

Effective Strategies to Empower Civil Society

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An Equinet report
December 2010

Effective Strategies to Empower Civil Society is published by Equinet, the European Network of Equality Bodies.

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ISBN 978-92-95067-54-7

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This publication is supported under the European Community Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

This programme is managed by the Directorate General for Employment, social affairs and equal opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

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Preface

Equinet's Working Group on Strategic Enforcement consists of experts working for national equality bodies and focuses on the effective implementation of the EU Anti-Discrimination Directives (2000/43/EC, 2000/78/EC, 2006/54/EC and 2004/113/EC) and the mandate of Equality Bodies. The Working Group looks at the powers and competencies of equality bodies and how they can be used in order to ensure a strategic approach and the effectiveness of equality bodies in their objective to combat discrimination and promote equality.

In 2009 the working group pointed at the importance of equality bodies identifying their role in society based on their mandate and in relation to other key stakeholders. In last year's report '*Strategic Role of Equality Bodies*' the working group concluded that a clearly defined role is a prerequisite for equality bodies to adopt a strategic approach and develop strategies within their national contexts that target and combine their powers and tools in an effective way. While several of the equality bodies represented in the working group had limited experience of such a strategic process, there was broad agreement that by defining their role and adopting a strategic approach to their mandate equality bodies can have greater impact in terms of combating discrimination and promoting equality.

Based on this understanding, the working group agreed that it would be interesting to focus in more detail on key strategies essential to the work of equality bodies and explore what elements such strategies could, or need to include, in order to be effective. During 2010 the working group members have focused specifically on a strategy that aims at empowering civil society¹. The reason behind this focus is the notion that this empowerment and the active involvement of civil society are essential in order to address the problem of discrimination and inequality in our societies.

The working group has met twice during 2010 for discussions on the topic and the members have also between these meetings exchanged ideas and shared experiences. This report summarises the discussions among the working group members this year.

The report contains seven chapters, each elaborating on one key element or tool that the working group has defined as essential in a strategy aimed at empowering civil society. Benefits as well as possible pitfalls of the different tools are outlined. The chapters also contain examples, which describe some relevant experience. The report builds on the experience of the working group members and the equality bodies they represent, taking into account good practices and lessons learned. One member of the working group has been responsible for each chapter but all members have contributed with ideas and experiences to all chapters.

It is to be noted that the conclusions are based only on the work and personal experiences of the working group members representing seven equality bodies and not of all the members of Equinet. In addition, the conclusions do not necessarily represent the position or opinion of the equality bodies either that have been involved in preparing this report or the other equality bodies that are members of Equinet.

On behalf of Equinet – European Network of Equality Bodies, we would like to thank all of those who contributed to this report for their time, expertise and support.

John Stauffer
Working Group Moderator

¹ In this context civil society has been defined as comprising individuals and 'rights groups' (e.g. trade unions, NGOs) but excluding 'responsibility groups' (e.g. employers' organisations), lawyers, judges, media and the government sector.

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Introduction

The active involvement of civil society and in particular those affected by injustices and their organisations, is essential in order to come to grips with discrimination and inequality and realise the necessary changes in society. There are numerous examples of civil society being the driving force behind the development and effective implementation of international standards and national law to protect human rights. The achievements by the civil rights movement in the United States and the advancements achieved by the women's lobby across Europe are just two examples of this. Also the EU anti-discrimination directives have been put in place much due to strong pressure from civil society groups targeting national as well as European institutions. The continued involvement by civil society is now necessary in order to ensure that legislation and structures now in place to combat discrimination and promote equal rights and opportunities in Member States are implemented and become effective.

As national institutions put in place to promote equal rights and opportunities in accordance with the EU anti-discrimination directives and, hence, to be another driving force in this field, equality bodies have a particular and important role vis-à-vis civil society. With limited mandates and scarce resources equality bodies can at best function as catalysts, targeting other key stakeholders in society with the aim of giving them the tools to actively engage in equality matters or putting pressure on them to take responsibility in this regard. With this view of the role of Equality Bodies, civil society is an obvious target group for empowerment activities. This includes working with and supporting non-governmental organisations but also taking action to ensure that those individuals affected by discrimination are empowered to claim their rights.

It is also the case that equality bodies depend on the active involvement of civil society to execute their tasks and duties. Information from those experiencing discrimination or civil society organisations is essential in order to identify the structures in society that result in discrimination of individuals and to develop adequate measures to promote equality. Even equality bodies with limited mandates or quasi-judicial bodies depend in their work on the action taken by individuals subjected to discrimination. Clearly, the involvement of civil society is necessary to make the legal tools and activities for the promotion of equal rights and opportunities effective.

Within civil society well-organised and experienced organisations exist, which equality bodies can easily develop relations to and cooperate with in different ways. Organisations such as trade unions can have possibilities to support members on discrimination issues and even to bring cases to court. However, civil society is often fragmented and weak, lacking resources and the knowledge necessary in order to engage and trigger a process of societal change. This is the case in particular regarding those groups in our societies that are most vulnerable to discrimination. Equality bodies must take these differences into consideration when developing strategies and adapt their role and activities depending on the counterpart in order to fulfill the needs of the different target groups. However, irrespective of whether a sector of civil society is strong or weaker, it is important to remember that cooperation with civil society actors is a two way process where equality bodies also gain knowledge that is essential to their work.

In order for efforts directed at civil society actors to have positive effect for equality bodies as well as for civil society there is a need to develop a strategic approach. *Ad hoc* activities will produce limited results and may even be counterproductive. An attempt at elaborating such a strategy has resulted in identifying seven broad areas of work (tools), each including a wide range of activities, which are essential parts of such a strategy in order that the engagement of equality bodies will show positive results. These tools are not distinct from each other but they overlap and are interlinked. 'Training', for example, can of course form part of dialogue activities and vice versa and 'advice and recommendation' cuts across the other tools. Distinguishing between the tools serves the purpose of presenting different aspects of and providing different perspectives to work with civil society.

The ability to engage in activities targeting civil society of course depends on the mandate and resources of an equality body and, hence, greatly differs between Equinet members. While a full strategy may not be feasible, the different tools that form the strategy can serve the purpose of providing good examples that Equinet member organisations can pick and choose from when developing a strategic approach vis-à-vis civil society within their national contexts.

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1. Training

Centre for Equal Treatment, Luxembourg

1.1 Introduction

The term 'training' refers to the process of developing and improving the knowledge, attitude and skills of the 'trainee' through instruction and/or practice; training is held in order to help build the capacity, improve the performance and increase the competences of the individual, groups or organisations being trained.

Each European Member State has an organisation whose mission is to promote equal treatment; the organisation in charge of this promotion is normally the national equality body. Training offered by equality bodies is considered to be a key way in which to promote equal treatment. Equality bodies have agreed on the fact that training is an important tool to communicate an unequivocal message.

The overarching objective of training for each equality body is to increase knowledge in society about the content of EU Anti-Discrimination Directives and their transposition to the respective national legislation; only well-informed persons are able to claim their rights, combat discrimination and promote equality.

1.2 Description of the tool

Advantages of training as a tool for the promotion of equal treatment

In a sense, training represents a proactive and preventive approach to the complex phenomenon of discrimination. It is an engaging and easy way to approach a difficult subject matter. For those who have never been confronted with this set of problems, it is can provide an explanation of the basics and for people who are already engaged in the field of equality, facilitates the development of their knowledge of their rights and duties. By offering training sessions for stakeholders, individuals and "rights groups", such as trade unions or non-governmental organisations (NGOs), equality bodies are convinced that the message will pass rather quickly in the short-term and reach a wider audience in the longer term.

Training is generally a cheaper solution, in comparison to a large campaign which is often much more expensive. Whilst, limited resources, financial as well as human, can be a barrier to setting up an efficient training programme or an internal training department to offer tuition, even equality bodies with a low budget can afford to set up training if they have the opportunity to participate in a call for tender or proposals of the PROGRESS programme or the European Social Fund. In these cases, small equality bodies can offer tuition with the help of a third party. However, it is necessary to bear in mind that the outcome of both the campaign and the training can be difficult to measure.

Difficulties encountered and details to pay attention to

The starting point for developing successful programmes is to ensure that the attendees have the skills and confidence needed to carry out the work; training must be adapted to the audience. The content of the exercise must reflect the level of knowledge of the trainees in order to improve on it. Success of training can also depend on whether it is an on-the-job or off-the-job training; motivation can differ extremely if people attend on a voluntary or compulsory basis.

Most of the time, members of "rights groups" such as trade unions or NGOs are better informed about legislation than people outside of this field of work. It can be far more difficult to arouse interest for anti-discrimination matters among individuals.

In a general training session offered to a large audience, one must also pay attention to the fact that both victims as well as perpetrators of discrimination may be in the audience. Both have to be given the required tools to prevent discrimination.

Equality bodies should be aware of their general audience, and also seek to identify any specific stakeholders to whom they wish to target the message of the training. Besides the fact that the audience is often very diverse, concerning interest and knowledge of the participants, the true representatives from the targeted public should be found out. This problem is most acute in the context of a weak civil society that has not already organised itself into a representative and recognised NGO. It is crucial to reach and identify the right people to train. Thus, for example, not only staff members should be trained, but the board sensitised to the subject to support the aim as well as to push staff members to attend training.

Aims of training can differ depending on the targeted public, and can be seen to have a more positive impact when they do. Whilst individuals must be sensitised to claim their rights and to address equality bodies themselves, "rights groups" must also be encouraged to do something about it themselves, that is to say that their ability to defend themselves and therefore to set up cases alone or in collaboration with equality bodies must be improved.

Trade unions, for instance, have an important role to play in the workplace via their participation in the negotiation of collective bargaining agreements it is crucial, however, that they have a solid command of anti-discrimination legislation. They must clearly engage in these issues to prevent discriminatory sections, such as pay gaps, to emerge from collective bargaining agreements.

In all cases, it is fundamental that key actors take responsibility to implement anti-discrimination law on the ground. It is also very important to make alliances and to ensure that other stakeholders take responsibility to fight against discrimination in a more effective and straightforward manner.

Training can be adapted to a specific-target audience, for example, by focusing on specific grounds of discrimination or areas of society or can be aimed at a larger public. In both cases, sensitisation and concrete information about individual rights and legal-action possibilities are vital.

In addition, training should be accessible to everyone, independently of the level of knowledge or cost.

Furthermore, training should not only focus on the individual interest of one person, but also on the public interest. Starting from an individual case, one must look how this can contribute to bringing more fundamental and structural social change for everyone. And similarly, finding solutions or improvements to existing legislation should be applicable to every single case. It is important to ensure that the work is varied and that the training includes a balance between theory and practice. That is why the panel of trainers should be interdisciplinary, for example including, but not limited to, lawyers and sociologists.

It is essential that the content of the training is carried on beyond the day of tuition. The goal of training is that the knowledge acquired on the day is passed on. Strategically, the most effective way to spread a message is to train trainees to become trainers themselves. This approach is relevant both in relation to large organisations as well as to vulnerable groups. Training trainers and key personnel within larger organisations will support the setting up of their own training programs and guarantee the quality of such programs. In terms of particularly vulnerable groups in society, it is essential in order to reach individuals belonging to such groups to focus training efforts on key representatives of those groups who can then spread the knowledge further, and function as focal points within the group. In both cases it is essential for equality bodies to carefully identify these key individuals, in order to ensure training efforts are strategic and effective. Another key factor for the effectiveness of training

efforts targeting vulnerable groups is that the involvement of equality bodies must be long-term.

Practical experience

Training can be diverse and cover any possible field of experience, for example employment, housing, social protection or education.

Possible training topics might include intercultural dialogue, development of prevention tools or diversity management.

Primarily, prevention is the keyword for all actors. If cases of discrimination are avoided because people are well-informed, the work of equality bodies has produced fabulous results.

Capacity building of participants can lead to reinforcing the message of training. Attendees must be given the intellectual tools to detect possible discrimination traps in order to avoid them and to promote equality.

It is important that training that targets civil society is rights based, gives a broad understanding of human rights and, if those rights have been violated, presents the available remedies. It is important that through training equality bodies provide civil society representatives with the tools to work proactively to combat discrimination and promote equal rights and opportunities. Such an approach requires that equality bodies equip trainees with a much broader set of tools than just knowledge of the legal framework. It is important that people know their rights and duties, but the knowledge alone is useless if it is not used in a proactive way and if people do not know how to defend themselves.

Besides these intellectual tools, it is also possible to design pedagogical kits, which can be reused by new and future trainers. This equipment can also provide mutual education reusable in the daily work of equality bodies and can help victims to identify discriminatory situations themselves.

Another useful training tool is the creation of e-learning platforms offered via Internet. This form of learning has the advantage of being very flexible and always accessible. Everyone can test and improve their knowledge, independently of time schedules and/or financial status.

It is interesting to share experience with other committed individuals or organisations. Training with a great variety of people, people with different professional or social backgrounds can be enriching for everyone.

It is both useful and rewarding for participants to continue to meet both formally and informally, and to maintain contact with interested people and organisations after the tuition has ended. Coordination with "rights groups" and others who have direct contact with victims is fundamental as is these groups that promote the initiative, provide ongoing support through information and encourage people to defend themselves, respectively potential offenders to avoid discrimination.

1.3 Examples

Organised by an advanced training institute in collaboration with the Luxembourg Equality Body, numerous different NGOs and trade unions attended a training session called "Fight discrimination". It was difficult to tailor the training to the potentially very different needs of the audience it was achieved by remembering their background in the introduction and theoretical parts, by giving examples of multiple fields and through brainstorming the wide variety of concrete problems of their day-to-day life in workshops and finding solutions to them. The main problem of this training was the difference in knowledge between the participants; there were people who had previously assisted at an earlier training and had therefore acquired the theoretical background whilst for others everything was new.

Three partners in Luxembourg created an e-learning platform with the financial help of the European PROGRESS programme; without the funding of which it would not have been affordable. Unfortunately technical problems were the main obstacle to this project; none of the partners had the computing faculty to carry out this project on their own and therefore had to depend on a specialised firm. Having developed a prototype, the next step could be to adopt this platform for other target audiences provided that enough money is available.

Another PROGRESS project in Luxembourg was the development of a pedagogical kit called "Living diversity" aimed at younger children. The training itself consisted in teaching people working with children how they can explain playfully the concept of diversity to children from 0 to 12 years through the use of games and books. The advantage of the kit is that it is a sustainable tool reusable by multiple players, but unfortunately it is difficult to keep track of how the tool is deployed.

1.4 Summary

In the role of equality bodies to promote equal treatment, training is considered to be an effective preventive tool. Training provides an opportunity to explain the content of EU anti-discrimination directives and their transposition in the respective national legislation to potential victims, as well as perpetrators of discrimination in order to combat unequal treatment and promote equality. In order for training to have effect it is important for equality bodies with limited resources to apply a strategic approach to training activities. The focus and level of training must be considered carefully and matched to the participants in order for the training to have the desired result. It is equally important to target individuals and organisations representing civil society that are able to function themselves as trainers or focal points within their respective groups. In this way training efforts of equality bodies can benefit a large number of individuals.

2. Information campaigns

Equal Treatment Authority, Hungary

2.1 Introduction

Activities aimed at providing information to the general public as well as victims and people at risk of being subjected to discrimination are important in providing a basic understanding and awareness about the rights of individuals and the role and work of equality bodies. Information campaigns and specific information activities are indispensable tools in this regard and if used correctly they contribute strongly to the empowerment of civil society by making sure people know about and understand their rights and legal possibilities. Information campaigns have a strong potential also in terms of combating under-reporting of discrimination.

2.2 Description of the tool

National equality bodies can transmit the message of their activities to civil society in many ways, using for example electronic newsletters, handbooks, leaflets and other printed materials, webpage, radio, TV or social media. The use of these information technologies in an adequate manner is of utmost importance. Obviously the potential for conducting information campaigns depends on the financial and human resources of the Equality Bodies.

The following traditional or more creative tools can be used in information campaigns:

- Printed material – within this category equality bodies may use leaflets, brochures, handbooks, posters, etc. This is probably the most traditional but still very effective tool.
- Webpage – equality bodies should primarily use their own websites but they can consider using also others, e.g. newswires or websites often visited by a specific vulnerable group.
- Newsletters and e-mails – newsletters and e-mail communication can be targeted mainly to institutional partners and those individuals who are already partners or clients of the equality body.
- TV and radio – as detailed below, these media are often the most effective and efficient means of reaching the largest possible part of the general public, including above all specific vulnerable groups.
- Printed media – articles in newspapers can reach the wider public as well as specific groups. Highlighting individual complaints and court cases can be a way of spreading information about the problem of discrimination, rights and remedies. Activities such as press releases and press conferences targeting printed media are therefore essential for equality bodies.
- Social media – equality bodies and their partners from the civil society turn increasingly to the use of Facebook, Twitter and similar services in order to provide regular information in a cost-effective way to all their stakeholders.
- Calls for tenders and competitions – these are certainly less traditional ways of reaching members of the civil society but they can be very useful when, for example, the equality body launches a drawing competition for children possibly attracting also large media attention.
- Conferences – such activities targeting a broader audience (it can be for example a conference or seminar for NGOs about anti-discrimination legislation) can be used to a good effect vis-à-vis institutional partners as a complement to more in-depth training.

Advice and information to individuals can also be very effective and important information tools – this activity will be discussed later, in chapter 7 of this publication.

When developing information campaigns and activities equality bodies need to first identify the target groups they wish to reach. They need to tailor the material to the audience and importantly they need to use the right information channels to reach them. For example in case of individuals that belong to particularly vulnerable societal groups, which are generally difficult to reach, the use of TV and radio and newspapers can arguably deliver better results and provide better reach than the use of printed material and the equality body's webpage or social media. This is the case with respect to for example the Roma minority, older people or economically marginalised people, who often may not have internet connection. It is, however, important to consider which TV and radio channels and newspaper to target with such activities. On the other hand, specific institutional partners are easy to target with a newsletter or regular mail. When it comes to printed material it is also important to consider how to distribute the material in order that the target group is reached. Cooperation with civil society actors can contribute to effective dissemination of the information. As mentioned above, the financial and human resources can be a key constraint on information campaigns and activities, determining the choice of tools (e.g. advertising or purchasing time on TV will always be more expensive whereas activities aimed at encouraging media to write about equality issues or maintaining continuous activity on the Facebook page of the equality body is inexpensive but requires much more staff time).

All materials used by equality bodies in their information campaigns should be tailored to the different needs and different target groups. All information should be available in all the official languages of the country, and ideally also in the language of the minorities. The materials used must be well planned and elaborated providing useful and targeted information about, depending on the target group, the definition, the protected grounds and fields of discrimination, the mandate of the equality body, alternative redress mechanisms, the policy and legal developments or the tools and possibilities of advocacy.

In general, information campaigns should be creative, inventive, colorful and impressive to interest and catch people's attention.

2.3 Example

The website of the Hungarian Equal Treatment Authority contains all necessary information about the operations of the Authority. It describes in detail the phenomenon of discrimination, the mandate and proceedings of the authority, contains summaries of the cases investigated, and features a section with formal decisions of the authority if the publication of the decision was applied as a sanction. Regular information can be read on the meetings of the Advisory Board and their position papers. The website is also accessible to persons with visual impairments. Experience shows that a website can usefully include a specific section with information tailored specifically for civil society actors. This further increases access to information and the usefulness of the website.

Although the information campaign is a very effective tool in terms of diverting the attention of civil society actors and the general public to the challenges of discrimination and the challenges faced by equality bodies, there are also potential pitfalls and shortcomings of this tool that need to be avoided.

The experience in Hungary and other countries is that media sometimes tends to focus on the negative issues related to minorities and they are not balanced by positive stories of their contribution to the society. This represents a difficult challenge to equality bodies who wish to deliver a positive message reporting about its successes.

In the general public, minorities (especially certain groups, such as Roma, Muslim, transgender or homosexual people) are all too often treated as issues and problems, not as persons, and they are misrepresented in the media. Equality bodies often need to inform the general public about cases and issues that are not 'popular' and face serious resistance. In extreme cases information activities on such issues might result in a public discontent with the work of the equality body. This happened in a recent case in Hungary where the ground of discrimination was the victim's Roma origin. One of the daily newspapers published an "open

letter" to the readers, and accused the Authority of being the agency of "ethno-business", only because the Authority established the discrimination against Roma in the field of access to goods and services.

If an equality body dealing with multiple grounds centers its information activities predominantly on one ground, this might result in it being labeled as dealing only with that problem or vulnerable group. Besides the cost in the public image of the equality body this may potentially also increase the level of under-reporting from other vulnerable groups. For these reasons, the equality bodies need to make sure that they conduct their information activities along a carefully elaborated communication strategy and that they take into account the potential effects of their information campaigns.

Prejudices are deeply embedded in society. Equality bodies often encounter criticism from various societal actors. This is why it is critical to use broad information campaigns to explain and clarify the importance and societal benefit of equality and the general approach and aims of the Equality Bodies.

2.4 Summary

Equality bodies using information campaigns strategically can reach a very high number of people and can have a lasting effect mainstreaming the importance of equality and anti-discrimination. It is imperative that the equality body has a communication strategy with clear priorities in order to be able to use the diverse tools mentioned in this chapter to their best effect. A successful information campaign can help to combat under-reporting, raise awareness about equality rights and duties and redress mechanisms.

3. Financial support

Institute for Equality between Women and Men, Belgium

3.1 Introduction

The issue of financial means is essential when speaking about empowering civil society. How can we stand up for the rights of discriminated people without qualified people to inform the victims about their rights, without a place to carry out lobbying activities, without IT to communicate, to give only a few examples.²

The issue of financial support discussed here only concerns non-governmental organisations (excluding trade unions). Within the independent support provided to victims by equality bodies, the issue of indirect or direct financial support can also play a role (for instance, in cases when the equality body institutes a judicial proceeding in its own name or in the name of the victim and assumes legal and procedural costs). This issue is discussed in chapter 7.

3.2 Description of the tool

There is no European model for non-governmental organisations (NGOs) and the traditions of the different Member States show how diverse the financing possibilities and modes of operations are within the civil society: professionalised and paid civil society organisations providing real services in the social field, for example, or those mainly made up of volunteers forming interest groups acting as a force of opposition in the political field. In some States, there is a close cooperation between civil society and public authorities, where the voluntary sector plays a key role in the dialogue on public policies.

Associations are funded through various sources: public subsidies, donations and patronage, activity receipts, members' contributions.

Furthermore, on top of the diversity between Member States, there is also the diversity within the field of non-discrimination. Feminine or feminist civil society, associations defending the rights of disabled people or LGBT or combating racism can generally not be compared. Some associations linked to some discrimination grounds are older and have sometimes become professionalised, requiring greater financial means. Other, more recent organisations think they are the poor 'relatives' of the public authorities as far as financing is concerned (associations defending transgender people's rights, for example). At the same time, some associations, like those defending disabled people, because they are linked to health and social security, usually receive more financial support from public authorities.

Direct financial support of NGOs is not the role of a national equality body (NEB) as such but some NEBs have this possibility. Most of the time financial support will be indirect giving the NGO financial means to help assuming some particular missions linked to the activities of the NEB. The added value of an NEB could be in helping NGOs that work on equality matters to receive sufficient means to conduct their missions efficiently.

² In November 2008, the European Commission published a Green Paper on Consumer Collective Redress. Among others, it affirmed that: "Elements which contribute to the effectiveness and efficiency of a collective redress mechanism include political and **financial support from governments**, high media coverage (...), no or low litigation fees for consumers, no or reduced litigation fees for representatives, flexible solutions regarding lawyers' fees and bypassing the formalities of normal civil procedures. On the other hand, elements which hinder the effectiveness and efficiency of a collective redress mechanism include **insufficient funding**, lack of expertise and resources of consumer organisations, the fact **that the risk of paying high litigation fees often falls on consumer organisations**, (...)"

Even though, as far as we know, there is no broad study on the equality and non-discrimination associative sector and its financing modes, it is surely correct to think that the same analysis would apply to associations which can enter an appeal, even if it is individually.

Some forms of financial support from a national equality body can/could occur at several levels and for different types of activities. It is evident that this support has to be defined in a more or less explicit way in its statutes or missions.³

It can take the form of a financial support of projects. National equality bodies can for example consider specific sensitisation and information campaigns aimed at discriminated target groups. Granting subsidies is usually linked to the fact that it is a project (and not a recurrent activity) respecting fundamental conditions directly related to the NEBs tasks, taking place in a specified period, requiring a limited budget, with a measurable effect and being the subject of a selection and a specific follow-up.

It is also possible in many Member States that civil society organisations take discrimination cases to court. This requires expertise within organisations but also significant financial means, which often means that such organisations depend on external funding. Equality bodies could be in a position to provide both the necessary legal training as well as funding or to play a role in establishing legal funds for that purpose.

Another way of providing funding can go through calls of tenders for research or projects coordinated by an NEB. NGOs can apply and be selected to conduct some research or contribute to the elaboration of recommendations taking into account their specific expertise.

It is also possible to consider a structural subsidy to civil society. In this case, the financing concerns the association's regular activities (wages, direct and indirect working costs, etc.). An agreement can fix the concrete financing conditions: defined cooperation and evaluation methods, development of a multi-annual plan, definition of the structural tasks which are defined in the statutory goals of the association and which are in line with the legal tasks and strategic objectives of the national equality body.

It is certainly important to be careful to avoid at least three potential pitfalls when speaking about the support granted to NGOs by NEBs.

Firstly, there is the **competition issue**. Financial means are always limited and giving a part of the means of an equality body to civil society inevitably means reducing its own means. The competition issue occurs also between NGOs: why decide to finance one NGO against another one? Clearly defined selection criteria are therefore important. The principle of subsidiarity should play a role in this respect. It is important that the agreements and tasks between the NEB and the association are clearly defined. Another possibility is for NEBs to enter into joint projects with civil society actors. This will be elaborated in Chapter 4.

Secondly there is the matter of **independence**. It is important that a financed association does not become an instrument, a service provider for an equality body under the pretext that it owes it something. Its task must be defined by its members. It should be able to act independently and decide, for instance, to take legal action, whatever the opinion of the equality body may be.

³ The law concerning the foundation of the Belgian Institute for the Equality between Women and Men includes several articles clarifying its role towards the civil society :

« Art. 3, §2 : In the accomplishment of its mission, the Institute enters in dialogue and works together with the associations, institutions, bodies and services whose action exclusively or partially concerns this field or which are immediately linked to the realisation of the mission mentioned above.

Art. 4, 4° : The Institute is competent to organise the support offered to associations working in the field of equality between women and men, or projects aiming at achieving equality between women and men.

Art. 4, 10° : The Institute is competent to set up a network with the various key players in the field of gender equality. »

Objectives can be different between NEBs and NGOs and clear criteria for funding have to be defined. Some associations see to it that they have their own financial means (members' contribution) so as to depend less on subsidies.

Finally, it is important to guarantee the **sustainability of resources**. An association can obviously not rely only on the financing of an equality body. The NEBs could play an important role in ensuring that NGOs have means to work in the long term.

3.3 Summary

The issue of financial means is essential when speaking about empowering civil society. There is no European model for NGOs and the traditions of the different Member States show the diversity of financing possibilities and modes of operations within civil society: public subsidies, donations and patronage, activity receipts, members' contributions. The diversity of the associative world depending on the rights which are defended is also important.

Direct financial support of NGOs is generally not the role of an NEB but some forms of financial support can occur at several levels. It is evident that this support has to be defined in a more or less explicit way in its statutes or missions. It can take the form of financial support for projects, structural subsidy, specific funding for civil society organisations, taking discrimination cases to court and calls for tenders for research or projects.

It is certainly important to be careful to avoid at least three potential pitfalls when speaking about the support granted to NGOs by equality bodies: competition, independence and sustainability of resources.

4. Partnership, cooperation and joint projects

Centre for Equal Opportunities and Opposition to Racism, Belgium

4.1 Introduction

Many European countries have a long history of strong civil society participation. This means that citizens are familiar with the process of organisations defending the aspirations of their members. A number of these organisations focus on possible fields of discrimination, for example trade unions and the employment field; others are more focused on a specific discrimination ground, for example disability, sexual orientation or age. Civil society actors can therefore be valuable partners of equality bodies in achieving equality and equal rights for all.

For equality bodies it is important to enter into different kinds of cooperation with civil society actors for a number of reasons. The most obvious reason is perhaps that equality bodies are often not equipped to give an appropriate response to every question that may occur. However, if this is the only reason on which equality bodies base their cooperation, there is a risk that the partnerships will not be sustainable. This chapter will outline some of the benefits of close cooperation with civil society actors and provide examples of good practices.

4.2 Description of the tool

Cooperation between equality bodies and civil society actors is an important element of a strategy aimed at empowering civil society. Such cooperation can take different forms and be part of different aspects of an equality body's mandate.

Exchange of information, training and experience

Concluding partnerships will certainly increase the workload in the organisation. Equality bodies will very often receive questions as they are known as the expert. In most cases they will be asked to share their expertise or their juridical knowledge with partners. But partners also, who are present for a longer time than equality bodies in civil society, who are more familiar with the needs of potential victims are source of knowledge and experience for the equality body. Sharing expertise can even result in common training, for example the equality body can give training, together with a union, in an employment field or, with a non-governmental organisation (NGO) defending rights of LGBT people on the evolution of the jurisprudence of the European Court of Human Rights (ECHR).

Outreach to a larger and specific public

Even with an extended "official" network, an equality body can never reach the most vulnerable victims, those who never leave their local environment, who are not aware of their rights, who cannot formulate their complaint by mail or fax, who are ashamed of their discrimination and will not phone you to explain the problem and will certainly not intend to go to court to obtain compensation. Especially for these victims collaboration with partners is important and crucial. First the victim can be helped properly and second the partner will be more able than the equality body to reveal, due to their experience and presence in the field, structural problems. In some countries equality bodies have decentralised contact points. This regional presence can be the result of an agreement with local organisations or even institutions well known by the public as this is the case for example in Sweden or in Spain. The staff of these contact points does not necessarily have to be on the payroll of the equality body but independence must be guaranteed. The regional or local contact point can usefully function as a front office, helping victims of discrimination and channelling in complaints to the equality body.

Sensitisation of civil society through key civil society actors

Large campaigns for raising awareness will certainly be on the strategic planning of an equality body. But everyone knows that the effect of such campaigns is rather limited in time and the result is probably not measurable. Moreover the cost cannot be underestimated. When partners are important civil society actors, with a regular access to the media, they can make equality bodies' message part of theirs, not only for the wider public, but also for their members or the public they reach through their activities. This will help the message of the equality body to become part of the priorities of the whole society.

Joint projects

Beyond the structural collaboration in "daily" activities, it is also possible to work more "project orientated", with a defined task, budget and time limit. As was raised in chapter 3 on financial support, joint projects are also a way contributing to funding the activities of civil society. Projects can be very different, for example a campaign for sensitisation on specific fields, a publication, a political action, bringing a case before court, etc. Partnership can also be a tool to enable civil society to participate at European level in funded projects.

4.3 The Belgian example

The Belgian Centre for Equal Opportunities and Opposition to Racism is involved in different types of cooperation with a large spectrum of partners within civil society as defined in this report. These can be subdivided into two categories:

- Institutional partners, so called well-structured civil society such as unions. The focus of the cooperation with these organisations is partly proactive, but also it can concern complaints of their members or against their members. Training, information and an exchange of expertise is also part of the cooperation.
- Civil society that is not as well organised, or organises itself more spontaneously. Such as NGOs defending the rights of disabled people, of migrants, of LGBT people or of elder people. The focus in this kind of partnership is on solving complaints, information and training. Here the input of the equality body depends on both its own mandate and the nature of the partner organisation. A process that needs time and will always be a work in progress.

Between the parties involved it is crucial that there is a basic level of mutual confidence from the beginning of the process. In particular new equality bodies have to deal with organisations that have often had many previous years of practical experience in the field. Some of the partners can, in the beginning of this relationship, feel threatened or there may be a lack of trust due to the fact that the equality body is a state institution. It is essential that the equality body makes it clear that it is not its intention to replace them and to stress that the cooperation aims at being mutually beneficial and supporting the empowerment of civil society. It is important not to force the process but allow it to develop in a more organic way, through taking the necessary time to cultivate a relationship of trust between the parties involved.

Whilst partnerships between equality bodies and civil society can be beneficial to both parties, it is necessary that the equality body takes time to consider the possible costs, risks and benefits of such association. It is critical that the equality body assesses its own capacity, priorities and last but not least reputation, before entering into partnerships with Civil Society in these initial stages.

How can working together be successful?

What follows is not a magic recipe but reflects the difficulties the Belgian Centre had to overcome in order that successful collaboration with its partners produced positive benefits for any potential victims of discrimination.

First it is fundamental to make a clear plan of the NEB's goals and how they fit into the agenda of potential partners. What are the expectations of partner organisations and does the NEB have the capacity to fulfil them? What are the expectations of the partner in terms of communication; is contact foreseen via a more structured system of collaboration or through planned but less intensive contact. In both cases it is important that a model of collaboration is elaborated upon, from several means of collaboration: training, information, and a specific contact person, a front office for the complaints of their members or back office for their workers, legal aid or interventions for mediations. These arrangements should be agreed upon and as clear as possible, so no one will be disappointed and everyone will be treated in the same way.

Regular face-to-face contact between workers and directors and monitoring of cooperation are key to avoid misunderstandings, collaboration should be continuously evaluated and adapted if necessary. The involved parties should keep each other informed concerning the follow up of complaints that are being handled simultaneously. If work on complaints is completed jointly (as back or front office), they should work with a compatible computer system so that at the end of the year data analysis can be performed regarding the situation at present and be used in informing key policy decisions.

By asking for feedback, whilst not going as far as asking for approval, during both the design and implementation of an NEB's strategic plan, partners and stakeholders can ameliorate its evaluation. This engenders a more holistic, yet still independent, evaluation process, allowing the NEB to analyse the impact of its strategic plan in the field.

A partnership does not mean that the equality body has to give up its independence. An equality body is not an NGO; its interventions must reflect expertise and well-thought strategy. An NGO can sometimes permit more aggressive interventions in the media or on a political level than an equality body; this is the role they have to play. Yet an equality body is a statutory state organisation and must be on speaking terms with different actors in society and therefore find methods that, first of all will not harm the victim and respect their interests, even if the wishes of the victim are not identical or as "intrusive" as those of the equality body, and secondly will place the equality body in a position that allows it to maintain a relationship with the "opposite" person when finding solutions for future victims.

4.4 Summary

Close cooperation between equality bodies and civil society actors of various kinds are not only important in terms of empowering civil society but also in order to ensure and increase the quality and efficiency of the work of equality bodies. Good cooperation, however, must be built on trust and it is essential that equality bodies put time and effort into building the necessary confidence. Cooperation can take different forms such as partnerships and joint projects, or more informal cooperation in different areas or types of activities. Irrespective of the form of cooperation or activity undertaken it is important to develop the cooperation into an engagement that is mutually beneficial to both the equality body and the civil society actor.

5 Dialogue

Ombud for Equal Treatment, Austria

5.1 Introduction

According to the European Anti-Discrimination Directives, Member States shall take adequate measures to promote the *Social dialogue* between the two sides of industry (e.g. Art 11, 2000/43/EG), which is focused also on the exchange of experiences and good practices. Member States shall also encourage dialogue with appropriate *non-governmental organisations* (e.g. Art 12, 2000/43/EG). This should happen with the focus on promoting the principle of equal treatment. These kinds of dialogues are very formal and mostly organised by governmental departments, which are responsible for the legislation context of equality law in the Member States. Nevertheless equality bodies should ensure that these dialogues take place.

For equality bodies “Dialogue” is a strategy to empower civil society. It is a tool for formal or informal *networking, exchange of experience, knowledge and information* for the strategy of equality bodies to involve the civil society into the equality process. Dialogue is thus a mutual two way process aiming to increase the capacity of both civil society actors and equality bodies. Dialogue is primarily activities that are aimed at producing internal developments within civil society and equality bodies. Equality bodies should therefore use this tool with regard to the civil society in a formal and informal way in order to strengthen their competences in view of their responsibilities: counselling and supporting victims of discrimination as well as promotional work.

Dialogue as a tool has two effects: equality bodies can provide their experience, knowledge and information to individuals and rights groups (such as non-governmental organisations and employee organisations) and receive in exchange experience, knowledge and information from individuals and right groups for their work as well. So the tool can be used as an objective to strengthen the competences of equality bodies in counselling and supporting persons who feel discriminated against and in doing promotional work in anti-discrimination and equality matters. Furthermore there is also a networking effect, too. Dialogue is a tool to develop a net of social cohesion across central social areas and stakeholders in anti-discrimination and equality matters.

Dialogues can be encouraged by equality bodies themselves in a formal and informal way, sometimes other groups from the civil society initiate dialogues with equality bodies as well. In all dialogue activities it is important to carefully and strategically identify which organisations or individuals to include.

5.2 Description of the tool

There are different characteristics of the tool “Dialogue” depending on the different partners of equality bodies.

1) Individuals

First of all, it should be stressed that equality bodies normally use dialogue as a tool in counselling and supporting *individuals*. This is their central legal function. In individual cases of discrimination dialogue between the equality bodies and the individual can lead to a better understanding of the functioning of discrimination, and thus how to combat it. Individuals can gain access to their rights, as well as being supported to deal with their personal situation.

Usually individuals initiate the dialogue with the equality bodies. Equality bodies therefore have to produce information, so that individuals are able to find their way to them. Examples for providing information: website, an advertisement in a newspaper (which could be

combined with an information campaign), folders (in several languages). The possibility to contact the equality body must be very low-threshold. It is therefore important to have a low charge telephone number and a possibility to get contact per email.

This kind of dialogue is an integral part of ordinary daily work; it can help to have checklists, which can facilitate an open dialogue which is very important in counselling situations, but also provide help for the legal advisor of the equality body in terms of prompting thought on the relevant issues.

Equality bodies should run statistics about the people who are seeking counselling and support to allow them to assess if they are being reached by all vulnerable groups and if they have sufficient low-threshold access for all of them.

Outreach activities targeting individuals can also be organised by equality bodies in the form of open hearings to facilitate the dialogue. This target group can be reached through advertising such events in relevant media.

2) Rights Groups

a) Smaller and specialised organisations, such as NGOs

These kinds of organisations often operate on one special ground of discrimination, such as gender, race/ethnic origin, sexual orientation or disability, while equality bodies often deal with all grounds of discrimination as a single body. Equality bodies also have a clear mandate depending on the law (e.g. on an Equal Treatment Act). Non-governmental organisations (NGOs) do not only counsel and support people in regards to the law, but also in psychological and practical daily life situations. They demonstrate the living conditions of a specific group in society and often publish reports about this subject.

Equality bodies should build links with several NGOs. Therefore it is important to ensure the identification of all relevant reference groups for long-term cooperation. All parties should have a clear understanding and awareness of their expectations of generally informal, mutual dialogues. One objective is to exchange cases and knowledge about the situation of specific vulnerable groups. Alliances with NGOs can help equality bodies to find out if some vulnerable groups (e.g. such as Roma, transgender persons) need more information about access to equality law, and/or help in channelling complaints to the equality body. They also help equality bodies to gain a clearer picture of the social development of these groups. In return, the rights groups gain knowledge of the law and increase their access to it. For equality bodies this information is essential in order to identify and address structural problems in society. This knowledge will not only allow for the development of more relevant and effective promotional activities but also for equality bodies to identify strategic cases and to improve litigation and results in court. Dialogue between equality bodies and vulnerable groups can also lead to a common claim for a better legal and daily living situation of discriminated groups, e.g. by media campaigns.

It is also possible for equality bodies to include duty bearers in dialogue activities with civil society. This approach can contribute to bridging gaps between civil society and key duty bearers such as local government, housing companies, etc. and creating links that can be important in increasing awareness and resolving problems.

A pitfall could be that equality bodies, which often have a stronger institutional role in civil society, see these dialogues as training for NGOs. While training can sometimes be part of a long-term dialogue process it is crucial that the relationship between the dialogue partners is not hierarchical rather that it is a mutual process, where both parties have something to contribute and to learn and benefit from. It is essential that this tool is long-term and builds trust and a special relationship between the two parties.

b) Larger organisations, such as trade unions

These kinds of organisations mostly give legal advice within the complete scope of labour law to their members. Therefore equality law is just one specific subject in their field.

Some of the key objectives of formal and informal dialogue between larger organisations and equality bodies is to exchange experience and knowledge and to discuss legal arguments and possible interpretations. Equality bodies can gain a broader insight of the role of equality law within the scope of labour law whilst organisations like trade unions can benefit from the experience equality bodies have from dealing with discrimination cases. These organisations often have greater resources (both human and financial) than equality bodies. They often have direct influence on specific political decisions and can be involved in political trendsetting. As a result they can be strong partners for equality bodies in the fight against discrimination.

Equality bodies often lack legal competences to bring cases before the courts. In many Member States their role is to counsel individuals, supporting them in finding informal solutions (e.g. mediation) and bring the cases to specialised “soft law” judicial bodies. These decisions are often not-binding and victims of discrimination have to rely on trade unions to bring their cases to court in order to gain compensation. However in other Member States both the equality body and trade unions have a mandate to bring cases to court. Thus a dialogue between equality bodies and trade unions with regard to court cases can help them to succeed before the court.

However, having different powers in court and different expectations can lead to problems. When equality bodies wish to be more involved in cases before a court; the organisations sometimes evaluate this as unwanted interventions. It is therefore necessary to have long-term cooperation and continuous dialogues to avoid such misunderstandings.

In situations where trade unions do not take their responsibility in terms of fighting discrimination and promoting equality, Dialogue should be a tool to put pressure on them to do so.

These organisations are also part of the Social Partnership in the Member States. They are able to develop good practices e.g. in the area of equal pay for equal work, and work for equal rights and opportunities in a broader way. Dialogue with equality bodies can therefore support also their promotional work by helping to develop preventive practices in the workplace.

5.3 Summary

Equality bodies need to exchange their experience and specific knowledge about equality issues with civil society, as well as to gain knowledge and expertise that civil society holds itself. Dialogue is a useful tool that strengthens the impact of equality issues in civil society and improves the ability of equality bodies to act. Dialogue with individuals and rights groups should, when possible, be integrated in all activities of equality bodies. These dialogues can also include duty bearers; this allows equality bodies to contribute to building links between civil society and key duty bearers in society. Dialogue can contribute to other tools such as media campaigns and training and joint projects. It is however a long-term commitment, not an ad hoc-activity, which requires mutual agreement, trust and a shared perspective between the two parties.

6. Advice and Recommendation

Office of the Greek Ombudsman Human Rights Department, Greece

6.1 Introduction

The existence of discrimination and prejudice encountered by vulnerable and socially excluded groups in itself reveals the failure of modern states to assure that all of its members have equal access to goods and services along with equal protection under the rules which govern any given society. Thus, the empowerment and mobilisation of civil society, from the point of view of equality bodies, is aimed at filling in the gaps which the state may create in the process of social cohesion. The basis of the tool “*advice/recommendation*”, which will be described in this chapter of the report, is offering guidance and the dissemination of information. Therefore, it may be argued, this tool contains the all-encompassing quality which may be found in different degrees or emphasis in all aforementioned parts of the strategy set out in this report.

6.2 Description of the tool

Empowering civil society is a complex and difficult issue. It is not enough to motivate civil society organisations to participate actively in political and social processes by engaging or speaking on behalf of the members of vulnerable groups. In addition, the members of civil society, who hold different degrees of power amongst each other vis-à-vis the power of the state, must transcend existing power relations and interact amongst each other for the purpose of reaching their goals. Equality bodies then, utilising the tool “*advice and recommendation*,” may strive to do both: offer civil society organisations a guide to action and provide them with the information (the content to be put into practice) that will enable them to make the choices or decisions which in turn will promote their active input at local, national, and perhaps international levels.

The work of equality bodies, particularly their promotional work, is strongly related a) to strengthening efforts, with the intention of creating an organisational culture where people belonging to vulnerable groups feel confident about reporting discrimination, while competent authorities, on the other hand, respond without prejudice and b) to contributing to the promotion of good relations amongst different groups, defusing racial tensions and hostility, promoting the benefits of equal rights and opportunities for all, building understanding through interaction, and challenging public misconceptions and prejudices. In this regard, the equality bodies can have an impact at different levels: in societal, institutional and community level. One tool utilised to bring about this impact is: “*advice and recommendation*”.

“*Advice and recommendation*” works on at least two levels: a) the mechanical level, since it provides a practical guide of what course of action to follow (e.g. make a proposal for legislative change), and b) at an essential level, since it provides the necessary information that will prompt civil society organisations to acquire knowledge, skills and civil competences, which in turn will enable them to formulate and express their needs and goals in a viable way, while simultaneously communicating clear messages against discrimination (e.g. what the content of the provisions should be, techniques to be promoted, etc.).

Advantages / Disadvantages

There are both positive and negative aspects of using the tool of advice and recommendation.

The key positive aspects of advice and recommendation are that it has the potential to:

- Instigate motivation to active participation, by pointing out that the status quo is a non-end and by offering direction out of it
- Offer a sense of order and focus in the chaotic environment of multiplicity and overabundance of information, e.g. by cutting through the plethora of intricate legal details and offering advice of how to resolve an issue
- Provide a mapping for courses of action, e.g. administrative or judicial resolution, political intervention or legislative change, practical steps for influencing changes in behavior
- Propose alternatives for both courses of action and usage of results of applied techniques, e.g. informal resolution, establish and/or employ legal case precedents
- Utilise acquired experience and disclose and make available best mechanisms for bringing about the desired results, e.g. as we attempt to do here
- Broaden available choices, by improving on the positive results already established
- Support decision making and risk taking
- Assist in the building of capabilities that will enable people to act freely, to exercise their rights and to create their culture of rights
- Enhance collaboration between civil society organisations by strengthening the connections to each other, thus building social solidarity

Thus, the inherent value of this tool, as it emerges from the aforementioned, is that it generates a stable, fertile ground, out of which it may spring forth the interest of civil society's entities to take concrete action. Furthermore, it may act as the podium upon which ideas about what needs to be done may be exchanged. Most importantly, it is the tool which may be used to provide direction. In doing so "*advice and recommendation*" is perceived to concentrate the existing dynamism of active citizens in society and to channel it in the areas which need improvement or re-building.

However the limits of this tool must also be noted. It may be argued that "*advice and recommendation*": a) It is inherently paternalistic since it starts from the point of view of the knowledge holder assisting the one who does not know, or who has limited capabilities, or opportunities for free thought and action; b) It may lead to complacency since it offers already-made alternatives of ideas and paradigms of courses of actions. This way it may be seen as inhibiting the development of freedom of choice in fundamental matters of the interested subjects themselves; c) The victim of discrimination who on his behalf advice is offered is not treated as a free agent but rather as a means to achieve other ends.

However, when the nature and limitations of this tool are known, it can be employed so as to maximise the positive impacts and minimise the negative. When dealing with the effects of exclusion, discrimination and prejudice, the severe repercussions that are felt by the victim must be addressed with the aid of external help in order for them to escape the situation.

Civil society organisations, seen as an effective multiple communication channel, along with equality bodies, may use a variety of tools and techniques to bring about an opening in the wall of exclusionary systemic structures. Accordingly, co-operating and acting in sync with civil society organisations equality bodies may direct their input to both fronts: the state powers/institutions, for the purpose of altering the illegal and false policies and practices pertaining to vulnerable to discrimination groups and, on the victims themselves, by assisting them to find their own voice and pursue action to ensure their individual rights as equal citizens.

In practice, therefore, equality bodies while pressing for equal treatment have been creative in utilising this tool striving to motivate civil society agents to act and to collaborate with each other.

6.3 Examples

An example of this can be found in the open communication and coordination networks established by the Greek Ombudsman (GO) intended to bring together the Roma,

immigrants, and refugees with civil society organisations which are active in several regions in Greece. The goal of these networks is to outreach and come into contact with local civil society organisations that are working for the protection and assistance of the aforementioned groups. In practice, this has resulted in a two-way cooperation: The GO receives information from the civil society agents about the situation at local level. In turn the Greek Ombudsman offers them advice/recommendations for addressing the problems. This co-operation has been so far satisfactory and the GO looks for more ways in improving and expanding the usage of these mechanisms. The feedback and the assistance of the civil society organisations provide the GO with the necessary data and ideas in dealing with the relevant issues. As a result, the Greek Ombudsman assesses and use these data to further carry out, in the best way possible, its duty as an equality body. This example also shows that sustaining a dialogue with civil society actors is a prerequisite to the successful use of the tool of advice and recommendation.

Moreover, another example is that of the Equality Commission of Northern Ireland which provides consultation to individuals who may have experienced discrimination on a personal basis. The practice of offering this type of advice by the Commission may cover things such as how to resolve an issue informally, identify the protection provided by the law for any given specific issue or circumstance, inform the complainant about time limits for taking a case, etc.

Furthermore, other techniques which may be employed to advance the stated goal are:

- The creation of an «easy to use guide», in the form of a booklet, which should be addressed to both civil servants and civil society entities. This booklet should contain practical information regarding *what one should do* when observing issues of discrimination affecting vulnerable groups (where to address complains, what procedure to follow, etc.) The Greek Ombudsman (GO) is preparing such a guide pertaining to issues concerning the Roma.
- Do *on-spot consultation* when visiting or performing an on-site investigation in areas where vulnerable groups live.
- The GO operates a *site where immigrants can make written queries* about the problems concerning them. There are two members of our staff that respond to these queries and offer advice. This practice may be expanded to include more general issues of discrimination.
- Also in the GO there is an *advice phone* line where citizens may make complains or seek advice on issues pertaining to the rights of children. However a similar line directed to victims of discrimination is deemed very useful and effort should be made for such an advice line to materialise.
- Social media such as Facebook or Twitter is a new and interesting forum for giving advice and recommendations both responding to queries from individuals as well as targeting a wider audience.

6.4 Summary

To extend a cord containing the necessary information to groups which need it, in order to perform their function in society, may not be the highest service one can provide. However, in doing so one builds the way to social cohesion and equality before the law, which are the fundamental values which may guarantee the well-being of citizens in any given society.

7. Legal Assistance

Equality Commission for Northern Ireland, Northern Ireland

7.1 Introduction

Although national equality bodies will have distinct powers and very different approaches to the provision of legal assistance to victims of discrimination, it is universally agreed that such assistance is a valuable tool, indeed an essential tool, to what is after all a common challenge, the elimination of unlawful discrimination.

This chapter considers the role of legal assistance and in particular, legal casework, in the fight against discrimination and discusses possible approaches which a national equality body might take to expose discriminatory practice, and to promote good equality practice through legal assistance. It addresses specifically the role that legal assistance can play in empowering civil society.

7.2 Description of the tool

Although the EU Anti-Discrimination legislation sets out a common framework of protection and the Race and Gender Directives require equality bodies to provide “independent assistance to victims of discrimination in pursuing their complaints”, the Directives do not specify the nature or form of such assistance. Furthermore, as national equality bodies operate within national legal frameworks, national cultures, traditions and political contexts etc, the approach to the provision of assistance with discrimination cases can and does differ widely across Member States. Equality bodies may select individual cases that they wish to support either because of their strategic importance, their facts or the contribution they may make to clarifying or strengthening the law. In many instances supporting individual cases may be the primary means of enforcement for the national equality body.

The following paragraphs also discuss a strategic approach to litigation which, in partnership with civil society, uses cases to promote awareness of inequality and the employment of not just legally successful cases, but also compromised or settled cases, to revise discriminatory practices. In this approach the objective is not the case itself, but the strategic outcome which extends beyond the individual case and seeks to improve practices in respect of employment and service provision in wider society.

Throughout the world it is accepted that assisting individual victims of discrimination is central to the promotion of equal treatment and equality of employment and service opportunity. A national equality body which does not provide assistance to individual victims will be seen as irrelevant. Legal assistance to victims will raise awareness of the protection of the law, and of the responsibilities on employers and service providers to avoid discrimination. In many ways, non-discrimination and the promotion of equality are indivisible.

The use of legal assistance can be particularly valuable in terms of empowering civil society to be aware of the discriminatory practices, rights and available remedies and to themselves challenge such practices directly. It is especially important for Trade Unions in this regard. A case which is well publicised will increase the understanding of a particular discriminatory practice and the Union may then identify other situations where comparable discrimination is also present. Initially the Union may forward further cases to the national equality body to prosecute or support such cases themselves. Of greatest importance will be the role the Trade Union can play in negotiating with employers to end such discriminatory practices in the workplace.

The Directives require equality bodies to provide independent assistance to victims but do not set out the form of such assistance; this might be the provision of funds to go to a lawyer (legal aid) or it might be assistance by an in-house legal team. Neither do the Directives require an equality body to assist all cases where an individual alleges discrimination. Some Member States have sought to assist all cases to raise awareness of the protection early in their existence or on occasions because the national originating legislation for the Member State requires the Body to do so. However, in circumstances where equality bodies have sought to assist all cases of discrimination, they have often become overwhelmed and large backlogs of cases have developed. Importantly too many of the cases addressed to the national equality body may not focus on the most disadvantaged persons in the society or the key inequalities which the legislation sought to address. Accordingly many national equality bodies have sought to put in place arrangements for the systematic identification of cases for support, most usually described as strategic cases. The specification of the criteria for support of a case is typically a process which requires considerable thought and which a national equality body (NEB) will subject to regular revision.

Some equality bodies may be quasi-judicial in nature and will themselves have the responsibility to consider the complaints made to them and issue opinions on those complaints. In some circumstances where the opinion is not legally binding the individual will then have the opportunity to take legal action before the courts to obtain a legal determination. In circumstances such as this the equality body may not have the option of developing a strategic casework strategy but may be required to consider all complaints made to them and to issue opinions. It is nevertheless important that the equality body still seeks to use its cases to change behaviours and policies within organisations and to tackle under representations. This can still be tackled by advice and training and case outcomes used as disincentives for employers. Working with civil society will be central to the objective of changing behaviours and practice on foot of cases.

It is almost inevitable that an equality body will have limited resources and the complex questions of which cases to assist and the extent of assistance to be granted will always arise. Equality bodies too will be considering what area of discrimination to prioritise and for those victims experiencing the greatest degree of exclusion, how can the limited resources best be deployed to achieve the maximum impact.

Although national equality bodies may have a range of enforcement tools available many will prioritise the individual justice model, this is a focus on relying on individuals to make a complaint when they have been the victim of discrimination and via such complaints, the use of test litigation to define the reach and effect of the law. This approach is often described as a strategic litigation model.

Even when resources are tight, it is important that national equality bodies continue to assist individual victims of discrimination. Individual litigation has had and always will have an important role to play in the pursuit of social change. National equality bodies should identify a Casework Strategy; this strategy should be coherent and should have the support of organisations within civil society. The experience of civil society can also be important to take into consideration when developing such a strategy. The Casework Strategy should be publicly available. An approach of partnership working can be particularly valuable when resources are limited. Some non-governmental organisations (NGOs) may themselves have funds to support cases. NGOs more frequently work directly with victims to identify cases for prosecution. Importantly too NGOs can help promote case outcomes and thus assist with the elimination of discrimination.

7.3 Examples

In Northern Ireland the equality body, the Equality Commission for Northern Ireland, has always and continues to use assistance to victims of discrimination as a central activity in the pursuit of equality and in the elimination of discrimination. In Northern Ireland during the year commencing on 1st April 2009, 55 cases taken on behalf of 52 applicants by the Equality

Commission were settled out of court. The total compensation recovered for applicants in this year was €560000 ranging from €382 on a disability reasonable adjustment case to €152 000 for a disability and gender case taken by a woman who lost her job after 33 years service. In most settlements the Commission negotiated additional terms. These included undertakings to liaise with the Commission in order to review policies practices and /or procedures which had led to the case being taken, commitments to equality principles; apologies or statements of regret; provision of references and commitments to undertake equality training. A number of cases were also determined at hearing or tribunal in the year. The following are of particular note:

Jennifer Johnston v Royal Group of Hospitals

The tribunal upheld a complaint by a nurse who is dyslexic and who claimed that the respondent failed to make reasonable adjustments for her disability in the arrangements put in place for the recruitment of a staff nurse. The tribunal awarded compensation for injury to feelings.

Terence Lesslar v Sycadex

The tribunal upheld the complaints of race discrimination and harassment on grounds of race in his selection for redundancy. The claimant was awarded €44000 which included compensation for sums for injury to feelings, loss of earnings and one year's future loss.

Lopez and McGuinness v Premium Bars and Restaurants

The Court upheld the Plaintiffs complaints of race and in the case of McGuinness race and sex discrimination, following their complaints of unlawful harassment by a doorman at a night club. Each Plaintiff was awarded €9125 for injury to feelings and this included a sum for aggravated damages. The court costs were also awarded and recovered by the Equality Commission.

Strategic litigation of discrimination cases can assist an equality body in defining its role in society in support of victims and also in working in a cooperative way with other stakeholders. Strategic litigation can help define the reach of the law and in particular can bring a focus on important sectors such as the public service. It can also ensure that particular types of employment, such as the Police, are subject to judicial scrutiny. It helps individuals in society understand the protection of the anti-discrimination law by identifying how the equality body remedied a situation for an individual. Importantly too, it provides a deterrent effect to respondents. In Northern Ireland cases assisted and concluded by the Equality Commission are used in training employers and service providers in how to avoid discrimination. Importantly too, the costs of defending a case, the compensation paid when a case is concluded or when it is settled (compromised) and especially any poor publicity are deterrents to employers and service providers.

National equality bodies have on occasions expressed concern about a reliance on an individual enforcement model. Cases supported are dependent upon the willingness of individuals to challenge their treatment. In particular, in areas where a minority has not been present before, a challenge is unlikely to be brought forward; it is unlikely that a case of race discrimination will be brought against the national security service if the number of minority employees is very small. There are also concerns that cases may lose at hearing based on the evidence. Despite these risks legal assistance of discrimination cases is very important. Cases can establish legal precedent and judge made law can extend the protection of the statute. Even a case which is lost at hearing can identify the need for the legislature to extend the protection and the role of civil society in lobbying for such expansion will be important. However, a strategic litigation approach which is not about test cases but more broadly about the strategic outcomes arising from the challenge can have very successful outcomes even if it settles (compromises). A settled outcome which does not have a restriction on publicity may have very positive wider effects as the publicity may encourage improvements in practices in other comparable businesses. Also, a compromised case may include adequate compensation for the victim and an express commitment to revise policies in that particular business.

7.4 Summary

Providing legal assistance to individual victims of discrimination will benefit not only the victim but also plays an important role in relation to the idea of empowerment of the wider civil society. Legal assistance will raise awareness of the problem of discrimination, the protection of the law, rights of individuals and the existence of redress mechanisms. In order for legal action to be strategic and effective in contributing to changing behaviours and practices it is important that equality bodies involve and work with representatives of civil society.

Conclusions

The Equinet Working Group on Strategic Enforcement has attempted to elaborate a strategy with the aim of empowering civil society, exploring different tools and perspectives of such a strategy. The ambition of the working group members has been to initiate a discussion on this topic and to highlight the importance of links between equality bodies and civil society. While the report only scratches the surface of a complex topic, which needs to be explored further within national contexts, some important conclusions can still be drawn from the discussions in the working group.

To work with civil society is clearly a strategic choice by equality bodies. It is a choice based on the understanding that involvement of civil society is essential in order for a society characterised by equal rights and opportunities to evolve and not least in order for the work of equality bodies to have any effect. It is also a choice based on the view that equality bodies in many cases are in a good position to provide support to representatives of civil society. In order for activities by equality bodies to contribute to empowering civil society there is clearly a need to develop a strategic approach. The current situation must be analysed and needs within the national context determined. There are important decisions to make concerning tools and target groups/individuals and activities must be carefully tailored to reach the desired results. Linkages and synergies between tools must be taken into account. Scarce resources and limited mandates will necessarily be aspects that restrict the options. However, some tools can be used at low cost while still being effective and equality bodies with limited mandates, such as quasi judicial bodies, can in most cases also find ways to particularly target civil society, for example by way of strategically disseminating their decisions. To some extent contributing to the empowerment of civil society may not so much be about doing new things but to do the things we already do in a different way.

When engaging with civil society it is important to view the engagement as a two way process where, on the one hand, civil society needs support and knowledge from equality bodies and, on the other hand, equality bodies depend on civil society in order to function and succeed in their work. Hence, we are looking at a process that needs to be characterised by collaboration and a mutual exchange of experience and knowledge.

In order for equality bodies to establish any kind of collaboration with representatives of civil society it is necessary to build trust. In many cases members of civil society have bad experience of state institutions and may not automatically put trust in an equality body, even if independent. This goes in particular for those who are most vulnerable in society and that belong to groups that may have had their rights violated by state institutions. Building the necessary trust require not only effort but also that the target groups actually see that they can benefit from the collaboration. It is, for example, not enough that individuals are aware of rights and remedies, they also need to see that the remedy is effective, that complaints to equality bodies produce some kind of redress. A process of building trust is often long and may be cumbersome, requiring determination and long term commitment by equality bodies. However, this trust, that is also inevitable if the equality bodies are to successfully fulfill their other duties, can usefully and effectively be increased by strategically using the tools empowering civil society described in this report.

Generally, any engagement with civil society with an empowerment objective needs to be viewed as a long term commitment in order to produce such results. To some extent this of course depends on the level of organisation and knowledge of the target group. However, even in areas where strong organisations exist such as within the women's movement, it can be the case that certain groups of women, for example women of ethnic minorities, are not well organised and generally lack very basic tools.

Before launching different kinds of activities targeting civil society it is important to go through a process whereby key representatives of civil society and their specific needs are identified. Who these representatives are and what should be achieved through the specific activity, of course, depends on the national context. It is, however, important that equality bodies engage

with Individuals and organisations that represent different views and experience within civil society and that these representatives have such positions within civil society that enable them to function as focal points for the groups they represent.

This report does not aim to provide a comprehensive list of possible tools and activities to empower civil society and it certainly cannot take into account the differences in national legal systems and social realities. However, the report gives an overview of those tools that the members of the Strategic Enforcement Working Group see as important and useful in this context and aims at emphasising the importance of developing a well-thought-out strategy for empowering and cooperating with civil society. The working group chose to deal with the strategy of empowering civil society in 2010 as we regard engagement in this field as crucial for all equality bodies, irrespective of mandate, and that there is ample opportunity for innovation and good practice exchange at the same time. We encourage equality bodies to take steps to develop strategies and work in this field and members of civil society to cooperate with equality bodies in this effort in order to reach a society characterised by equal rights and opportunities for all.

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Effective Strategies to Empower Civil Society
An Equinet report
December 2010

ISBN 978-92-95067-54-7

Equinet member organisations

Country	Member
Austria	Ombud for Equal Treatment www.gleichbehandlungsanwaltschaft.at
Belgium	Centre for Equal Opportunities & Opposition to Racism www.diversite.be and www.diversiteit.be
Belgium	Institute for the Equality of Women and Men http://igvm-iefh.belgium.be/en
Bulgaria	Commission for Protection against Discrimination www.kzd-nondiscrimination.com
Croatia	Office of the Ombudsman www.ombudsman.hr
Cyprus	Office of the Commissioner for Administration (Ombudsman) www.ombudsman.gov.cy
Czech Republic	Office of the Public Defender of Rights www.ochrance.cz
Denmark	Board of Equal Treatment www.ast.dk
Denmark	Danish Institute for Human Rights www.humanrights.dk
Estonia	Gender Equality Commissioner www.svv.ee
Finland	Ombudsman for Equality www.tasa-arvo.fi
Finland	Ombudsman for Minorities www.ofm.fi
France	High Commission against Discrimination and for Equality www.halde.fr
Germany	Federal Anti-Discrimination Agency www.antidiskriminierungsstelle.de
Greece	Greek Ombudsman www.synigoros.gr
Hungary	Equal Treatment Authority www.egyenlobanasmod.hu
Hungary	Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities www.kisebbsegiombudsman.hu

Country	Member
Ireland	Equality Authority www.equality.ie
Italy	National Office against Racial Discrimination www.unar.it
Latvia	Office of the Ombudsman www.tiesibsargs.lv
Lithuania	Office of the Equal Opportunities Ombudsman www.lygybe.lt
Luxemburg	Centre for Equal Treatment www.cet.lu
Malta	National Commission for the Promotion of Equality www.equality.gov.mt
Netherlands	Dutch Equal Treatment Commission www.cgb.nl
Norway	Equality and Anti-Discrimination Ombud www.ldo.no
Portugal	Commission for Citizenship and Gender Equality www.cig.gov.pt
Romania	National Council for Combating Discrimination www.cncd.org.ro
Serbia	Commission for Protection of Equality www.ravnopravnost.gov.rs
Slovakia	National Centre for Human Rights www.snslp.sk
Spain	Spanish Race and Ethnic Equality Council www.igualdadynodiscriminacion.org
Sweden	Equality Ombudsman www.do.se
UK – Great Britain	Equality and Human Rights Commission www.equalityhumanrights.com
UK – Northern Ireland	Equality Commission for Northern Ireland www.equalityni.org

ISBN 978-92-95067-54-7

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