



Providing Independent Assistance to Victims of Discrimination

 Equinet
European network
of equality bodies

An Equinet Report

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Providing Independent Assistance to Victims of Discrimination is published by Equinet, the European Network of Equality Bodies.

Equinet brings together 37 organizations from 30 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

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Preface

Equinet, the European Network of Equality Bodies, brings together 37 member organisations from 30 European countries and provides them with a platform for exchange and cooperation. National Equality Bodies were established across the Member States of the European Union and beyond following the adoption of the EU Equal Treatment Directives. Their objective is to promote equality and combat discrimination across a range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

Equinet's Working Group on Strategy Development 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, 2004/113/EC and 2006/54/EC) and the mandate of national equality bodies. The group is a part of the Equinet strategy for peer support to enhance institutional development of national equality bodies. To this end, the Working Group focuses on the powers and competencies of national equality bodies and how they can develop and implement strategic approaches for pursuing their mandate and objectives.

In 2009 the Working Group pointed at the importance of national equality bodies identifying their role in society based on their mandate and in relation to other key stakeholders. The Working Group concluded that a clearly defined role is a prerequisite for these bodies to adopt a strategic approach within their national contexts. 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 has focused in more detail on key strategies essential to the work of national equality bodies and explored what elements such strategies could or need to include in order to be effective. In 2010 the group focused specifically on a strategy that aims at empowering civil society¹ and in 2011 the focus has been on the integral task of national equality bodies to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination. This function for national equality bodies is a formal requirement of EU directives. Therefore, the Working Group sought to explore how different equality bodies work to fulfil this task and share experiences of different approaches.

The Working Group has met twice during 2011 for discussions on the topic and the members have also exchanged ideas and shared experiences in between these meetings. This report summarizes those discussions and contains eight chapters elaborating on different ways of providing assistance to individuals that the members of the Working Group and their organizations have experience with. The focus is both on different types of assistance and the methods for providing this assistance. The report offers concrete examples and describes some relevant experiences of national equality bodies. The report builds on the experience of the working group members and the organisations 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 expertise.

It is to be noted that the conclusions are based on the work of the Working Group members representing seven national equality bodies and not all Equinet members. In addition, these conclusions neither necessarily represent the position or opinion of the national equality bodies that have been involved in preparing this report, nor of the other members of Equinet.

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

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¹ Equinet report on *Effective Strategies to Empower Civil Society (2010)*

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Introduction

Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination goes to the core of the work of national equality bodies: all national equality bodies put in place under the EU anti-discrimination directives are mandated and bear a responsibility to take on this task. What this task entails, what kind of support these bodies should give and how, is not elaborated in any detail by the directives. Consequently, while all national equality bodies have the same task, the meaning of this obligation has been interpreted differently in the various Member States. Different needs due to various national contexts and diverse views of the role of national equality bodies have led to the development of several different approaches, both in terms of the broader mandate given to these bodies and in relation to how particular assistance is given to the individual.

One reason for entrusting national equality bodies with the task of providing assistance to victims of discrimination is to strengthen the protection against discrimination, which is also stressed in the preamble to the EU Directive 2000/43/EC. The work of national equality bodies targeting victims of discrimination thus serves to ensure that the anti-discrimination legislation is implemented in practice to the desired effect.

If one looks at the broader picture, an attempt to identify and group the different mandates national equality bodies are vested could look like this:

- ▶ Competence to promote equality, provide guidance, information and advice and collecting and interpreting data about discrimination. This is done on three levels:
 - General: advice, opinion to the governmental institutions, participation in the legislative process, annual reports, surveys;
 - Preventive: trainings, information campaigns and appearances targeting duty bearers;
 - Supportive: advice and information targeting victims of discrimination.
- ▶ Competence to investigate cases of alleged discrimination and issue non-binding decisions, recommendations, advice or opinions.
- ▶ Quasi-judicial powers to investigate cases of alleged discrimination and issue binding decisions.
- ▶ Competence to represent complainants before courts.

Most of these powers in fact concern different aspects of providing assistance to victims of discrimination. National equality bodies are in many cases vested with several of these competencies and in different combinations. Some of the competencies, such as providing information and advice to victims of discrimination, is a part of the mandate of all equality bodies, while others are unique to only a few.

Many of the competencies and the strategies developed by national equality bodies that aim at assisting victims of discrimination overlap and are closely interlinked. Furthermore, assistance to victims of discrimination and the various ways of doing this cannot be separated from other types of work done by national equality bodies. In fact, the mandate to assist individuals can be seen as a prerequisite for other strands of work to be effective. Informing and advising individuals will empower victims to turn to national equality bodies and other stakeholders to seek redress. The knowledge that national equality bodies acquire through these contacts will form an important basis for identifying problems in society and generating

effective activities. In last year's report the Working Group elaborated on the importance of the active involvement of civil society and those affected by discrimination in particular, in order for the work of national equality bodies to have effect.

One important aspect of the task of providing assistance to victims of discrimination is that the assistance should be independent and that national equality bodies should act independently. The EU Directives 2000/43/EC, 2004/113/EC and 2006/54/EC state that assistance should be given without prejudice to the rights of victims and of associations, organisations or other legal entities that engage in issues related to discrimination and equality. It is important to acknowledge that national equality bodies need to take steps to ensure that they act independently from pressure by different stakeholders in society, both from public and private bodies, civil society organisations and/or individual victims themselves.

The ability to engage in different activities aiming at assisting individual victims of discrimination depends, of course, on the mandate and available resources of a particular equality body. The purpose of this report is, therefore, not to formulate an ideal strategy concerning assistance to victims of discrimination. Rather, the different tools and activities elaborated on in this report serve the purpose of providing good examples that Equinet member organisations can consider when setting out to develop a strategic approach vis-à-vis victims of discrimination within their national contexts.

1. Providing general information

The Council Directives 2000/43/EC, 2004/113/EC and 2006/54/EC prescribe that bodies responsible for the promotion, analysis, monitoring and support of equal treatment must provide independent assistance to victims of discrimination in pursuing their complaints about discrimination.

By independent assistance, we understand amongst others offering a good service of information, since it is vital that potential victims and victims know their rights under the equal treatment legislation.

Information given may, among other things, cover the content of EU Anti-Discrimination Directives and their transposition to the respective national legislation, as well as the available redress mechanisms.

This information must be made available to everyone, but whereas some target audiences are easily identifiable and reachable, it becomes more complicated to target and reach unidentified victims who must also be informed.

Therefore, the disseminated information and the channels chosen must be adapted to the particular target group.

General information must be given to everyone, to ensure that (potential) victims and (potential) perpetrators are informed and able to claim their rights, combat discrimination and promote equality. General information can also be an important and basic part of advising individuals. Sometimes there is a fine line between general information and advising/counselling, as information goes hand in hand with advice about a particular case.

Information given can be about the right institution to turn to, about legal possibilities open to victims, about the potential of national equality bodies to provide legal assistance before the courts, about the investigative powers of the national equality bodies, about casework reviews to communicate the learning from the casework, or other important and useful factors for tackling discrimination.

This information can be communicated via different channels. Some channels have the advantage of reaching a broad public while others are more suitable for targeting a specific group. In any case, the formulation of the content should be concise and easy to understand. Depending on the channel chosen, the wording and complexity of the information can or should vary as well.

Below, we offer and discuss a number of possible ways to communicate information and provide examples of how equality bodies have used them:

1. Printed materials like leaflets, brochures, handbooks, posters etc. where the legislation and the role of the national equality body is explained in a simple and understandable language. It is a useful good practice to develop, print and disseminate these materials in different languages, including in minority languages.

The **Centre for Equal Treatment** in Luxembourg has developed a flyer aimed at young people to show them how discrimination can take place on the Internet. Designed with two other partners, one active in the field of youth and the other active in taking civic action against illegal content on the Internet, this flyer was full of powerful pictures that show the quick progression from a stereotype to actual discrimination. It explains that discrimination is illegal, even on the Internet, which discriminations are

involved, which sanction can be imposed and which institution to turn to for information.

For the equality body it was fruitful to work with other partners that have the expertise in their respective fields and to design a flyer which "speaks" to the targeted audience. The language, examples and pictures chosen are therefore well-adapted to young people. The partners are important also for spreading the message because in their daily work they often meet young people and can thus distribute the flyers to them directly.

2. *Webpage where the information is probably the most complete and voluminous and can even be found in different languages.*

It is possible to have a specific section targeting victims and it is also important to adapt the website, as far as this is possible, to the needs of people with disabilities (films, audio, plain English, etc.).

3. *Newsletters and e-mails allow the equality body to address specific target groups or a larger public for a single issue or a general purpose.*

This is a very effective tool to provide regular information and updates to a large audience – however, it is only effective vis-à-vis persons who are already connected to the equality body.

4. *TV and radio spots reach a very large public, including vulnerable groups.*

This channel of information is very effective when providing brief information and drawing attention to issues, such as the possibility to file a complaint with a national equality body. However, national equality bodies often lack the necessary financial resources to sustain a longer campaign in the audiovisual media.

5. *Appearances in printed media reach a large audience as well, but at the same time only the readers of those newspapers and of the concerned article.*

In information campaigns, national equality bodies have found it beneficial to use actual cases to draw the attention of the public to a certain issue. As an example, in August 2011 the **Equality Commission for Northern Ireland (ECNI)** publicized the settlement of a case in which a disabled woman claimed that she was charged more than a non disabled person for using an accessible taxi. The company had agreed an out of court settlement and had also agreed to review its policies and procedures and to implement reasonable recommendations made by ECNI.

The Disability Transport Regulations extended the protection of the Disability Discrimination provisions to transport vehicles. As these Regulations were relatively new, many disabled people were not aware of their additional protection. The widespread publication of the case (*Nesbitt v Value Cabs*) in the newspapers, on the radio and on television increased the understanding of the new Transport Regulations among disabled people in particular, as well as within the broader community.

6. *Media campaigns can be adapted to target a specific group or to reach the general public.*

The **Equality Authority** in Ireland tried to raise awareness of lesbian, gay and bisexual people generally of the existence of anti-discrimination legislation and of the Equality Authority. That action has taken the form of buying advertising space in publications and websites produced by LGB organisations that have a wide readership within those communities. These included advertisements in the main monthly magazine and in the programmes of major LGB cultural events. In addition to raising awareness of the

existence of the Equality Authority, the advertisements also mentioned where people can get more information, including the telephone number of the Equality Authority's Public Information Centre, its email address, and its web address.

7. Social media is very cost-effective, easy to handle and can potentially reach a large public very quickly.

It is often considered as being one-sided, since there is a risk that national equality bodies might be inclined to use it primarily for spreading information without answering or reacting to the comments received from their followers. At the same time, social media can be very interactive too, since people are given the opportunity to agree with the news being disseminated or to comment on them. Furthermore, people can directly contact the national equality body for additional information via this channel. Some people prefer this unconventional way to approach a national equality body that is often still considered as being a distant and cumbersome institution.

8. Calls for tenders and competitions permit to sensitize the public to the thematic of equal treatment and so to inform them (in)directly.

In 2010 the Luxembourg **Centre for Equal Treatment** launched a competition called "Communicate on equal treatment" where people could hand in a poster, a radio spot or a video about combating discrimination. Since they had to address the six grounds of discrimination and they had the chance to win an exciting money prize, the results of the competition were overwhelming from the point of view of quality as well as the number of participants.

9. Conferences and seminars addressed to the general public allow national equality bodies to spread awareness of the content of legislation. Specialized conferences are more restrictive.

The **Centre for Equal Treatment** in Luxembourg organized a conference with Viviane Reding, Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship, where everybody interested could attend. The title of the conference was "Equal opportunity for every citizen in the European Union" and she spoke about European and national legislation, the role of national equality bodies as well as the future developments she wants to put forward to achieve equal treatment in every European country. After the presentation, the public was given the chance to ask questions to the Commissioner.

10. Dialogue with civil society allows equality bodies to reach unidentified victims and specific groups due to a trust-building relationship and exchange of contacts.

The **Equality Ombudsman** in Sweden has worked extensively with representatives of civil society and of particularly vulnerable groups in order to contribute to a process of empowerment. This has included training and dialogue activities, and the distribution of information to representatives of target groups such as Roma in order for them to function as bearers of knowledge and focal points within their groups. These representatives provide necessary information to individuals and channel cases to the Ombudsman's office. These efforts have produced positive results which can be seen in terms of an increase in the number of complaints from targeted groups and an improvement in the quality of those complaints. This has resulted in the Equality Ombudsman being able to successfully take cases to court.

11. Presence at events where it is possible to disseminate information in a concentrated manner to a large public.

The Hungarian **Equal Treatment Authority** puts an emphasis on being present at programs attracting many people, such as local festivals or the SZIGET Festival in Budapest. In particular, the Authority has for a number of years already maintained an information stand at the SZIGET Festival, providing general information and raising the awareness of visitors about their rights under the Hungarian equal treatment legislation.

The Swedish **Equality Ombudsman** is also present at festivals that target audiences which may include victims of discrimination (such as Pride events).

The Luxembourg **Centre for Equal Treatment** privileges presence at specific events like the biggest LGBT event in Luxembourg called GAYMAT and the Festival des Migrations, des Cultures et de la Citoyenneté which is aimed at people with different ethnic backgrounds. At these occasions, general material as well as specific information can be handed out.

12. A combination of several tools

In order for information to reach the identified target groups it can be important to combine several of the tools presented above. An approach of the **Equality Authority** in Ireland sought to target a specific sub-group in the LGB communities who are known to experience particular and severe forms of discrimination and who have not come forward in any numbers to make complaints or bring proceedings. That group is young LGB people in school who experience very high levels of harassment. Research has also shown that few schools have taken all the steps that they could to prevent the problem.

In addition to campaigns for raising awareness of the problem, and work to assist schools in identifying practical steps they can take to prevent it and respond to it, the Equality Authority has sought to make LGB school students aware of their right to redress if their school has failed to prevent the problem from occurring, and of how they can exercise their right to seek redress.

Three different tools were used: (i) The Equality Authority in partnership with BeLonG To Youth Services, an NGO of young LGBT people, distributed postcards in cafes, clothes shops, and music and games stores that contained the slogan 'Know your Rights', a short paragraph stating that homophobic bullying is prohibited under the equality legislation, and contact details for the Equality Authority's Public Information Centre. (ii) Equality Authority staff have delivered presentations to meetings of youth groups for young LGB people that outline the provisions of the equality laws (across all protected grounds), and how the law applies to young people. (iii) The Equality Authority has also developed a strategy to raise awareness among youth workers who regularly meet and work with young LGB people so that they are aware of the legal rights they have under Irish equality laws and how young people can obtain information on their options and on the support that is available if they wish to pursue the matter.

When developing information campaigns and activities, national equality bodies need to first identify the target groups they wish to reach. Sometimes, a single event (new legislation, high-profile incident, etc.) or the numbers of enquiries (no one at all or numerous) can be an indicator for the choice of a target group.

It is important to tailor the material to the audience and use the right information channels to reach this specific audience. For example, in case of individuals that belong to particularly

vulnerable societal groups, which are generally difficult to reach, the use of TV, radio and newspapers can arguably deliver better results and provide better reach than the use of printed material, 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 individuals who often may not have an internet connection. However, it is important to consider which TV, radio channels and newspapers to target with such activities in order to secure the desired effect. In relation to certain target groups, one-way communication may not be enough to raise awareness. In such cases, dialogue activities that can contribute to a confidence building process should be considered.

In contrast, specific institutional partners are easy to target with a newsletter or by regular mail. When it comes to printed material it is also important to consider how to distribute the material in order for the target group to be reached. Cooperation with civil society actors can contribute to effective dissemination of the information, because they can target and reach specific groups (including the particularly vulnerable ones). Cooperation with duty-bearers is also important, as they are responsible for disseminating the right information and can sensitize all persons they have contact with.

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 the 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 resources).

All materials used by equality bodies in their information campaigns should be tailored to the different needs and different target groups. The use of court cases and settlements to raise awareness is a good starting point to explain a problem and to show that individuals can do something about injustices and get redress.

All information should be available in all the country's official languages, including the languages of the national minorities, and ideally also in the languages of other minorities. Of course, the needs of people with disabilities should be considered as well and therefore information in different formats is essential. The materials used must be well planned and elaborated, providing useful and targeted information about issues such as:

- ▶ Legal protections (e.g. the definition of discrimination, the protected grounds and areas of society covered);
- ▶ The mandate of the equality body;
- ▶ Alternative redress mechanisms;
- ▶ Policy and legal developments or tools;
- ▶ Possibilities for advocacy.

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

Equality bodies need to be aware of the challenge that, on the basis of the general information received, some people may raise unrealistic expectations. Therefore, equality bodies need to make sure that they explain clearly and understandably the legislation as well as the procedures. A number of legislative provisions and complicated procedural rules may reduce the chances of a successful case, and these difficulties need to be outlined. Examples of issues that would need to be mentioned include:

- ▶ The importance of time limits to notify the potential respondent which can be restrictive for those who were not aware at the time of an incident that they had

legal protections and which can be restrictive for those who may feel vulnerable about legally challenging the perpetrator;

- ▶ The need to be clear that not all incidents of discrimination by harassment will give rise to a successful legal case;
- ▶ The risk that the other party will seek to undermine the victim or their evidence;
- ▶ A further issue with targeting unidentified victims through presentations is the need to ensure that the audience understand that the process of taking a case can be feasible and useful while at the same time not encouraging people to take poorly founded cases;
- ▶ Finally, equality bodies are official public bodies and it is important to be aware that many people may not be comfortable dealing with such state authorities. In that context, it is important to make target groups aware that contacting the Equality body for advice is not the same as making a commitment to take a case.

Consequently, when addressing a public, the national equality body has to pay attention to the formulation of its message and the channel to choose. In any case, also for general information aimed at a larger public, it is important to approach the victims and perpetrators on their ground and not to wait for them to approach the equality body.

2. Counselling / Advising

Counselling individuals is a process wherein individuals are influenced by the advice, opinions, and ideas from one party to another. All national equality bodies, in one form or another, utilize this form of guidance in order to assist victims of discrimination. Advice, by its nature, is inherent in all the mechanisms utilized by national equality bodies, since through it all parties involved are informed about antidiscrimination law and the means available, in any given society, to combat discrimination. Therefore, it is important to consider the counselling patterns different equality bodies employ, so as to identify their strengths and weaknesses and, in turn, use or imitate their best features. Counselling victims of discrimination, offering them advice on how to best deal with the situation they encounter, is of fundamental importance for the achievement of the equality bodies' goal of combating discrimination.

Advice is a way of conveying opinions and ideas to another person or group of individuals as guidance to action or conduct from their part. If we are to put it more simply, offering advice is to open a field of possibilities (through the presentation of thoughts, instruments, materials, etc.) to someone so as to consider how to best address the problem she/he is facing or how to best manage a critical situation. Thus, in case of national equality bodies, to provide "advice" is a way of empowering the victims of discrimination, by providing them with the means to challenge discrimination. Advice works at many levels: it works by instructing victims of discrimination about potential courses of action, by empowering them both psychologically and on a practical level, and by motivating them to take action.

The process of counselling individuals is a dynamic process through which both the victim and the equality body learn from each other and become more equipped to further their separate goals. This process builds on and includes elements of general advice, as discussed in the previous chapter, but it goes further by applying this knowledge to concrete cases with the help of an expert officer of the equality body. Thereby, individual victims of discrimination receive crucial advice and information on their basic human rights and on the possible concrete steps they can take to counter and challenge the discrimination they experience. Equality bodies on the other hand fulfil their mission of providing independent assistance and they also receive important information on the levels and forms of discrimination in their country, informing their future work and activities. It is important that equality bodies give some advice or take action to assist the individual even if they have no competence, mandate or expertise to deal with the problem raised by the complainant. This might take the form of advising the complainant on the legislation and the remedies available or even referring the case to the body with relevant competence.

However, the inherent dangers in this advisory process should not be underestimated. The advisor/advisee dynamic can make the advisee feel overpowered. In order to avoid the victim feeling overpowered or patronized, the proper selection of trained staff of the equality body entrusted with this task, as well as the methods which will be employed for counselling, are essential for the successful application of this tool. Some of the current counselling practices of equality bodies are, in principle, formally sought by the victim. The fact that counselling is offered as an institutionalized benefit and that its content consists of practical, methodological and legal matters is believed to safeguard against its misuse. Therefore, the value of this guidance should be seen in the results it produces, namely, in what it enables the individual who receives it to do with it.

Equality bodies provide counselling utilizing a number of different channels: it is customary to give advice to the victim turning to the equality body in person, via telephone, via regular mail or e-mail. It is becoming more and more accepted to provide advice via social media channels

as well. It is also important to consider these different possibilities keeping in mind the principal aim of giving advice / counselling close to the victim, making it available to everyone.

Equality bodies have also developed different strategies in regards to the form, manner, and content of the advice they offer as a service to the individual. The differences between these patterns lie in the nature and extent of their mandate and competences.

Examples

- ▶ The **Equality Ombudsman** in Sweden provides legal advice and information about available remedies to victims of discrimination through the use of an open telephone service, by answering written queries, and through personal meetings. The **phone service** is available 2-4 hours each day and the advice is given by case officers. In 2010 the Equality Ombudsman in Sweden answered more than 4,500 queries by phone. Simultaneously, in 2010 the Equality Ombudsman responded to more than 2,200 written queries submitted by victims of discrimination. It is possible for victims of discrimination to turn up at the office during opening hours without prior notice and receive advice in person from a case officer. Through these measures the equality body has aimed at being accessible for individuals and providing a good quality of service. It appears then that through this neutral form of communication, the Swedish equality authority succeeds in performing its mission as an equality body while maintaining its objectivity and independence.
- ▶ The **Centre for Equal Opportunities and Opposition to Racism** of Belgium offers similar services since it operates at two levels: there is a “front line” service, wherein instructions are given following questions that filter queries, offering general answers when possible. In depth handling of discrimination cases is done in the second line of this service. In addition, the Belgian equality body, in trying to become more accessible to victims, provides “**open consultation hours**” one day a week. Furthermore, the authority has established a **protocol of collaboration** with several regional authorities, in order to develop a network of antidiscrimination contact points, through which a sensitization campaign on anti discrimination issues will be carried out. Thus, in this multi-level approach, there is both personal and impersonal handling of cases, according to the needs of the injured party. In addition, the increase of the number of channels through which the victims may be reached enhances the chances of attending to those who live in remote areas and perhaps those who are most likely to be socially excluded.
- ▶ The **Greek Ombudsman** has also established **two open communication and coordination networks** in addition to handling written complaints and providing information to victims on a face-to-face basis. These networks are intended to bring together the Roma, immigrants, and refugees with civil society organizations that are active in the area of combating discrimination throughout the country. Mechanisms such as the aforementioned are considered capable of breaking the walls of social exclusion for members of socially vulnerable groups, while simultaneously able to determine civil society organizations to participate in this process.
- ▶ The Finnish **Ombudsman for Minorities** on the other hand prefers to act as “a *low-threshold body*” that advises and assists complainants in different ways. These ways are: providing **information in many languages** (currently 17) and

translating the written answer to the language of the person concerned if it is deemed necessary. Furthermore, the authority utilizes diverse work methods in order to attend to the needs of the complainants. For example, they separate the cases based on the criterion of how important it is to act quickly and use rather unobtrusive methods – such as the telephone – or to focus on customer counselling. In this example, the means utilized for resolving a matter and for intervention in problems are considered flexible, *including the possibility of arbitration, directing customers to various support services (e.g. Municipal Patient or Social Ombudsman, Legal Aid Attorneys etc.)* Therefore, the emphasis on the particular individual needs of the injured party, in conjunction with the flexibility of utilizing several different methods of intervention, while maintaining independence, appears to enable the equality body to follow a more inclusive approach toward the protection of the victim.

- ▶ The **Equality Commission for Northern Ireland** follows a similar approach. The Equality Commission has established a more formal mechanism for advising individuals **as it has in place an advisory team** for those individuals who believe they may be the victims of unlawful discrimination. In addition, advertisements help individuals in Northern Ireland to contact the Equality Commission's telephone service for discrimination advice. Each year, the Commission deals with approximately 3,000- 4,000 inquiries. Furthermore, many individuals are assisted by the Equality Commission in resolving their issue at the workplace. Generally enquirers are given verbal and written advice plus published material in relation to their area of enquiry. A new addition to this service is a catalogue of web based materials which provide step-by-step assistance on discrimination, as well as guidance on how to lodge a case and how to apply for Equality Commission assistance. The Equality Commission also contributes to various outreach programmes in association with NGOs. These are aimed at **building the capacity** of those NGOs to recognize discrimination issues, to refer appropriately in regards to them and to consider enforcement options. In parallel, the Equality Commission cooperates with trade unions providing training **on how to deal with issues in the workplace** such as bullying and harassment, grievances and equal pay. The personal attention to the victim, the on-site resolution of the problem, in conjunction with the attempt to outreach for wider publication of the anti-discrimination rules for the purpose of enlightening the public, appears to be a very effective way of carrying out the mission of a national equality body.
- ▶ The Hungarian **Equal Treatment Authority** places emphasis on how **the complainants may get free legal advice** from different governmental institutions and from NGOs active in this field. This reminds us of the variety of means that may exist in any given society which the victims of discrimination could take advantage of in order to find redress for the injustice done to them. In this case, the role of the national equality body is a "hands-off" approach which has the following goal: once the necessary information is provided to the victim, he/she will be able to acquire aid/ assistance on his/her own.
- ▶ Lastly, the **Centre for Equal Treatment (CET)** in Luxembourg provides to the victims of discrimination **an advisory and orientation service** which channels intended information regarding their individual rights, legislation, case law, and the means for claiming their rights. The particularity of the CET is that it does not intend to get involved directly on behalf of victims of discrimination, but rather to serve as an **important contact by means of its advisory and**

orientation functions. Therefore, it sees its role as carrying out its mission on a consultative basis. This is judged as a better approach to the issue of offering assistance since it is deemed as enabling the authority to maintain an objective stand in accessing and assessing the existing mechanisms, structures and procedures put in place for the benefit of victims. Thus, depending on the gravity of the case, the CET decides which form of intervention to follow. Advice could be the basis or could accompany any other form of action the authority would eventually undertake.

In summary, we underline that advice is offered by all national equality bodies in various forms. The practices listed above can be regarded as best practices that others might also wish to consider.

When developing a service of providing advice to individuals who have experienced discrimination, it is important that national equality bodies take steps to ensure the accessibility of this service. The examples provided above point to different ways of doing this: through the use of different means of getting the advice; through extensive opening hours; by providing advice in the individual's own language and through local presence. It is also essential to take steps to ensure the high quality of the advice given. The advice needs to be relevant and correct and should be the same irrespective of who gives the advice. The accessibility and quality of the service will ensure that individuals get effective assistance and that confidence in the equality body is built and maintained.

3. Legal assistance – alternative dispute resolution

In this chapter, different possibilities to handle discrimination cases and solutions with non-judicial or non-litigation tools are covered (i.e. interventions known as mediation, conciliation or negotiation).

The focus will be on the cases where a national equality body has to handle a case and its intervention involves more than providing information, giving an advice or a legal interpretation. These are cases where there are one (or more) victim(s) and one (or more) presumed discriminator(s). These cases could also involve other parties (witnesses, lawyers, unions, associations, etc.).

Definitions

The definitions used in this chapter are the ones used by the Belgian Centre for Equal Opportunities and Opposition to Racism:

- ▶ *Mediation*: formal intervention where a third party, as neutral actor, helps the parties to communicate and to find a solution which is acceptable to both of them.
- ▶ *Conciliation*: informal intervention where a third party tries to convince all the parties, but especially the source of the presumed discrimination, to reach a solution.
- ▶ *Negotiation*: informal intervention where a third party tries to obtain compensation or reparation for a victim of discrimination.

The difference between conciliation and negotiation is not so important, but the intervention of the third party in the latter is more focused on the rights and interests of the victim of discrimination.

- ▶ *Solution*: the result of mediation, conciliation or a negotiation can be relatively broad, for example an apology, reintegration or other sanction (from an authority to subordinate), financial compensation, engagement for the future (diversity policy, charter, etc.), reasonable accommodation, public declaration.
- ▶ *Discrimination cases*: all civil or penal cases of discrimination (on all possible grounds according to the national law) or hate crime, hate speech. It concerns also all sectors of the society (employment, housing, school, social relations, and cyber hate).

General issues

Mediation

The possibility for a national equality body to resort to non-judicial or non-litigation tools will first depend on its legal mandate. The provisions in the EU Directives give a relatively broad scope of possibilities to each Member State regarding the powers and mandate of its national equality body. Thus, each equality body has its own mandate according to the national law. Most of them can receive and handle individual cases and assist victims of discriminations through a non-litigation approach. Sometimes this is the only way of handling discrimination cases.

Even if the legal provisions allow mediation, it is most of the time difficult to accept that a national equality body could make a real mediation. A mediator must be neutral and have a position between the parties and must also be seen as neutral. That could be a problem because, according to the EU Directives, a national equality body has to provide assistance to victims. So, even if an equality body attempts to be neutral in a specific case, the presumed discriminating party could have the perception that the body is not in fact neutral. However, if the equality body is convinced that mediation is the best solution, it can direct the parties to a professional mediation service.

We can also consider that, in case of a formal mediation, the national equality body could participate, not as mediator but as party. Of course, it will not always be possible, desirable or practical, depending on the mandate of the equality body and the concrete situation of the case. Such participation will be an exception but must not be excluded in principle.

Conciliation/Negotiation

Conciliation/negotiation is not a compulsory step before going to court, except where there is a legal provision (either in a specific procedural act or in the legal statute of the national equality body) that obliges the equality body to try to find an amicable settlement before turning to the court. However, from a strategic point of view, a national equality body could find it interesting to profile itself as a 'willingness institution' which tries to find concrete solutions instead of automatically turning to litigation. Such a standpoint can give more confidence to victims of discrimination and may increase the credibility of the equality body. An agreement also opens up for different kinds of solutions to a particular situation that may be preferable compared to monetary compensation awarded by a court decision. Therefore, equality bodies could find it interesting to put in place internal provisions providing that conciliation/negotiation is a general rule. However, it is important to point out that there need to be exceptions to this general rule as some cases are by their very nature or the severity of discrimination unsuitable for conciliation/negotiation. It should also be pointed out that an agreement does not carry the same weight and create the precedent that a court ruling does.

In Belgium, at the Centre for Equal Opportunities and Opposition to Racism, conciliation is a general rule, but with the following exceptions

- ▶ Case introduced by public prosecutors (because their initiative means that facts are very severe);
- ▶ Grievous bodily harm;
- ▶ Incitement to hatred, when there is no doubt about the intention of the perpetrators (Blood and Honour, cyber hate);
- ▶ Denial of the Holocaust;
- ▶ Attack on places of worship such as synagogues, mosques.

The threat to prosecute or start litigation can help the national equality body to reach a solution by conciliation/negotiation. The presumed discriminator may well be more motivated to participate at a conciliation/negotiation in order to avoid a legal procedure.

Of course, if the conciliation/negotiation leads to an agreement signed by all parties, it is possible to include in the agreement that neither the parties, nor the equality body will bring the case to the court.

Reaching an agreement is also possible after the start of the court procedure if the national legislation allows this. In fact, the decision to litigate might even persuade the presumed

discriminator to accept a conciliation/negotiation procedure. Depending on national procedural rules, the court procedure might be suspended for the duration of the conciliation/negotiation and it can be resumed if no agreement is reached by the parties.

Protection measures against victimisation

Article 9 of the Council Directive 2000/43/EC provides that “*Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment*”.

Depending on the national legislation, the scope of the protection measures can be diverse. Conciliation/negotiation, as an informal step in handling cases, does not necessarily grant these formal protection measures to the complainant. Therefore, when an equality body decides to support a victim of discrimination by conciliation/negotiation, it needs to pay attention to possible retaliation measures affecting the victim. It is important that legal provisions provide a possibility to guarantee some protection for victims also when the equality body decides to conciliate or negotiate before or without any litigation measures.

Formalization

Conciliation/negotiation is an informal handling of cases compared to litigation.

Nevertheless, an equality body needs to have clear internal rules to formalize its procedures with conciliation/negotiation in order to achieve consistency in its approach. Equality bodies must be as clear as possible on the rights of the individual (victim, witness, presumed discriminator).

The outcome of a conciliation/negotiation should preferably also be formalised. The respective commitments (victim, presumed discriminator, equality body) may be included in an official document to ensure that the parties fulfil their respective commitments and to enable monitoring.

Confidentiality

The presumed discriminator may wish to avoid negative publicity. Often, he will ask for discretion and confidentiality, for example if he accepts to pay compensation. In such a case, the victim can be satisfied. However, the agreement in an individual case can be a useful tool for the equality body to increase awareness in the society.

The requirement of confidentiality can be problematic from this point of view. Equality bodies therefore could negotiate that possible confidentiality clauses are limited to the identity of the parties but do not affect the substance of the discrimination case. Thereby, the equality body can use the case as an example without publicly shaming the respondent. Equality bodies have approached this issue differently. While some agree to confidentiality clauses, others reject such demands in all situations.

Monitoring

Once formalized, the agreement resulting from conciliation/negotiation needs to be implemented in order to reach the desired effects. It is important that the equality body

monitors this implementation and takes the necessary steps (including litigation) in case one of the parties fails to abide by the terms of the agreement.

Advantages and risks

Advantages

There is a French expression that says: “Un mauvais arrangement vaut mieux qu’un bon procès” – A bad agreement is better than a good court-case.

Conciliation/negotiation is a very interesting alternative tool to achieve concrete solutions in discrimination cases compared to litigation:

- ▶ It is (much) cheaper
- ▶ It is faster
- ▶ It does not expose the victim of discrimination and protects their privacy
- ▶ It can keep or restore a non-conflicting relationship between the parties
- ▶ It can lead to creative solutions
- ▶ It can be implemented in cases where litigation is difficult due to lack of evidence
- ▶ It does not prevent the possibility to litigate afterwards
- ▶ It can give a better picture of the equality body’s role to the public

Risks and gaps

Conciliation/negotiation is not necessarily the only tool. Its informal character is also open to some pitfalls:

- ▶ It is not always possible to guarantee protection to the victim
- ▶ One of the parties could try to simply win time without a real intention to accept an agreement
- ▶ Confidentiality requirement by the (presumed) discriminator
- ▶ It can lead to a vague commitment without real possibility to control it
- ▶ Informal solution will never be as strong as a condemnation (that has the “power of example”)
- ▶ It prevents the equality body from engaging in strategic litigation.

4. Legal assistance – litigation

The provision of legal assistance to potential victims of discrimination to conduct litigation is an important tool of national equality bodies in the fight against discrimination. Across Europe legal casework, while utilised in many different ways, has and continues to play an important role in the elimination of unlawful discrimination.

The Race and Gender Directives both require national equality bodies to provide independent assistance to victims of discrimination but the Directives do not specify the form that this assistance must take, or the extent of such assistance. There are two broad types of national structures for promoting equality. There are quasi-judicial type bodies which predominantly operate to investigate, hear or mediate and make findings in relation to claims of discrimination. There are promotional or advisory type bodies that provide legal assistance to individuals experiencing discrimination (normally to take claims to external courts or specialist tribunals) and to implement a broader range of awareness raising and good practice sharing activities.

The following section outlines the tool of legal assistance and discusses some approaches and activities and also restates some of the pitfalls and the key advantages which can result from successful utilisation of the tool.

One of the most important issues for a national equality body is how to maximise the outcomes from the resources it commits to casework. Litigation is expensive and an equality body is always likely to be limited in the amount of resources it is able to commit to casework. Accordingly, a key consideration is that of selecting the cases for legal assistance. If it is shown that the provision of legal assistance by the national equality body increases the likelihood of successful litigation, one possible consequence is that applications for such assistance will increase and the body may be overwhelmed by the number of individuals applying for legal assistance. There have been a number of examples of this most notably in the 1990s in the USA when the backlog of cases at the Equal Employment Opportunities Commission exceeded 100 000! The EU Directives do not require national equality bodies to support all potential cases, so a system of selecting strategic cases is frequently employed. It is common for the national equality body to wish to harmonize its criteria for casework with its current corporate priorities and in this way may regularly, in line with its medium term plan, revise these criteria. However, a national equality body should not want to define its selection criteria too tightly lest this results in it supporting an insignificant number of cases. This would mean failing to build up a comprehensive body of case law and failing to utilize the most valuable tool in its box for raising awareness by both citizens and responsibility holders of the nature of discrimination. By supporting a very low number of cases an equality body may also run the risk of affecting the trust of individuals in the institution and the willingness to file cases.

In the **Equality Authority (Ireland)** the criteria for selection have been grouped into 6 categories and cover:

- a. Principle/precedent/strategic priorities
- b. Ability
- c. Nature of claim
- d. Resources
- e. Claimant and

f. General

Each of these six categories covers a number of points that are considered when deciding whether to provide legal assistance or not. For example, under the first category, concerning questions of principle, precedence, and strategic priorities, there are eleven factors that are considered:

- ▶ That the matter raises an important matter of principle;
- ▶ That the matter raises issues that refer to equality grounds (gender, race, sexual orientation, etc.) where any or significant case law has not been developed;
- ▶ The extent to which precedent has already been established in relation to the matter;
- ▶ That the proceedings are likely to be successful;
- ▶ That the proceedings will or are likely to have a beneficial impact for others covered under the same, similar or other grounds;
- ▶ That the proceedings will or are likely to have a beneficial impact for change in practice by employers or service providers;
- ▶ That the proceedings will or are likely to have a beneficial impact for the development of equality policies or practices;
- ▶ That the proceedings will or are likely to have a beneficial impact on the standing or perception of the Equality Authority in the pursuance of its functions;
- ▶ The geographic spread of the claims;
- ▶ That the matter falls within the themes of the Equality Authority's strategic plan that is in force at the time; and
- ▶ The extent to which the matter raises an issue which is appropriate to be decided by the Circuit Court.

Across all six categories, a total of 35 individual criteria are listed. A decision to provide or refuse legal assistance may be based on one or more of the criteria, and the criteria are not mutually exclusive.

The criteria are used in each request for legal assistance and are intended to enable the Equality Authority to take a comprehensive assessment of all of the issues that are relevant in taking a case. For example, they include questions concerning the cooperation of the claimant with the Equality Authority, her or his willingness to follow advice or a reasonable request of the Equality Authority, and his or her behaviour and honesty. The criteria recognise that the situation can change as a case develops, and new information can be used if any emerges. A decision to provide limited legal assistance or no legal assistance would not necessarily be for 'negative' reasons. For example, where a claimant has the capacity to represent herself or himself and the issues in the case are sufficiently straightforward, then the Equality Authority has the discretion to decline legal assistance. A further application for assistance may be made if the matter is appealed to a higher court. The Equality Authority would consider the new application and has the discretion to make a different decision in light of the criteria.

The decision to grant or decline legal assistance is made by the Chief Executive Officer. The Equality Authority provides a procedure where an individual who is declined legal assistance may make an appeal and have the decision reviewed by the Board of the Equality Authority.

The **Belgian Centre for Equal Opportunities and Opposition to Racism (CEOOR)** can engage in legal proceedings based on (among others) the federal Antiracism- and Antidiscrimination Acts. These acts – modified and harmonized in 2007 – are mainly focused on protection and compensation under civil law, but they also contain criminal sanctions (for example for hate crimes and public incitement to hatred, discrimination or violence). In cases of racial discrimination in employment and goods and services, both civil and criminal proceedings are possible.

When dealing with discrimination cases, the CEOOR generally favours non-judicial solutions. On average, only 1 or 2% of the cases are brought before the courts or tribunals by the CEOOR itself (victims may of course engage in legal proceedings without the CEOOR). For example, in 2011 such a decision was taken in 16 cases, of which 5 discrimination cases under civil law. The complaints which the CEOOR addresses to the public prosecutor, asking to investigate a possible crime under the Antiracism- or Antidiscrimination Act are not included in these figures.

The CEOOR's litigation strategy is basically determined by the following factors:

- a. **Sound case.** There needs to be strong evidence or at least facts that facilitate the shifting of the burden of proof before the tribunal or court. When a first attempt to conciliate/negotiate fails, the CEOOR will try and build the case with the claimant and partner organizations such as trade unions or other interest groups, labour inspection, etc. Sometimes this may yet lead to a settlement outside the judicial system.
- b. **Precedent / Clarifying the law.** A decision to initiate legal proceedings will often be based on an opportunity to create a legal precedent or to clarify the law. This is especially valuable in areas where there is no or scarce jurisprudence (for example discrimination on the ground of disability or refusal of reasonable accommodation), where there are conflicting rulings and/or where there is a possible breach of EU law (in which case the CEOOR will seek referral to the Court of Justice of the European Union). In this respect, the CEOOR would for example like to obtain more legal clarity regarding the argument of "neutrality" or "client preferences" which is more and more often used as justification by private employers to ban the Islamic headscarf or other signs of religion or belief at the workplace.
- c. **Impact or gravity of the facts.** When the case is likely to have a strong impact and/or when the facts are particularly worrying – for example racist, anti-Semitic or homophobic hate crimes or organized incitement to hatred, discrimination or violence (for example Blood and Honour) – the CEOOR is likely to be a party in the (criminal) proceedings.
- d. **Are the victim(s) identified?** When the victim(s) are identified, the CEOOR will need formal consent to initiate legal steps. In quite a few cases, the CEOOR is not involved directly in the proceedings but provides legal advice for example to the claimant, lawyers or trade unions. If the CEOOR does appear as a party before the court or tribunal, it will generally do so on the side of the victim (not on behalf of the victim). On the other hand, when there are no identified victims, this might be an important argument for the CEOOR to take a case to court as 'actio popularis'. This was for example an important aspect of the Feryn case which ended up before the CJEU (C-54/07).
- e. **Attitude of the alleged discriminator.** Although this is as such not a

determining factor, the attitude of the adverse party (willingness to engage in a constructive dialogue, accepting responsibility, change of discriminatory policies, future commitments, etc.) may influence the CEOOR's decision to eventually take legal steps or not.

The CEOOR is constantly trying to improve the quality and the effectiveness of its services and policies, including when it comes to litigation. In 2012, it will implement a project within the Discrimination Department to further strengthen and harmonize non-judicial strategies in discrimination cases as well as the approach to strategic litigation.

At the **Equality Commission for Northern Ireland**, the selection process will first consider those grounds set out in the discrimination statutes:

- a. Does the case raise a question of principle?
- b. Would it be unreasonable to ask the applicant to deal with the case unaided?
- c. Are there any other special circumstances?

The Equality Commission for Northern Ireland (ECNI) then considers a number of areas of interest such as if the case highlights issues within the UN Convention on the Rights of Persons with Disabilities and, finally, a number of discretionary factors including the potential ripple effects, the prospects of success and whether the costs of assistance would be commensurate with the benefit to be gained.

Although there are distinctions across the national equality bodies in how the criteria are defined, it is clear that some combination of the following factors is important in considering whether to assist individuals:

- ▶ **Establish a legal precedent.** This is an important reason for a national equality bodies to assist a case (for many bodies it is actually the most important reason). However, it must always be remembered that such a case is by definition working on the margins of issues presently protected by the equality statutes; in consequence there is perhaps a greater likelihood for such a case to be dismissed by the court. Furthermore, even if successful and thereby extending the protection from discrimination, only relatively few citizens may benefit from this extension. Establishing a legal precedent is of such importance that national equality bodies will wish to support cases that have only reasonable prospects of succeeding in court so as to raise awareness of an important issue.
- ▶ **Expose particular discriminatory practices.** Cases which expose a particular practice are most likely about very current or topical issues and may chime well with the public debates at the time.
- ▶ **Highlight how inequality works in practice.** This has been of considerable importance in Northern Ireland where case reports in the media have greatly extended understanding of issues protected by the equality provisions; for example, in 2011 ECNI highlighted how a new mother was denied a reference for a new job after she sought to return to work from maternity leave and this denial meant she could not find employment as a home care worker.
- ▶ **Act as a deterrent to other respondents.** When a case is decided at hearing

or when a settlement is attained and a considerable compensation sum is agreed, other respondents are likely to revise their practices to avoid such a penalty.

- ▶ **Provide the national equality body with an opportunity for follow up work.** Cases successfully concluded either at hearing or by settlement will allow an equality body to follow up to improve practices either directly with the respondent or more widely with a number of employers/service providers in that industry or sector.

In preparing its casework strategy a national equality body will also wish to be aware of the limitations of casework. By definition the likelihood of a case succeeding is dependent on the facts of the particular case. Should an equality body wish to highlight a particular issue via a case this will depend on the availability of a complainant who has had the particular experience and who is willing to take a case and in many circumstances this will be significantly restricted by the time limits applying to case lodgement.

As a general rule, relatively few cases are concluded at hearing; in Northern Ireland 60 cases were concluded by way of settlements and only 10 by way of court or tribunal decision in the year 2010/2011. In Sweden 38 cases were concluded by way of settlement in 2010 and 15 by way of court decisions. Of course, a concluded case (even one concluded by settlement) can still be used by a national equality body to highlight the discriminatory nature of the issue.

Every case has the potential to experience evidential difficulties. Taking forward a case can be very significant for a complainant and it is not uncommon in discrimination matters for complainants to experience stress which may increase such difficulties.

A national equality body will also need to be aware that, especially in circumstances in which it highlights a case in the media, there is a potential for a complainant to be subjected to victimisation. Should this occur it will be necessary for the equality body to be ready to offer protection and redress.

This section has considered the ways in which a national equality body can meet the requirements of the Directives in respect of providing legal assistance to individuals.

This is dependent upon the nature of the body, so while a number of bodies have satisfied this by providing advice or sign posting to other sources of assistance, other equality bodies have interpreted this as representation in tribunals and court.

The section has also considered some of the factors a national equality body will wish to consider in designing its casework strategy, and also the related issues of how to select cases and how to deploy resources in order to have the best effect. The varied experience of bodies across Europe will be of interest to all equality bodies in formulating their casework strategy.

5. Legal assistance – interventions

Using their powers to intervene and submit *amicus curiae* briefs, national equality bodies can take part in court proceedings and provide useful and much needed direct or indirect legal assistance to victims of discrimination. National equality bodies' powers and opportunities to intervene are of crucial importance when individuals take their case to court by themselves or with the help of lawyers, trade unions or NGOs. These powers enable equality bodies to provide assistance to victims and influence the decision and interpretation of the law even in these cases.

There are many different terms used for interventions, such as 'interventions in support of a party', '*amicus curiae* interventions', 'third-party interventions', 'public interest interventions'. However, in practice we can distinguish two main types of interventions: those in which the intervener enters the dispute to support the case of either party; and those in which the intervener wishes to assist the court in its thinking and decision-making process by providing its special expertise and experience but without taking the side of either of the parties.

In certain cases the victims of alleged discrimination might not initially turn to the national equality body for assistance in claiming their rights. This might well be the situation, for example, if the victim of discrimination is unaware of the existence and potential help of the equality body or if they turn to other possibilities for assistance instead (e.g. legal aid offered through union membership or directly to the court). In particular, victims of discrimination might consider it more practical to turn to the courts instantly in cases where there is a short and binding statutory time limit on claiming their rights, such as in employment cases in some countries².

In these cases national equality bodies will practically have only the option of intervention to get involved in the dispute and to provide independent assistance to the victim of discrimination. In many countries interventions in support of a party have a long-standing tradition and they provide a useful tool for national equality bodies to assist victims. In most cases the equality body will have to ask the court to permit its intervention and for this it will have to show its legally justified interest in the case.

A recent survey performed by Equinet among its members³ showed that approximately half of those bodies that filled in the questionnaire can intervene in court proceedings, whereas others do not have the powers to do so. However, it is remarkable that even those bodies that have the mandate to intervene make use of this power very rarely. In fact, the only national equality body that reported a widespread use of this tool is the British Equality and Human Rights Commission that intervened in 32 cases between 2008 and 2009. Scarce financial and human resources seem to be the main reasons behind equality bodies' reluctance to make use of this tool. Another reason is some courts' reluctance to permit interventions despite equality bodies' clear mandate to protect and promote equality and combat discrimination helping them arguing and justifying their interest in how a certain case of discrimination is decided in court.

Intervening as a third party, submitting *amicus curiae* briefs or expert statements in court cases is another avenue national equality bodies may wish to consider. Although they do not directly assist the victim of discrimination, these types of interventions may also have a very important role by drawing the court's attention to certain legal and sociological facts as well as

² Hungary is a good example in this regard, where court proceedings in a number of labour law disputes can only be initiated within 30 days following the notification of the employee

³ Influencing the law through legal proceedings - Powers and practices of equality bodies, Equinet (2010), available under: <http://www.equineteurope.org/58390.html>

clarifying complex and complicated issues. When submitting such interventions the equality body acts as a neutral third party, interested in assisting the court with its expertise and experience in the field of anti-discrimination law and practice. The above mentioned Equinet survey clarified that in a number of countries there is no tradition of permitting amicus curiae-type interventions or it only happens on very rare occasions. This is demonstrated by the Belgian case where the judge asked for the expert opinion of the Belgian Centre for Equal Opportunities and Opposition to Racism in a discrimination case concerning housing but the appellate court rejected this demand for expert opinion because in Belgium only a natural person can act as expert. Therefore, and owing to capacity limitations, national equality bodies shall only ask for permission to intervene as an expert or third party if the nature of the case or the legal problems at stake makes it necessary and desirable to clarify the boundaries of the equal treatment legislation and to establish strategic precedents.

It is also remarkable that in the survey a number of national equality bodies, especially those with powers to formally decide discrimination claims such as the Dutch Equal Treatment Commission, reported challenges relating to their position when filing expert statements or amicus curiae briefs. As organisations mandated to protect victims of discrimination and promote equality their neutrality and objectivity might be questioned by the parties in the court proceedings as well as by the courts or even within the equality bodies themselves.

Although this is a valid concern shared by a number of national equality bodies, it does not exclude the use of this tool. Equality bodies can still file amicus curiae briefs, provided that these interventions rely on objective, well-founded and legally undisputable facts and legal sources, deploying their unique experience and expertise in the field. Fundamentally, this concern about neutrality and objectivity must be considered on the basis of the EU-mandate for national equality bodies and the way this mandate handles the concept of independence. The mandate calls for competences to provide independent assistance to victims and to conduct independent surveys, and it assumes that the bodies can be placed as part of agencies with responsibility at national level for the safeguard of human rights or the safeguard of individual rights. There is no contradiction between being independent and objective on the one hand and assisting victims of discrimination in pursuing their complaints about discrimination on the other. Thus the fact that equality bodies have a professional interest in safeguarding victims against discrimination and “promoting, analysing, monitoring and supporting equal treatment of all persons without discrimination ...” does not prevent them from intervening on an independent basis providing the courts with objective and qualified expert knowledge. It is the same competences the body relies on when providing the society with independent surveys and, on the basis of these surveys, reports and recommendations about discrimination.⁴

The strategic use of intervention implies that the bodies have up-to-date knowledge of upcoming and pending lawsuits. In order to submit successful interventions national equality bodies will also find it very important to develop a good cooperation with other equality stakeholders, primarily civil society. Regular contacts with NGOs and social partners will provide information about the court cases they are currently involved in and can offer useful opportunities for the equality body to intervene in cases that it deems to be of strategic importance. This information about court cases might also provide national equality bodies with possibilities for other types of legal assistance to victims prior to court proceedings, as described in other chapters of this report.

However, taking into account all the above mentioned criteria, national equality bodies should make sure that interventions are not used too extensively but rather in strategic cases or in

⁴ Between Impartiality and Responsiveness, Equality Bodies and Practices of Independence, EQUINET, December 2008, p 21

other important cases where there seems to be no other viable option for the equality body to provide independent assistance to victims. Equality body interventions by their very nature provide an indirect way of assistance to victims and in most cases the intervener has very little influence on the proceedings. Therefore, national equality bodies should look at interventions as a very important tool but, whenever it is possible, they should try to provide more direct forms of assistance to victims.

Interventions submitted by national equality bodies in court cases can take different forms but the common '*differentia specifica*' of these is that they provide an opportunity for the equality body to engage in court cases arguing for a certain reading of the facts and understanding of the law even when they are not parties to the original proceedings.

At the end of the day interventions should be seen as very useful but rather indirect instruments and equality bodies should consider providing more direct forms of assistance to victims of discrimination wherever this is possible.

6. Decisions

The competence of delivering legally binding or non binding decisions is a rather rare possibility for national equality bodies providing assistance to victims of discrimination.

National equality bodies vested with quasi-judicial powers may be a cheaper and quicker alternative to litigation, especially when the decisions of these bodies are legally binding.

Some national equality bodies can decide even on the complainant's claim for damages, and therefore their procedure can be a 'real' alternative to litigation.

Others have no possibility of deciding about the question of compensation, yet their procedures can ease the pressure on the courts by solving the 'less serious' cases of discrimination and can serve as kind of a preliminary procedure, the result of which can be the core of the legal action before the court.

A third group of national equality bodies with quasi-judicial powers can only produce non-legally binding decisions or recommendations. Their procedure therefore draws on the willingness of the parties to reach an agreement or the discriminator to change its course of action. However, it is important to note that some equality bodies in this category may be able to bring the case to the court when their recommendation or decision is not followed.

The competence of investigation and decision gives the national equality body a possibility of providing a personal remedy to the victim of discrimination. From this viewpoint the difference between legally binding and non-legally binding decisions is of a rather quantitative nature. The power of investigation without the competence to issue a legally binding decision might mean that the national equality body will mainly focus on a personal solution to the victim's problem and it will tend to build on mediation, and the public nature of recommendation and opinions. While mediation and the promotion of an amicable solution to the problem are important, if these efforts do not lead to a satisfactory result, the possibility of effective redress of the complainant's injury remains in the competence of the court. In such instances, the power of investigation and decision may also be used in order to bring the 'hidden' discrimination to the surface, to fight against discriminatory behaviour with the power of publicity. This system ensures that the national equality body has a strong contact with victims, helping it to strengthen its reputation in society. At the same time, the national equality body has a direct impression of the existing types, forms and trends of discrimination. It is important to point out that the success of this system, and ultimately of the bodies themselves, depends very much on the bodies' position and reputation. The Netherlands is a good example where the non-legally binding decisions of the equality body are largely followed due to its high reputation.

If the national equality body has the competence of concluding the case with a legally binding decision it will give a strong judicial character to its activity. The power of deciding in a legal debate automatically results in the national equality body finding itself in the position of the judge which has an important consequence regarding our topic: the equality body will have to remain impartial. It has to be noted that judicial powers and the delivering of a 'judgement', ruling or decision in a case could be questioned as a form of assistance to victims. However, there are also some strong arguments for accepting quasi-judicial powers of the equality body as a tool of providing assistance to victims. When the national legislator decides to introduce this system, it can turn out to be a great help to the victims because it makes access to justice easier (i.e. the procedure of the national equality body is usually cheaper and quicker than that of the courts, and legal representation is not necessary). The equality body, as part of its procedure, also conducts an investigation based on a victim's claim, which certainly assists

the victim in his or her attempt to seek redress. The equality body has to remain impartial while exercising this power. This means that these national equality bodies have to keep some distance from the complainants while investigating and deciding the cases and this stream of their activity must not interfere with their other activities, such as awareness raising or good practice sharing. The impartiality can and needs to be ensured also by the possibility of judicial review of the national equality body's decision.

When the national equality body can impose a fine on the discriminator but has no power to award compensation to the victim (this is the situation in Hungary for example), the regulation puts the emphasis on the public interest. This means that the state gives another opportunity to penalize the discriminator but opens no additional (easier) way for the victim to get compensation (i.e. the victim will have to bring his/her case to the court to achieve this). On one hand these national equality bodies offer moral gratification to the victims and on the other their procedure can serve as a 'preamble' to the court procedure. This opportunity helps to ease the caseload of the courts and to reveal a greater number of discrimination cases. This system can ensure that those who feel no inclination to launch a potentially long, complicated and expensive procedure before the court can choose a simple and effective way to report discrimination cases and seek a different remedy to their harm. In fact, the experience of the Hungarian Equal Treatment Authority and other similar national equality bodies shows that a majority of the victims mainly seek information or a moral redress (as opposed to compensation) when reporting acts of discrimination. It is important to point out that several quasi-judicial equality bodies have the possibility to levy a fine on the discriminator or publish the decision that gives weight to the national equality body's decision and offers a truly dissuasive remedy.

At the end of the day, quasi-judicial power may be an important element of the mandate of a national equality body and, as it has been shown in this chapter, it can be utilised as an effective tool for assisting individuals. The procedure before national equality bodies is in most cases cheaper and shorter and the victims do not themselves have to investigate the case and find proof of discrimination as this is done directly by the body. National equality bodies are in a position to build special expertise and experience in discrimination cases, enabling them to handle cases professionally and discreetly. Finally, equality bodies' decisions may have a wider effect as, depending on the national legislation, it may be used as supporting evidence in court cases and in the long run it may bring about positive changes in the law and its application.

7. Cross-cutting strategy 1: Local and regional presence

One way to strengthen the performance of national equality bodies and to extend the implementation of the principle of non-discrimination at the national level is the establishment of local or regional offices. An important motivating reason for their establishment could be for example the regional origins of initiatives or efforts to maximize the availability of national equality bodies in providing assistance to victims of discrimination and thus to increase the access to justice. Although operational and successful in some countries, not many equality bodies have regional and local offices. In order to tackle this shortcoming and secure a regional or local presence, some equality bodies teamed up with other governmental or non-governmental bodies, making those their 'eyes and ears' at the local / regional level. Below, we give a non-exhaustive list of examples of different approaches that seem to work well, pointing out also the difficulties, the advantages and disadvantages.

The Slovak Republic

The fact that 90% of all complaints came from other regions in Slovakia motivated the Slovak National Centre for Human Rights (Centre) based in Bratislava to establish seven regional offices in 2007. The main objective was to create and build an advisory and monitoring network of local partnerships at the regional level to effectively enforce the principle of equality and non-discrimination.

One of the main priorities of the regional offices is to provide free direct counselling to victims of discrimination and subsequently assisting in contacting the alleged discriminator to discuss and to settle the dispute. Through the regional offices, personal meetings with all parties can be offered, organised and realized to a greater extent. Experience shows that the possibility of direct meetings with discriminating employers increases the chances of a positive resolution of a dispute. After considering the dispute, the litigants will be offered a solution through judicial or alternative dispute resolution. In addition to these dispute resolutions, the trained staff of the regional offices provides a possibility to settle the dispute out of court, for example through mediation. Staff of the regional offices is able in this way to obtain all relevant information in a very short period of time. The Centre Headquarters obtains a complete "information package" containing the necessary information to assess whether a particular dispute breached the principle of equal treatment or not. The scope of local activity of the regional offices motivates both parties to try to find a solution locally because of the short distance (compared with travelling to the headquarters), and the time and money saved. The length of time from filing a complaint to reaching a solution is extremely important for the victim of discrimination and generally quite sensitively perceived.

The situation in various regions showed significant differences that affect the emergence of discriminatory phenomena. Diversity of regional complaints varies from region to region, depending on various factors such as ethnic composition of the population, high unemployment, economic and social situation in the region, and the like.

An important part of possible action in the region is the use of direct methods to detect discrimination, for example through independent investigation or testing. Regional offices fulfil a vital role, given the low level of public awareness of rights and available remedies in cases of discrimination. Through awareness raising and promoting the principle of non-discrimination at the regional level, a space is created for the delivery of relevant information in a more timely

and targeted way, taking into account the specificities of the target group. In this context, regional offices may act independently or in cooperation with NGOs in training and information sessions for various target groups such as: students in elementary and secondary schools, universities, trade unions, employers unions, employers, lawyers, judges, employment offices, local governments, members of municipal councils, higher territorial units, journalists, police officers and municipal police, the disabled and other entities in the region that are interested in these issues.

What is also unique about the status of regional offices is that, at the local level, they can collaborate with other institutions operating in the same region and jointly push for changes such as pressing for non-discriminatory decisions in government, state and public institutions, and in creating equal opportunities in practice. Regional stakeholders usually perceive the regional offices of the national equality body as being more open and approachable than its central headquarters. In turn, this helps regional offices to promote equality and non-discrimination more successfully. What is created is a space for a common interest in promoting transparent positive changes at the local level together with institutions that are located outside the region. From that point of view, implementing the changes is taken with greater willingness, faster and with a potentially longer effect. Experience shows that those responsible for discriminatory acts are more susceptible to constructive criticism and comments from the offices operating in the same region, as they have a better understanding of the issues in the given region and bring more targeted and relevant solutions. Representatives of the regional offices are often invited and appointed to various ad-hoc committees to municipal, state and public institutions and NGOs. In such a favourable climate national equality bodies have a possibility to participate in the creation of non-discriminatory procedures, regulations, and also ways to raise awareness. Networking in local partnerships also reinforces an important function of national equality bodies as “watchdog institutions”. This creates a space for effective monitoring of compliance with the principle of non-discrimination, democracy and transparency in the procedures of the local government. With the right strategic approach, regional offices (managed in close cooperation with the national equality body) can be perceived as a natural authority in the field of human rights at the regional level. At the same time, this can enhance the status and credibility of the equality body at the national level. To achieve such a status, regional offices require sufficient funding and adequate staffing in order to make effective use of the delegated powers.

In order to raise awareness and change the overall climate at the regional and national level, a crucial role is played by the regional networking. The success rate to enforce the principle of non-discrimination at the regional level is strengthened by the degree of cooperation with local partners. Regional offices have a general interest to cover all available opportunities to promote equality in the region. In Slovakia the regional offices have partnered with key regional players such as local partnerships for social inclusion, conciliation boards, mediation centres, regional TV, print media, NGOs, trade unions, employers, local governments, employment offices, labour inspectorates and other bodies active in human rights, and other bodies interested in these issues. In this context, it should be noted that cooperation and subsequent developments can occur only if an expression of willingness on the part of local partners is present. Practice shows occasional reluctance or unwillingness to cooperate, caused by the fear of interference in their own way of working. In cases of participation in projects, this raises the concern of withdrawals of funds from the local governments. Therefore, it is important to ensure a high level of cooperation between regional offices and local partners in promoting non-discrimination and equality. A functioning cooperation strengthens the status of all participating stakeholders and ultimately also the status of the victim of discrimination.

Romania

In Romania, the establishment of regional offices was the direct result of civil society criticizing the National Council for Combating Discrimination (NCCD) for not having a visible presence or activity all over the country, and for concentrating its information campaigns only in the region of the Romanian capital Bucharest. Along with some legislative changes of the Ordinance 137/2000 under which the NCCD is functioning, the establishment of regional offices was possible and the first two regional offices were opened in the counties of Mureş and Buzău. These were the first counties to express their availability for creating such regional offices. The county of Mureş has one of the highest population ratios of Hungarian ethnic minorities (Magyars) in Romania, giving rise to a lot of interethnic tensions.

In Romania, the powers of regional offices are for the moment not well defined and limited. Their activities consist mainly of giving direct advice to the victims of discrimination and developing, together with local NGOs and local state authorities, information campaigns promoting the principle of non-discrimination. They also collect the complaints received from the victims of discrimination, but they need to send them to the headquarters of the national equality body since that is the only office where these complaints can be solved. In some cases, the regional presence can help to find a solution of complaints and can very well simplify the communication between the plaintiffs and the central office. Also, one of the most important aspects is that through regional offices it is easier to monitor the discrimination practices and the nature of conflicts in each of the regions, helping to better understand the discrimination phenomenon and to combat it more efficiently.

For the moment, due to the lack of funds, there is only one employee for each of the regional offices whose powers are obviously limited. When the equality body will receive the necessary funds, the plan of creating a national structure of regional offices coordinated from the headquarters in Bucharest will be put into practice and the regional offices will take over more responsibilities. A positive evolution of society's perception regarding the activity of the National Council for Combating Discrimination has been evident since the establishment of these two regional offices, creating the input and incentive to continue developing in this area. Taking into consideration that the discrimination phenomenon is in itself a very sensitive and personal matter, the presence of the regional offices closer to the victims is an encouraging factor for them and facilitates an appropriate settlement of their cases.

Greece

In Greece, the offices of the "**Local Advocates**" operate since 2010. This is considered to be the simplest way through which a local resident of the country, who feels that he/she has been treated unjustly, may submit a complaint.

Specifically, in accordance with Articles 77 and 179 of the 3852/1010 Law, in municipalities larger than 20.000 persons, and in each of the seven regional administrations of the state, the institution of the "**Municipal/Regional resident and business Advocate**" should be established. The Advocate must be a person of recognized standing and experience and must be elected by a two-thirds majority vote of the members in the municipal /regional councils.

The municipal/regional Advocate performs the general tasks that a local ombudsman would perform, that is, receives residents'/businesses' complaints regarding maladministration (including issues of discrimination) on the part of the municipal/regional public services, and

mediates in order to resolve the relevant issues. The Advocate is obligated to respond in writing, or through e-mail, to the complainants within a period of 30 days and, if necessary, proceeds with the formulation of specific recommendations for the improvement of the services offered by the municipality or the region. In addition, the Advocate must submit an annual report which is discussed within a period of a month from its submission on a special, public meeting of the municipal/regional council. The tenure of the Advocate follows the term of office of the municipal/regional council.

The collaboration of the Greek Ombudsman with this newly established institution, even from the first year of its operation, has been good and is increasing. The Advocate usually contacts the Office of the Greek Ombudsman requesting: a) information about the relevant legislation to the specific issue examined, b) clear interpretation of a provision pertaining to the case, c) advice on how to handle a particular complaint. Complaints which the "Local Advocates" consider that, due to their general nature, could be best investigated by the Greek Ombudsman are forwarded there. On other occasions the Advocates provide information to the complainants so that they can request information and advice on their own, or submit a formal application to the Greek Ombudsman.

Belgium

The Centre for Equal Opportunities and Opposition to Racism is building a local network of contact points with several partners (both public institutions and NGOs)⁵. The Centre has concluded various collaboration agreements or protocols with such partners. All of these protocols contain a section on inquiries and individual case files and lay down rules on the specific collaboration for handling such cases. The Centre offers at least 2 services to these local partners: 1) training; 2) an IT system for the processing and registration of inquiries and files⁶.

This collaboration is advantageous for both parties: many local partners are involved in the combat against discrimination and the partners receive concrete help.

The only issue of concern is the independence of the equality body. On one hand, some of the partners can handle the individual cases; on the other hand, if the equality body disagrees with the way the case is handled, it can take steps and the partners cannot challenge its decision. The protocol of collaboration must be very clear on this point.

In Belgium, the development of regional offices has seen an unequal evolution between the northern and the southern part of the country in terms of coverage as well as powers, which implies a different cooperation with them. In the north of Belgium (Flanders) there are 14 contact points (regional offices), entitled to deal with individual cases and to conciliate. However, they're not allowed to act in court proceedings.

In the south of Belgium (Wallonia), a network of contact points is currently being set up. These local contact points are collaborating with the municipalities, with the public services and other local stakeholders, but are aiming only at the dissemination of information. They are only in charge of the first contact with the victims, giving them information about the Centre and how to contact it. They can even help the victims with the first phone call to the Centre. Also, each

⁵ Examples of these partners are: Public partners, such as the Ombudsman of Regions, towns and municipalities, Public Employment Services, etc.; partners of civil society, such as trade-unions, LGBT associations, associations of persons with disabilities, Human Rights associations, etc.

⁶ METIS: a web platform that allows complaints and case files to be processed and forwarded to internal services and external partners. A number of safeguards are built in so as to protect personal data

local contact point conducts yearly anti-discrimination campaigns. The Belgian equality body is in the process of building a contact point in every department of the country.

Summary

It is possible to see that the standard approach of the equality bodies is to provide information to victims of discrimination and the public primarily through web sites, printed materials and through social media. The question arising is how much the above mentioned information channels are available for the most vulnerable groups – the victims of discrimination. Usually most information is provided by the web site of the equality body. In this case it may mean the availability of information for victims of discrimination with technical equipment (for a majority a part of standard household equipment). Based on the social characteristics of victims of discrimination, for example older people, unemployed people, and people from the Roma ethnic group, it is possible to assume that the most vulnerable groups may have limited access to the relevant information on their rights and possible remedies. The advantage of establishing regional offices of national equality bodies is the availability of monitoring the situation of vulnerable groups in different regions, and creating a space for greater access to the comprehensive services provided by the central body.

The experience of the established regional offices and the feedback from clients points out the exceptional opportunity of a direct contact with the representative of the regional offices providing the necessary level of support and confidence (as victims of discrimination typically provide information related to a degrading situation). This contributes significantly to the success of the dispute resolution process, either judicially or out of court, and leads to better rights awareness. However, establishing local or regional presence can be very costly for equality bodies in terms of staff and office space. Therefore, a solution commonly employed by national equality bodies is to formalize agreements with local partners which can function as contact points.

8. Cross-cutting strategy 2 – cooperation with other stakeholders

National equality bodies interact with other stakeholders in society in a variety of ways. The cooperation with and empowerment of civil society by equality bodies by way of e.g. joint training, information campaigns and advisory services was described in more detail in an Equinet 2010 report on “Effective Strategies to Empower Civil Society”. In most of the EU Member States the national equality bodies provide independent assistance to victims of discrimination in a coordinated way together with civil society partners such as NGOs, trade unions and sometimes with local and regional governments. As outlined in the previous chapter, such cooperation can mean that local stakeholders function as the local or regional presence of the central body, but cooperation with other stakeholders in society can take many other forms and be less formalised as well.

National equality bodies are independent actors, neither part of government nor of civil society and they are not advocates of any particular set of interests in society. Therefore, they have an important role in providing assistance to victims. However, equality bodies do not work in isolation from other actors but rather try to coordinate their actions with other stakeholders and cover the gaps of access to justice for victims of discrimination. The most important cooperation partners are different NGOs working for the rights of different minorities, trade unions and regional and local authorities.

It is important that the cooperation with other stakeholders is transparent and planned so that all the partners know what they can expect and what they need to deliver in the relationship. It is also important to avoid favouring some specific NGOs / trade unions and instead try to build a network with as many partners as possible.

NGOs, trade unions and municipal authorities are an important channel of bringing cases to national equality bodies. This partnership and cooperation can be also a useful remedy to the lack of regional offices. Equality bodies often have a strategy of working with NGOs in order to gain access to otherwise difficult-to-reach or particularly vulnerable groups in society. Sometimes equality bodies need to earn the trust of discriminated groups with their actions in order to balance the previous bad experiences they have of authorities. It is easier for NGOs to build a close relationship and trust with the people who they represent or work with in society. Therefore people turn to them for help in all kinds of problems including discrimination issues. Often they also seek clarification from those who they meet in their daily life in social or cultural activities on whether they have been discriminated or not. In many cases it is also easier for ordinary people to discuss their issues at the local level with organisations who know the local circumstances. Quite often the local organisations have information about the parties and their possible previous breaches of the principle of equal treatment.

If there is an agreement or an established routine between a national equality body and e.g. NGOs of bringing cases of discrimination to the knowledge of the national equality body, this may be a significant way to tackling discrimination cases that would otherwise remain unknown to the body. This communication can be kept through regular meetings between equality bodies and other stakeholders or it can be agreed that NGOs choose and send those cases of discrimination to equality bodies that they feel should be dealt with by these bodies. The cooperation agreement often includes a commitment on the part of equality bodies to provide training on legal matters, on recognising structural or other forms of discrimination, and in some cases on assisting the victims in claiming their rights. On the other hand, these

trainings can well be mutual exercises as equality bodies can also learn from the practical experience and expertise of other stakeholders. Moreover, equality bodies may decide to organise joint trainings with their partners targeting for example vulnerable groups, or duty bearers such as employers or service providers, on identifying and tackling discrimination.

Sometimes national equality bodies work together with other stakeholders to provide assistance to victims of discrimination or advise clients to turn to them directly. Many national equality bodies apply a strategic litigation strategy when deciding which cases they can assist with as they do not have enough resources to assist everybody. Similarly, some equality bodies are not allowed to take legal action on behalf of victims or the cases are outside their mandate. In all these situations it is crucial that the equality bodies have clear guidelines on cooperation with other stakeholders to secure the rights of victims of discrimination. Therefore, when clients contact for example the telephone service line run by a national equality body they can get information on the services they can turn to whether these are run by NGOs, trade unions or local and regional governments. NGOs in particular often offer wide ranging assistance starting from psychological and legal support to victims of discrimination to political lobbying for fighting against discrimination. Although many organisations have long worked with discrimination cases and have a strong commitment in these cases, equality bodies should regularly evaluate the services they are directing people to contact.

Conclusion

In this report, the Equinet Working Group on Strategy Development has attempted to discuss and elaborate a strategy for national equality bodies to provide independent assistance to victims of discrimination. This is a natural follow-up to the working group's last report discussing the many ways of empowering civil society, focusing primarily on individual rights and remedies. This report cannot provide a comprehensive in-depth picture of all factors of independent assistance to victims, but it does aim to stimulate discussions and strategic thinking on the topic and to share a number of good practices identified by members of the working group. Furthermore, the discussions in the working group allow us to draw some important conclusions.

Independent assistance to victims of discrimination is arguably one of the most important missions of national equality bodies and it is listed by the European Union Equal Treatment Directives as a central task. It enables and requires national equality bodies to employ a wide range of tools in order to provide useful and much needed assistance.

It is clear that in order to successfully provide assistance to victims, equality bodies need to focus on the victims of discrimination. They must not lose sight of the fact that their primary mission is to help individual victims of discrimination who otherwise might lack any chance of effective remedies for the discriminatory treatment suffered. Therefore, equality bodies should take into account the victim's perspective and feelings. Experience shows the importance of providing some level of psychological support in addition to the legal assistance.

Although a clear balance needs to be held, there is no fundamental contradiction between the requirement of independence and this enhanced level of personal and legal assistance to victims of discrimination, especially in light of the fact that generally victims of discrimination are in a much weaker position than the other party.

Legal assistance and litigation is traditionally seen as the most evident tool of providing assistance to victims of discrimination. A number of Equinet's member equality bodies successfully employ an elaborate strategic litigation approach, using a certain set of criteria to decide which cases, if taken up by the equality body, might deliver the biggest and best effects both to the individual victim and the society. In addition to helping the individual, a strategic approach to litigation can also contribute to exposing discriminatory practices and structural problems in society which affect different groups. In turn this can be used to deter other employers and service providers from also engaging in such practices and it can offer a basis for equality bodies to follow up with promotional efforts targeting others in the same industry or sector.

A number of other tools for providing independent assistance to victims is also suggested and discussed in this report. Contrary to the traditional view by the public and all too often also by equality bodies, discussions in the working group made it very clear that independent assistance to victims does not only mean legal assistance in court proceedings. In fact, equality bodies need to use a wide range of policy, communication and legal tools and they need to use them to best effect in order to provide effective support.

Some of the tools discussed in the report might not be available for all national equality bodies or they might not be suitable given the specific context or circumstances of the case. However, an important message of this report is that equality bodies need to take a holistic approach, exploring all available powers and tools and using them to best effect.

National equality bodies also need to build trust in and engage with (potential) victims of discrimination and they need to form partnerships and cooperate with other stakeholders,

groups of rights holders and duty bearers alike. It is shown in the report that opening regional and local offices of equality bodies or providing similar services in cooperation with civil society renders the services much more accessible and seems to generate a higher level of trust within the local communities and victims of discrimination.

Finally, the issue of under-reporting emerged as another important concern from the working group discussions. Equality bodies need to make sure that (potential) victims of discrimination are aware of their rights and available remedies under the equal treatment legislation and that they know about equality bodies and their work. Ultimately, this knowledge is a prerequisite to be able to provide effective assistance to victims.

Therefore, equality bodies need to pay special attention to the phenomenon of under-reporting and they need to analyse the reasons for possible low numbers of complaints from any given group of society. They need to develop strategies and concrete answers to this challenge by attempting to reach out to these groups. Providing general information, counselling and ensuring publicity for results of successful litigation, landmark decisions and friendly settlements seem to be particularly useful tools in this area.

Finally, we believe that the report has shown the necessity and the advantages of a holistic and strategic approach to independent assistance to victims, utilising all necessary and relevant powers of national equality bodies. We encourage equality bodies to take the necessary steps to develop and/or review their strategies in order to provide useful and much needed assistance to victims of discrimination and invite other stakeholders to engage with equality bodies in this effort in order to provide a comprehensive mechanism against discrimination and to create a more equal society for all.

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Equinet member organisations

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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>

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 and Equal Treatment Commissioner
www.svv.ee

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FINLAND

Ombudsman for Minorities
www.ofm.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.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 Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Equality Authority
www.equality.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
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

POLAND

Human Rights Defender
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Immigration and Intercultural Dialogue
www.acidi.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commission for the Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snsip.sk

SLOVENIA

Office for Equal Opportunities
www.uem.gov.si

SPAIN

Spanish Race and Ethnic Equality Council
www.igualdadynodiscriminacion.org

SWEDEN

Equality Ombudsman
www.do.se

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