedure and labour law (the law dated 2 July 2004 amending the Code of Civil Procedure and certain other laws; the law dated 14 November 2003 amending Labour Law and certain other laws; the law dated 20 April 2004 on promotion of employment and labour market institutions; the law dated 28 July 2005 amending the law on promotion of employment and labour market institutions and certain other laws). Areas such as social security, education, access to goods and services remain sidelined. This situation is far from the requirements contained in Article 3 of the Directive 2000/43/WE, which defines the scope of its application.

2. Reversal of proof, introduced in Article 8 of the Directive 2000/43/WE and one of the most significant principles in combating discrimination, applies only in employment relations while the definitions of direct and indirect discrimination are contained only in the Labour Code after its amendment of 14 November 2003 (art. 18^{3a} items 3 and 4).

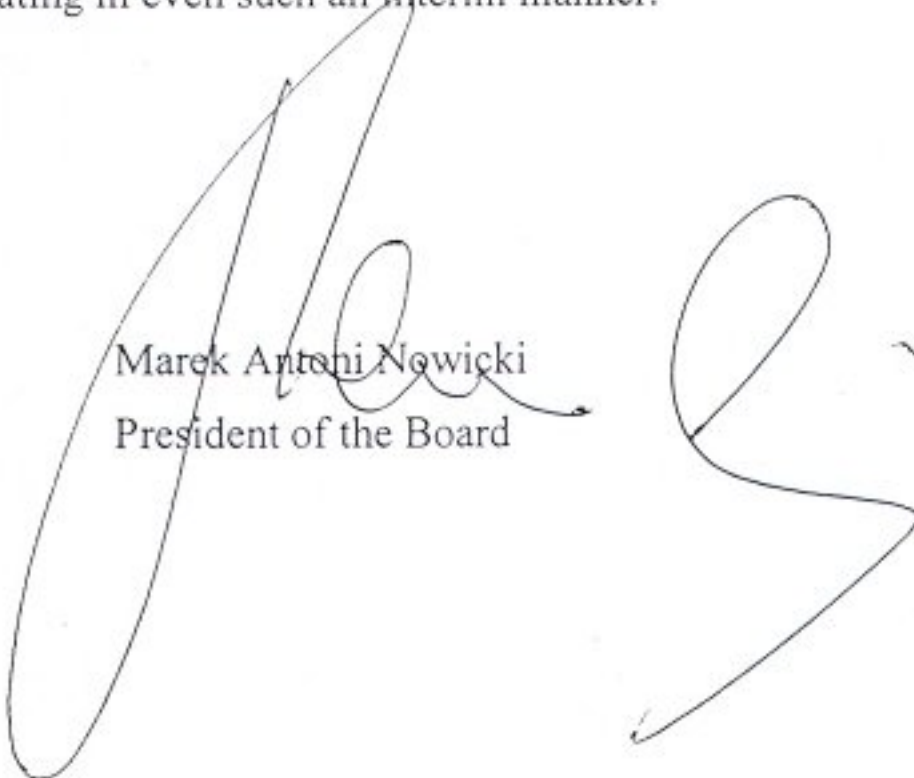
3. However, the definitions contained in the Labour Code only partially comply with the definitions contained in Articles 2a and 2b of the Directive 2000/43/WE. In the case of *direct discrimination*, the provision regarding unfair treatment of an employee (Labour Code, Article 18^{3a} item 3) is a legislative error as its practical application seems impossible in any situation whatsoever. Meanwhile, in Article 2a of the Directive 2000/43/WE, 'hypothetical' nature refers to the behaviour to which the discriminatory treatment is being compared (referencing treatment of another person in a comparable situation) not to the discrimination itself. Further still, in the case of *indirect discrimination*, the phrase "justified by other objective reasons" (Labour Code, Article 18^{3a} item 4) engenders doubt regarding the

allowable disproportions as, pursuant to Article 2b of the Directive 2000/43/WE, inequality may be deemed justified only when it is objectively justified by a legal aim and the means serving to attain that aim are proper and necessary.

4. Article 7.1. of the Directive 2000/43/WE, which refers to providing access to court and/or administrative proceedings to all persons who feel victims of violations of the equal treatment principle, applies only partially in Polish law. The right to legal aid guaranteed by the state (agency-appointed lawyers) does not include administrative proceedings. Meanwhile, in the Polish legal system numerous administrative proceedings may concern discrimination. Moreover, the reviewing of administrative court decisions is basically limited solely to evaluation of the administrative decision's compliance with the law and is of a cassation nature. Persons whose rights, as referenced in the Directive 2000/43/WE, were or could have been violated in an administrative proceeding have no right to legal aid prior to their filing a complaint with the administrative court.

5. The practical actions taken resulting from state policy toward persons subject to unequal treatment due to their ethnic or racial origin leave much to be desired. No independent institution to support equal treatment of all persons without ethnic or racial discrimination has been established, in contravention of the provisions of Article 13 of the Directive 2000/43/WE. Preliminary work prior to the creation of a body to prevent racial and ethnic discrimination was the province of the Government Plenipotentiary for the Equal Status of Women and Men (Decree of the Council of Ministers dated 25 June 2002 regarding Government Plenipotentiary for the Equal Status of Women and Men, § 2.2.). The foregoing office was never established while the Plenipotentiary was obliged merely to fulfill temporarily its functions (*ibid.* § 4). Since the disbanding of the office of the Plenipotentiary in November 2005, there has been no institution operating in even such an interim manner.

Respectfully yours,



Marek Antoni Nowicki
President of the Board