

Equinet Legal Training
Alternative Dispute Resolution: A tool for specialised equality bodies
23-24 May 2012, Vilnius (Lithuania)

Equinet organised its annual legal training in Vilnius on the use of alternative dispute resolution mechanisms by specialised equality bodies in cases of discrimination. The participants represented National Equality Bodies (NEBs) from all over Europe with very different mandates and practices regarding the use of such alternative tools, and this training gave them the opportunity to discuss and exchange their experiences.

The first session set the framework and enumerated the important issues for the discussions of the rest of the training. Ms Linda Reijerkerk, Chair of the European Mediation Network Initiative gave a key note presentation as a mediation expert, defining ADR and mediation in particular, underlining for instance the importance of the impartiality and personal attitude of the mediator. Representatives of two NEBs with very different experiences in the use of ADR mechanisms then presented their strategies and methods in using these alternative tools. The Belgian NEB has extensive experience of negotiating cases itself, while the Serbian NEB has recently started to use an external mediation service in the cases of discrimination brought to them. A rich and fruitful discussion followed where issues such as the definition of the role of an NEB in an ADR process and the strategic use of ADR as opposed to litigation were raised and discussed by the plenary.

Focusing on the practical experiences of ADR by NEBs, the second session included a presentation by the representative of an NEB having recently conducted a number of surveys with the aim of improving their ADR methods and procedures by evaluating the experiences of complainants and defendants having gone through negotiations via the NEB, as well as the impressions of other groups in society and other NEBs in Europe. This presentation was followed by two short case study presentations of real cases dealt with through ADR mechanisms by two different NEBs.

The first workshop of the training was a 'world café' exercise with four groups rotating around different tables, hosted by representatives of NEBs where the participants were asked to discuss different topics relating to ADR in discrimination cases. The issues raised included the challenges of convincing parties to agree to negotiations and those related to the neutrality of a NEB acting as a mediator, ways of handling the power imbalance between the parties and the cases of discrimination in which ADR is and is not a good option.

Aiming at focusing the continued discussions and presentations on the settlements or solutions adopted through ADR in discrimination cases, the third session included a very interesting presentation by a representative of a NEB with extensive experience in the use of external mediators in cases of discrimination, exploring potential solutions and the aspects which need to be taken into account when negotiating a case of discrimination. This presentation was followed by a panel discussion where four different parties discussed challenges and advantages with ADR in discrimination cases: a complainant with real-life experience of a case of discrimination being negotiated with the help of a NEB, an experienced representative of employers and service providers of the private sector in Lithuania, a professional mediator and a NEB representative with extensive experience in negotiating cases via external mediators. This debate raised issues such as whether a mediator needs to have detailed subject information, for instance in discrimination law, or

whether it is better not to have such information to be able to stay focused on the solution of a problem and “read between the lines”. The complainant also underlined that making right the wrong which has been done is more important for many complainants than financial compensation.

For the second workshop session participants were asked to discuss a case where a person in a wheelchair experienced repeated acts of discrimination when trying to take the bus to drop off and fetch her child at school. Participants discussed many important and interesting issues related to the case, including whether it would be a good case for ADR or if litigation might be strategically more preferable considering that it was a strong case reinforced by evidence. The NEB representative who had personally dealt with the case in real life then presented in plenary the mediation procedure which had been used and what aspects had been taken into account, as well as the settlement which was found and the outcomes for the complainant.

The feedback from participants has been very positive, underlining the importance for NEBs of this topic and the interest for exchanging experiences and strategies regarding such sensitive and complex issues.

If you wish to know more about this Equinet training, please check our website where you will find the detailed training programme, most of the presentations and other useful material.