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AN EQUINET PERSPECTIVE

EQUALITY, DIVERSITY AND NON-DISCRIMINATION IN HEALTHCARE: LEARNING FROM THE WORK OF EQUALITY BODIES

EQUINET
European Network of Equality Bodies

Equality, Diversity, and Non-Discrimination in Healthcare. Learning from the work of equality bodies is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe 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.

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**This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

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1. Introduction

1.1 Equinet Perspective

Equality in the field of healthcare, despite its centrality to wellbeing, remains a relatively under-examined field in the work of equality bodies compared to fields such as employment or education. Healthcare issues have gained prominence on the agenda of equality bodies with the COVID-19 pandemic. Adopting a multi-ground viewpoint, this perspective takes the opportunity of this increased prominence to establish the learning from this work of equality bodies for policy-makers at European and national level and for equality bodies themselves.

The preparation of this perspective involved:

- debates at two Policy Formation Working Group meetings, which draws its membership from all member equality bodies of Equinet.
- a membership survey that was completed by sixteen equality bodies in fourteen jurisdictions[1].
- the draft perspective was then discussed and finalised by the Equinet board.

1.2 European Policy Context

The European Union equal treatment Directives[2] provide an important underpinning for action on equality and discrimination in the field of healthcare. However, these Directives currently only cover this field on the grounds of gender and of racial or ethnic origin, despite the proposal of the European Commission to rectify this with a further horizontal Directive addressing fields outside the labour market on the grounds of age, disability, sexual orientation, and religion and belief.[3]

While competences in relation to healthcare at an EU level are limited, there is evidence of a growing policy focus on this area by the European institutions. This focus has been intensified in the context of the COVID-19 pandemic.

Ursula Von Der Leyen, in her 2020 State of the Union address, emphasised the need to 'build a stronger European Health Union'.[4] She identified the need to future proof the EU4Health

[1] Institute for the Equality of Women and Men, Belgium; UNIA, Belgium; Institution of Human Rights Ombudsmen of Bosnia and Herzegovina; Office of the Ombudswoman of the Republic of Croatia; Office of the Public Defender of Rights in the Czech Republic; Office of the Non-Discrimination Ombudsman in Finland; Defender of Rights in France; Federal Anti-Discrimination Agency in Germany; Office of the Commissioner for Fundamental Rights of Hungary; Office of the Equal Opportunities Ombudsperson in Lithuania, Commission for the Rights of Persons with Disabilities in Malta; National Commission for the Promotion of Equality, Malta; National Council for Combating Discrimination, Romania; Commissioner for Protection of Equality, Serbia; Slovak National Centre for Human Rights, Slovak Republic; and Advocate of the Principle of Equality, Slovenia.

[2] Race Equality Directive (Directive 2000/43/EC); Framework employment Directive (Directive 2000/78/EC) against discrimination at work on grounds of religion or belief, disability, age or sexual orientation; Gender Goods and Services Directive (Directive 2004/113/EC) implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Gender recast Directive (Directive 2006/54/EC) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

[3] Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, Brussels, 2.7.2008.

[4] State of the Union Address by President von der Leyen at the European Parliament Plenary, 2020.

programme with additional funding, reinforce the European Medicines Agency and the European Centre for Disease Prevention and Control, and create an agency for biomedical advanced research and development. She suggested that health competences required discussion as part of the Conference on the Future of Europe, and committed to a Global Health Summit.

Subsequent to this, the European Commission published a Communication on 'Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats', proposing the 'first building blocks for a European Health Union'.[5] This identifies one foundation as the 'obligation to ensure high level of human health protection as defined in the Charter of Fundamental Rights' and recommends 'a reinforced framework for cross-border cooperation against all health threats in order to better protect lives and the internal market as well as to maintain the highest standards in the protection of human rights and civil liberties'. **Nevertheless, a specific focus on equality, diversity, and non-discrimination remains to emerge**.

However, healthcare has been a specific focus within the latest equality strategies published by the European Commission. The recent gender equality strategy of the European Commission includes a limited focus on health noting that 'women and men experience gender-specific health risks'.[6] It commits to including a gender dimension into the 'EU Beating Cancer Plan', and facilitating regular exchanges of good practices between Member States and stakeholders on the gender aspects of health, including on sexual and reproductive health and rights.

The EU Anti-Racism Action Plan commits the European Commission to use policy measures and funding programmes to combat racism and discrimination in access to healthcare.[7] For the ground of racial or ethnic origin, it addresses: the possibilities offered by Next Generation EU and the Technical Support Instrument for structural reforms, to ensure support made available in healthcare contributes to equality; the potential in the European Structural and Investment Funds to promote infrastructure development and equal access to health and social care; the commitment in the EU4Health programme to address health inequalities by taking account of the specific needs of different groups; and the inclusion of a specific focus on reducing inequalities in the EU Health Policy Platform.

One of the sectoral objectives in the EU Roma strategic framework is to improve Roma health and increase effective equal access to quality healthcare and social services.[8] National strategic frameworks to be developed under the Strategy, should include measures to ensure the socio-economic inclusion of marginalised Roma in the area of health. This focus is

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats, COM(2020) 724 final, Brussels, 11.11.2020.

[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025, COM(2020) 152 final, Brussels, 5.3.2020.

[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, A Union of equality: EU anti-racism action plan 2020-2025, Brussels, 18.9.2020 COM(2020) 565 final.

[8] Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, Brussels, 7.10.2020 COM(2020) 620 final.

strengthened with further detail in the proposed Council Recommendation that accompanies the strategy.[9]

The European Commission's LGBTIQ equality strategy commits to supporting health research of relevance to LGBTIQ people, including trans and intersex people, through Horizon Europe.[10] Member States are to be encouraged to organise training for healthcare professionals on LGBTIQ needs and on issues of discrimination, and to exchange best practices in addressing mental health challenges faced by many LGBTIQ people.

The European Commission Strategy for the Rights of Persons with Disabilities includes a specific focus on the right to high-quality healthcare, including health- related rehabilitation and prevention for people with disabilities.[11] It notes that 'persons with disabilities report unmet needs for medical examination four times more often than persons without disabilities', 'healthcare is often too expensive, too far to travel to, not accessible, or subject to long waiting lists' alongside particular challenges in rural areas, and the lack of tailored supports required by particular groups of people with disabilities. Commitments made at European level include to: enable a sharing of validated health-related good practices to support Member States in their health reforms; support responses to the impact of the COVID-19 pandemic on mental health; and address specific inequalities experienced by people with disabilities in accessing cancer prevention, early detection and care. The strategy calls on Member States to 'improve access for persons with disabilities to the entire healthcare portfolio'.

The European Pillar of Social Rights is a driving force for this focus on healthcare. This includes that: 'Everyone has the right to timely access to affordable, preventive and curative health care of good quality'.[12] An action plan is proposed in relation to the Pillar of Social Rights[13] and commitments have been made to bring a focus on the Pillar of Social Rights into the European Semester and the European Structural and Investment Funds, under the broad policy objective for a Social Europe.[14]

[9] Proposal for a Council Recommendation on Roma equality, inclusion and participation, Brussels, 7.10.2020 COM(2020) 621 final.

[10] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, A Union of Equality: LGBTIQ Equality Strategy 2020-2025, Brussels, 12.11.2020 COM(2020) 698 final.

[11] A Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, COM(2021) 101 final, European Commission, Brussels, 2021.

[12] European Pillar of Social Rights, as proclaimed by the European Parliament, the Council and the Commission, Brussels, 2017.

[13] Political Guidelines for the Next European Commission 2019-2024, Ursula Von Der Leyen, Brussels, 2019.

[14] Article 4, Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, Strasbourg, 29.5.2018 COM(2018) 375 final.

2. Equality Bodies: Strategy

2.1 Mandate and Priority

The mandate of most equality bodies reporting under the survey encompasses access to healthcare services across multiple grounds (two equality bodies reporting were single ground bodies)[15]mandate includes service provision in both the public and private sectors. In some instances, this field of healthcare is specifically identified in the legislation establishing the equality body.

A survey of equality bodies, by Equinet in 2020 on behalf of the EU Agency for Fundamental Rights, identified the range of grounds currently covered by equality bodies in relation to the field of social protection and healthcare (see table below).

One equality body identified barriers in relation to its mandate[16]. The issue related to a narrow coverage of access to healthcare under the equal treatment legislation with a resultant lack of legal clarity. There was a further issue in the mandate of the equality body not encompassing coverage by public healthcare insurance providers. The equality body is seeking reform of the equal treatment legislation.

Eight equality bodies accorded a high priority for this field of access to healthcare. The rationale for this includes: level of demand from complainants; the centrality of this field of provision for wellbeing and quality of life; an evidence base of discrimination in the field of healthcare; inadequacy of health systems; and prioritisation on foot of the COVID-19 pandemic.

Five equality bodies accorded a medium priority for this field of access to healthcare. The rationale for this includes: national provision in relation to healthcare is regarded as adequate and, with limited resources priorities have to be set; prioritisation limited by the level of resources made available to the equality body; and low levels of complaints being presented to the equality body.

Two equality bodies accorded a low priority for this field of access to healthcare. The rationale for this includes: impediments in their mandate; presence of other Ombud office type of institutions specifically addressing healthcare and with greater specialist expertise in this field; and lack of demand from complainants.

One equality body noted that it treated all fields as being of equal importance.

[15] Commission for the Rights of Persons with Disabilities in Malta and Institute for the Equality of Women and Men in Belgium.

[16] Federal Anti-Discrimination Agency in Germany.

Ground / Country	Albania	Austria	Belgium	Bulgaria	Bosnia and Herzegovina	Croatia	Cyprus	Czech Republic	Georgia	Germany	Great Britain	Greece	Denmark	Estonia	Finland	France	Hungary	Ireland	Italy	Kosovo	Lithuania	Luxembourg	Latvia	Malta	Moldova	Netherlands	Norway	Poland	Romania	Slovenia	Spain	Sweden
Sex/ Gender	X				X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X		X
Gender Identity	X				X	X		X	X	X	X		X		X	X	X		X	X			X			X	X	X	X	X		X
Sexual orientation	X		X		X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X			X	X	X	X	X		X
Racial/ ethnic origin	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Religion or belief	X		X		X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X		X
Age (Children)	X		X		X		X	X	X	X	X		X		X	X	X			X		X	X		X		X			X		X
Age (other)	X		X		X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X		X		X	X	X	X		X
Disability	X	X	X		X		X	X	X	X	X		X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Health status	X		X		X	X			X		X		X		X	X	X						X		X	X		X	X	X		
Social/ socio-economic status	X		X		X	X			X		X		X		X	X							X		X			X	X	X		
Other grounds	X		X		X	X	X	X	X		X				X	X							X		X	X		X	X	X		

Table 1: Countries in which equality bodies have a mandate on discrimination in the field of social protection and healthcare, per ground. In countries where there is more than one equality body, these have been taken in conjunction in a single indicator. Source: Equinet

2.2 Issues and Grounds

A framework of discrimination issues in the field of access to healthcare can be identified from the work of the equality bodies, encompassing:

- ***availability*** of healthcare provision in a timely manner.
- ***adequacy*** of healthcare provided to meet the needs of the patient.
- ***unequal treatment*** on the basis of protected characteristics
- staff ***attitudes and behaviours***, assumptions, and negative perspectives on diversity, including harassment.
- ***inaccessibility and inadequate flexibility*** to accommodate diversity, address barriers for people with disabilities, and barriers due to such as lack of interpretation or digital inequalities in a context of increased online services.

Equality bodies reported overarching health inequalities as being rooted in the **design and development of healthcare systems** where:

- the discrepancy between public and private provision of health services generates health inequalities based on economic divides;
- an overall lack of investment in healthcare systems generates greater negative impact on groups exposed to inequality and increases the risk of institutional discrimination with systemic pressures on providers to be time and resource efficient;
- the uneven geographical spread of health services acts as a potential access barrier for older people with mobility issues and for Roma in isolated settlements;
- limitations in the coverage of public health insurance can leave the needs of some groups unaddressed; and/or
- there is the potential for discrimination on the basis of the use of Artificial Intelligence in the field.

Equality bodies pointed to the lack of an equality infrastructure in the organisations responsible for healthcare policy-making and service delivery. Equality mainstreaming is under-developed in such policy making and programme development. Organisations in this field tend not to have an equality infrastructure, such as: equality policies; equality training for staff; structures accorded a responsibility for equality; equality action plans; participation by service-users from groups exposed to discrimination; and gathering and analysis of equality data. This is linked to issues of lack of competence in relation to equality and non-discrimination among personnel in this field.

While there is a wide range of grounds evident in the work of equality bodies on access to healthcare, there was a particular focus reported on: older people, people with disabilities, trans people, women, Roma, migrants, minority ethnic people, intersex people, and the ground of socio-economic status. Care recipients, people with HIV/AIDS status, and victims of domestic violence are also noted as a focus in this work.

A number of equality bodies identified healthcare issues they have worked on that are specific to particular grounds. These included access to fertility care and in-vitro fertilisation for women in same sex couples and single women; access to centres for reproductive health; access to safe houses for victims of domestic violence; access to treatment pathways for trans people; blood donation by gay men; harassment experienced by LGBTI people, the experience of intersex patients, in particular intersex infants, and people who are HIV positive; access to healthcare buildings for people with disabilities; and residential care settings for older people.

Intersectionality and multiple discrimination were a feature reported in this work of equality bodies. While victims of intersectional discrimination could potentially come from any background, equality bodies reported a particular prevalence of the following in their work in this specific field. Socio-economic status was seen to be a key intersecting ground across all other grounds, as well as a focus in its own right where such a ground is included in the mandate of the equality body. Gender intersects with the ground of age for older women, with the ground of racial or ethnic origin, in the experiences of Roma women and men in access to healthcare, and with the ground of disability. The ground of disability intersects with the ground of age in the specific situation and experience of children with disabilities.

2.3 Strategy

Equality body strategies in relation to access to healthcare encompass all their various competences, as can be seen in the next section of this report. However, three inter-connected strands emerged from the survey as particularly prominent in underpinning equality body strategy in this field:

- Responding to complaints is at the heart of equality body strategy, deploying equal treatment legislation and mediation initiatives to secure change for the individual complainant but also seeking to build a culture of compliance among healthcare providers.
- Deepening the knowledge base on the issue of equal treatment in access to healthcare is a significant element of equality body strategy including survey and research work: gathering and analysing available data; building an evidence base in relation to discrimination and using research to stimulate change among healthcare providers and in healthcare policy; and deepening a shared understanding of the relevant equality, diversity and non-discrimination issues through engagement with key stakeholders, community leaders and NGOs.
- Increasing visibility for issues of equal treatment in access to healthcare with a focus on these issues in: media work; annual reports; research reports; events and roundtable meetings; and reporting under international and European human rights instruments.

Practices of interest:

In the Slovak Republic, the ***Slovak National Centre for Human Rights***, identifies a stimulus for its focus on health in the Agenda 2030 Sustainable Development Goals[17], under Goal 3: ensure healthy lives and promote well-being for all at all ages. Healthcare is not monitored by any other independent body and the approach taken by the equality body encompasses the roles of the state, insurance providers, and healthcare providers.

The equality body reviews legislation regulating access to healthcare services from an equality perspective; works with key stakeholders to promote equal access to healthcare; promotes human rights-based approaches in health policy-making; and provides legal aid and consultation for those exposed to discrimination in healthcare. It has taken up issues of segregation of Roma women in maternity services, LGB people's access to blood donations, access to health services for people who are HIV positive, issues facing intersex

[17] Transforming our World: the 2030 Agenda for Sustainable Development, United Nations, 2015.

people, access to safe abortion, and enabling access to treatments through their coverage by health insurance companies.

2.4 Context and Change

The COVID-19 pandemic has placed a particular spotlight on access to healthcare both in terms of its impact on particular groups, and in terms of how its management has been experienced by different groups. Six equality bodies reported an increased emphasis on this area in their work due to the pandemic, including greater vigilance in monitoring issues that might arise.

In general, equality bodies identified change as a result of the COVID-19 pandemic in terms of an intensification and amplification of the issues in relation to access to healthcare for groups exposed to discrimination, rather than the emergence of new issues. The COVID-19 pandemic and the responses required and pursued have shone a harsh light on already existing health inequalities and were noted as exacerbating already existing experiences of discrimination[18]. Specifically, an increase in casework on access to healthcare was noted directly linked to the impact and management of the COVID-19 pandemic.

Particular additional issues are identified in terms of inequalities or discrimination in access to COVID-19 testing programmes, vaccination programmes or information materials, alongside promotion of inclusive vaccination programmes and communication about such programmes. Additional issues were further noted in terms of issues in access to healthcare areas compromised due to the priority that had to be given to the COVID-19 pandemic. Specific issues are noted for people in institutional care settings, older people and people with disabilities; for children with autism and their parents; and for trans people awaiting gender reaffirming surgery and access to hormones from abroad.

Multi-mandate bodies with a human rights mandate alongside an equality mandate identified value in the additional human rights lens they can apply to the COVID-19 context. Issues being raised with them related to violations of human rights, given the breaches in these key minimum standards observed for some groups. In particular, issues of medical and ethical criteria in the prioritisation of patients in situations of capacity saturation in hospitals were noted as a focus.

2.5 Enablers and Barriers

The need for strong and comprehensive equal treatment legislation was noted in underpinning work by equality bodies in the field of access to healthcare.

Equality bodies in jurisdictions where equal treatment legislation makes provision for positive equality duties on service providers, emphasised the potential in these provisions for addressing issues in the healthcare sector.

Practices of Interest:

In Finland, the ***Office of the Non-Discrimination Ombudsman*** has brought the implementation of positive duties in the equal treatment legislation to the attention of the

[18] See further: Equality in the time of COVID-19: Learning from Equality Body Initiatives, Equinet, Brussels, 2021.

Ministry responsible for healthcare and institutions providing healthcare. Equal treatment legislation public authorities, private actors performing public administrative functions, education providers and employers must assess and promote equality in their activities and are required to prepare equality promotion plans to promote equality. The equality body notes that an equality promotion plan prepared by a public authority can help to identify the needs of different customer groups and ensure that everybody is able to use the services provided by the authority on an equal basis. The equality body has identified a key priority for 2021-2022 as being to push for more efficient fulfilment of these obligations in all sectors[19].

Another enabler identified by equality bodies was their knowledge of the healthcare terrain and relationships with relevant stakeholders in this sector. Cooperation with NGOs was noted as a valued enabler of work in this field. In all cases, adequacy of budget was essential to underpin work in this field, with particular note given to the cost of casework in relation to insurance companies. Opportunities for meaningful collaboration are emphasised as a key enabler, across public authorities, healthcare professionals, and civil society, including participation in official commissions, taskforces, and working groups.

Equality bodies reported facing barriers in their work in this field due to:

- under-reporting and low numbers of complaints;
- lack of equality data and difficulties in gathering evidence in complaints;
- complexity of health systems and the particular expertise required in dealing with issues relating to medical needs;
- lack of knowledge about, understanding of, and concern for issues of diversity and non-discrimination among healthcare providers and lack of resources allocated to addressing such issues;
- lack of competences within the equality body, in particular competences to make legally binding decisions;
- failure of institutions to implement equality body recommendations; and
- inadequate resources made available to the equality body.

[19] See more: Non-Discrimination Ombudsman website (English).

3. Equality Bodies: Initiatives

3.1 Enforcement

Equality bodies have engaged in actions to:

- provide advice and assistance to individuals to bring forward discrimination cases in relation to access to healthcare;
- receive and hear complaints of discrimination in relation to access to healthcare; and
- pursue own-initiative or ex-officio cases of discrimination in relation to access to healthcare.

Practices of interest:

In Belgium, the ***Institute for the Equality of Women and Men*** brought a procedure before court because men don't get their HPV vaccinations reimbursed and is to bring a further procedure because men don't get certain osteoporosis medicine reimbursed.

In Bosnia and Herzegovina, ***the Institution of the Ombudsmen on Human Rights*** has investigated individual complaints on the right to donate blood[20] by LGBT people and on the right of access to healthcare by Roma individuals without insurance[21].

In Germany, the ***Federal Anti-Discrimination Agency***, despite limitations in its mandate, received 129 complaints regarding discrimination in the healthcare and care sector in the last four years and supported complainants with legal advice. These related to the following grounds: 40% disability; 26% ethnic origin; 16% gender (and gender identity); 16% no protected ground; 12% religion/belief; 9% sexual identity; and 4% age.

In Romania, the ***National Council for Combating Discrimination*** received double the number of cases relating to access to health in 2020, with 19 complaints on the grounds of: ethnicity (2); language (2); age (3); disability (3); HIV (1) and others (8). More than a third of the cases of discrimination are related to the COVID-19 pandemic, with a particular focus on the ground of disability.

In the Slovak Republic, the ***Slovak National Centre for Human Rights***, provided legal assistance to a girl with spinal muscular atrophy who was denied access to life saving medication by the health insurance company. Four patients with a comparable condition and age were given the new medication. However, when her doctor applied for the medicine to be covered by the health insurance company, the application was denied. The equality body was of the opinion that discrimination in the field of healthcare (when accessing lifesaving medication), based on the 'other grounds' category, was involved. After several negotiations, the health insurance company approved the application.

[20] Special report on the rights of LGBT persons in Bosnia and Herzegovina, p 70, available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016110413333704eng.pdf

[21] Special report on the status of Roma in Bosnia and Herzegovina, pp. 36-41, available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013121011144464eng.pdf

3.2 Promotion of Good Practice

The promotion of good practice by equality bodies contributes to the institutional change required to prevent discrimination and promote equality. Equality bodies have engaged with healthcare authorities and providers to raise their awareness of their obligations under equal treatment legislation; promote attitudinal change among healthcare professionals; and provide guidance on the steps required of healthcare service providers. There is a particular imperative in relation to this work, given the limited equality infrastructure noted in institutions in this sector.

Practices of interest:

In Belgium, ***UNIA*** developed and published a recommendation for the implementation of cross-cultural competences in the new nursing education curriculum[22]. This was promoted by the growing cultural diversity among patients and the imperative for healthcare professionals to understand the social and cultural factors that influence the health of and response to these groups. Healthcare professionals must have the appropriate knowledge and techniques in order to be able to adapt their skills and behaviour to their patient.

In France, the ***Defender of Rights*** published a practical information pamphlet for healthcare professionals setting out the legal framework which governs discrimination in any refusal or provision of care, setting out the different ways discrimination could happen, and establishing how to improve policy and practice for access to healthcare.[23]

In Hungary, the former ***Equal Treatment Authority***, whose functions are now taken over by the ***Office of the Commissioner of Fundamental Rights of Hungary***, published a booklet summarising its case law in the field of healthcare in order to support the prevention and recognition of discriminatory conduct.[24] Over 40 investigated cases were presented in the booklet, involving healthcare service providers as employers and concerning the provision of healthcare services.

In Malta, the ***Commission for the Rights of Persons with Disabilities*** established a Disability Equality Training service. Training is provided to healthcare professionals or others in related fields on request, covering disability etiquette and dos and don'ts when interacting with people with disabilities; perceptions of disability (social model and medical model); and an overview of the legislation.[25]

In Malta, the ***National Commission for the Promotion of Equality*** provides regular training on equal treatment legislation and access issues in practice, to nurses, midwives, and primary healthcare workers. The NCPE Equality Mark, a certification given to institutions demonstrating a proactive commitment to equality between women and men and towards people with family responsibilities, has been awarded to the national hospital and to the Primary Health Care service. This is reviewed every two years.[26]

[22] See: https://www.unia.be/files/Documenten/Aanbevelingen-advies/AAR_144_-_Implémentation_des_compétences_transculturelles_dans_le_nouveau_curriculum_de_la_formation_en_soins_infirmiers.pdf

[23] See: https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=18230

[24] See: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/EBH6_eng_w_sm.pdf

[25] See: https://www.crpd.org.mt/uncrpd-det/uncrpd/disability-equality-training/

[26] See: https://ncpe.gov.mt/en/Pages/The_Equality_Mark/The_Equality_Mark.aspx

In Romania, the ***National Council for Combating Discrimination*** provides regular training for medical staff and periodic courses at the post-secondary school for the training of nurses.

3.3 Research

Equality bodies reported a significant body of research in relation to access to healthcare. The research has a particular focus on establishing and tracking discrimination in access to healthcare and builds an evidence base for action by responsible authorities and by equality bodies themselves.

Practices of interest:

In Belgium, ***UNIA*** conducted and published a study to report on and make recommendations for better accessibility of hospitals to hard of hearing and deaf people in 2018/2019[27]. This work has been accompanied by legal proceedings to ensure access of hard of hearing and deaf people to healthcare.

In the Czech Republic, the ***Office of the Public Defender of Rights***, conducted research on accessibility of dental care for people with intellectual impairment or autistic spectrum disorder. A recommendation to improve accessibility was issued on the basis of this research.

In Germany, the ***Federal Anti-Discrimination Agency*** is developing research to establish the current level of knowledge and research gaps in relation to discrimination in the health sector: 'Discrimination risks in the health sector – Current knowledge and need for further anti-discrimination research'.[28] This is focused on gathering knowledge on prevalence and causes of discrimination in the health system across all grounds, including institutional discrimination. FADA's 2017 survey 'Discrimination experiences in Germany' also included questions about discrimination in the healthcare sector29.

In France, the ***Defender of Rights*** has published research to assess discriminatory refusals to provide healthcare in 2019[30], and on access to care for foreigners in 2019[31]. The first study measures differences in treatment in access to care for patients in three medical specialties (dental surgeons, gynaecologists and psychiatrists) and according to two criteria prohibited by law: origin and economic vulnerability. The second study takes stock of action taken by the equality body in relation to foreign people requiring healthcare and develops recommendations for the relevant authorities.

[27] See: https://www.unia.be/files/Documenten/Aanbevelingen-advies/Recommandation_accessibilité_hopitaux_personnes_sourdes_juin_2019.pdf

[28] See: https://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Forschung/laufende_Forschung/laufende_Forschung_node.html

[29] https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_diskriminierungserfahrungen_in_deutschland.pdf

[30] See: https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19292

[31] See: https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rap-etrangmalad-num-07.05.19_0.pdf

In Malta, the ***Commission for the Rights of Persons with Disabilities*** published research on practice and provision in access to healthcare in terms of therapy sessions for children. The research focused on bridging the gap between public and private services and discrepancies in fees involved. A position paper on the issues with recommendations was developed for the responsible authorities.

In Slovenia, the ***Advocate of the Principle of Equality*** published, in 2020, a 'Special Report on the Situation of Intersex People in Medical Procedures' with recommendations to relevant stakeholders.[32] At the instigation of a group of civil society organizations, the Advocate examined the situation of intersex persons in medical procedures in relation to human rights violations or unequal treatment due to a personal ground of sexual characteristics. The enquiry found, *inter alia*, the unfamiliarity of stakeholders with cases of medical treatment of intersex people; ambiguity and inconsistency of non-urgent medical interventions in the sex characteristics of intersex people and reliance on subjective judgment of "social acceptability" as a criterion for deciding on medically non-essential gender assignment operations.

3.4 Policy Advice

Equality bodies have an advisory function in relation to policy-making. Equality bodies reported engaging in this work through: development of policy positions; and active advocacy for policy change. The research work identified in section 3.3 above has also been a source of policy advice through the recommendations that emerge from this body of work. Policy advice work has predominantly included a focus on issues of adequacy and accessibility of service provision. It has also addressed a number of specific issues. These include: safe abortion, sexual and reproductive health services, public financing of health insurance companies to provide mandatory health insurance, funeral care for people with communicable diseases, and access to healthcare for foreigners.

Practices of interest:

In the Czech Republic, the ***Office of the Public Defender of Rights*** organised a roundtable with representatives from the Ministry of Health and public health insurance companies to successfully persuade them to raise payments for dental treatment of patients with disabilities that would enable healthcare staff to address better their individual needs.

In Finland, the ***Office of the Non-Discrimination Ombudsman*** developed a statement in relation the national reform of social and healthcare services.[33] This emphasised that the reform should ensure equality between groups at risk of discrimination, guaranteeing adequate resources for services, and paying sufficient attention to issues of accessibility in the provision of services.

[32] The Special Report on the Situation of Intersex People in Medical Procedures is available at http://www.zagovornik.si/wp-content/uploads/2021/01/Posebno-porocilo-Polozaj-interspolnih-ljudi-v-medicinskih-postopkih.pdf

[33] See: https://syrjinta.fi/en/-/sote-uudistus-voi-parhaimmillaan-edistaa-perusoikeuksia-mutta-esitys-kaipaa-laajempaa-nakokulmaa-yhdenvertaisuuteen

In Lithuania, the ***Office of the Equal Opportunities Ombudsperson's*** interventions led to the adoption of a policy for older people to be reimbursed for prostheses; and for children to get higher quality hearing aid.

In Serbia, the ***Commissioner for Protection of Equality*** submitted opinions, seeking improved social welfare and healthcare services, on the draft law to amend the Law on Social Welfare, and the draft National Strategy for the Prevention and Control of HIV Infection and AIDS in the Republic of Serbia.

In the Slovak Republic, the ***Slovak National Centre for Human Rights*** advocated for legislative change in the regulation of access to safe abortion. The equality body engaged with state (Ministry of Health of the Slovak Republic), professional associations (Slovak Gynaecology and Obstetrics Society), women´s organisations and potential victims of discrimination. It advocated with members of parliament and reported on the issue to the Council of Europe (Commissioner for Human Rights) and the UN special procedures. It is now examining opening a procedure before the Constitutional Court of the Slovak Republic, though it does not have mandate to initiate the procedure on its own.

In Slovenia, the ***Advocate of the Principle of Equality*** issued, in 2019, a set of recommendations to the Ministry of Health for the improvement of the health status of members of the Roma community.[34] Based on research conducted by the National Institute of Public Health, the Advocate recommended: conducting a research study on the causes and factors of poorer health indicators of the Roma community (if necessary); involvement of the Roma community and other stakeholders in the preparation of special measures to improve the health status of the Roma community; and monitoring the effectiveness of implementation of such measures and appointing a coordinator for this purpose at Ministry level.

3.5 Communication

Equality bodies reported an increased engagement in raising awareness of unequal impacts of, or discrimination in, the responses made to manage the COVID-19 pandemic. This involved media work, publications, and social media posts. It has included a focus on informing those exposed to discrimination in access to healthcare, about their rights.

Practices of interest:

In Bosnia and Herzegovina, the ***Institution of the Ombudsmen for Human Rights*** has undertaken significant media work in relation to issues such as: government measures to promptly procure vaccines necessary for immunization, especially of vulnerable categories of the population[35], and action by relevant authorities on increased levels of domestic violence in the context of COVID-19 restrictions[36].

In Croatia, the ***Office of the Ombudswoman of the Republic of Croatia*** organised a series of on-line events entitled "Human Rights Coffee Meeting"37, one of which dealt with the

[34] The recommendation is available in Slovenian at http://www.zagovornik.si/wp-content/uploads/2020/01/Priporo%C4%8Dilo.pdf

[35] See: https://www.ombudsmen.gov.ba/Novosti.aspx?lang=EN

[36] See: https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1516&lang=EN

[37] https://www.ombudsman.hr/en/the-pandemic-increases-awareness-of-human-rights-universal-value/

impact of the COVID-19 pandemic on the most vulnerable social groups and the protection of their social rights.

In France, the ***Defender of Rights*** published a pamphlet on refusal to care, to inform people of their rights and of the support they can seek in such situations.[38]

In Malta, the ***National Commission for the Promotion of Equality*** used social media effectively to raise awareness of the importance of gender mainstreaming in healthcare and health institutions during the COVID-19 pandemic.

[38] See: https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=18231

4. Equality Bodies: Learning

4.1 Equality Bodies

Equality bodies face particular challenges in fulfilling their mandate to promote equality and combat discrimination in relation to access to healthcare. This is a field that demands a very specific expertise, not always available to equality bodies. It is a complex field in:

- the range of institutions that are involved and the breadth of legislation that underpins it;
- the structural and systemic deficits in healthcare systems which in turn can drive inadequate and inaccessible healthcare provision;
- the power imbalances that can characterise the relationship between patient and medical professional; and
- particular imperatives of patient confidentiality that can at times act as a barrier to adequate data collection.

Yet this is a field characterised by significant inequalities across the non-discrimination grounds, and where capacity in relation to combating discrimination and promoting equality can be inadequate and institutions have often failed to put in place an organisational infrastructure to promote equality and prevent discrimination.

In such a context, there is an imperative for equality bodies to give some priority to the issue of access to healthcare and many equality bodies have long recognised this. This challenge has only intensified with the onset of the COVID-19 pandemic.

Equally, there is an imperative for equality bodies to develop and secure the capacity necessary to engage effectively with the healthcare sector in all its complexity. This involves building a knowledge of the healthcare terrain, developing relationships with key stakeholders, and securing access to specialist skills that might be required at particular moments. Initiatives of mutual education could be developed in this field whereby equality bodies and healthcare providers can exchange knowledge on the healthcare systems and processes and on equality and non-discrimination.

In their work in this field of healthcare, as in all other fields, equality bodies are called on to deploy the full range of their competences: enforcement; support for good practice; policy advice; research; and communication. There are, however, two particular areas of initiative that need further prioritisation by equality bodies in relation to:

- research and initiatives to deepen the knowledge base of the nature and level of discrimination in the healthcare sector, including a particular focus on institutional discrimination; and
- promotion of good practice and initiatives to develop and promote models of good practice for access to healthcare within the institutions responsible for such provision, and specifically models for the equality infrastructure required in such institutions if they are to be planned and systematic in their approach to equality and non-discrimination.

4.2 Policy Makers

Equal treatment legislation underpins, drives, and sets standards for action on equality within healthcare provision. It is important that gaps in this legislation are addressed. At a European level, this requires the enactment of the horizontal equal treatment Directive to prohibit discrimination in fields beyond employment on the grounds of age, disability, sexual orientation, and religion and belief.

At a European and national level, the further evolution of equal treatment legislation to include positive duties on institutions to be proactive in their approach to equality and non-discrimination has a further key contribution to make. It would be important for equal treatment legislation at all levels to require equality reviews and equality action plans in all institutions providing healthcare and to require equality mainstreaming in all policy making relating to healthcare.

It is clear from the work of equality bodies in the field of healthcare, and in other fields, that the ground of socio-economic status is of relevance both as an intersecting factor in the experience of discrimination on other grounds and a factor in itself in the experience of discrimination. It would be important to assess and respond to the need to include a socio-economic status ground in the equal treatment Directives at a European level and in legislation at a national level.

Equality bodies have a significant contribution to make in this field of healthcare, and the fruits of their endeavours are already evident in many jurisdictions. However, to achieve this potential it is necessary that they are adequately resourced, have the necessary competences, and are accorded the standing required to underpin their interventions. The full and effective implementation of the European standards for equality bodies is a prerequisite if equality bodies are to make their full contribution to a healthcare service characterised by equality and non-discrimination. The commitment of the European Commission to consider proposing new legislation to strengthen the role of national equality bodies by 2022 is particularly important in this regard.[39]

The emerging focus on healthcare evident in the development of a European Health Union is important in creating new solidarities across Member States in an area of provision that is central to wellbeing and will increasingly be central for resilience in the face of current and future crises. It would be important that the various strands of this policy initiative incorporate a concern to prevent discrimination and promote equality and that this focus is further developed as the European Health Union evolves.

As part of, or alongside this, it would be important to establish an equality standard for healthcare provision alongside investment and training programmes to underpin its implementation. An equality approach to healthcare would ensure that all healthcare institutions would have an equality policy in place, establish systems to engage and meaningfully involve groups particularly exposed to inequality and discrimination in the field of healthcare, identify internal structures to give leadership on equality, prepare equality plans based on a review of current policies, systems and procedures from an equality

[39] Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive', COM(2021) 139 final, Brussels, 19.3.2021.

perspective, and build staff skills and awareness in relation to promoting equality and combating discrimination in their work.

EQUINET MEMBER EQUALITY BODIES

ALBANIA
Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA
Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA
Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM
Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM
Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA
Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA
Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA
Office of the Ombudsman
www.ombudsman.hr

CROATIA
Ombudsperson for Gender Equality
www.prs.hr

CROATIA
Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS
Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC
Public Defender of Rights
www.ochrance.cz

DENMARK
Danish Institute for Human Rights
www.humanrights.dk

ESTONIA
Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND
Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND
Ombudsman for Equality
www.tasa-arvo.fi

FRANCE
Defender of Rights
www.defenseurdesdroits.fr

GEORGIA
Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY
Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE
Greek Ombudsman
www.synigoros.gr

HUNGARY
Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND
Irish Human Rights and Equality Commission
www.ihrec.ie

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

KOSOVO*
Ombudsperson Institution
www.oik-rks.org

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
Commission for the Rights of Persons with Disability
www.crpd.org.mt

MALTA
National Commission for the Promotion of Equality
www.equality.gov.mt

MOLDOVA
Council on Preventing and Eliminating Discrimination and Ensuring Equality
www.egalitate.md

MONTENEGRO
Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS
Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA
Commission for Prevention and Protection against Discrimination
www.kzd.mk

NORWAY
Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND
Commissioner for Human Rights
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 Migration
www.acm.gov.pt

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

SERBIA
Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA
Slovak National Centre for Human Rights
www.snslp.sk

SLOVENIA
Advocate of the Principle of Equality
www.zagovornik.si

SPAIN
Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.msssi.es

SPAIN
Institute of Women and for Equal Opportunities
www.inmujer.es

SWEDEN
Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN
Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND
Equality Commission for Northern Ireland
www.equalityni.org

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

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