

Litigation powers of Equality Bodies

Most Equality Bodies have some kind of legal standing in front of Courts. **Legal standing** refers to the right or ability to bring a legal action to a court of law, or to appear in court. This can entail giving expert advice to the Court as a non-party (such as *amicus curiae*), representing or supporting victims of discrimination in Court, defending their own decisions in Court if appealed (for Equality Bodies that have decision making powers), class action or bringing cases of discrimination in the Equality Body's own name, in defence of the principle of equality on behalf of the whole society.

Most Equality Bodies have the mandate to address the Court as **amicus curiae**. *Amicus Curiae* stands for "friend of the court", also known in some jurisdictions as a "third-party intervention", that is to say, a non-party with an interest in the outcome of a pending lawsuit (as opposed to an expert witness) who intervenes in the proceedings to enlighten the sitting judges and influence the outcome of a lawsuit involving matters of public interest by providing their external analysis regarding questions of law or fact in their area of expertise. Importantly, we are using *amicus curiae* as a general term, noting that submissions to the Court that are substantively similar may be called differently, depending on the legal system and traditions.

The Irish Human Rights and Equality Commission often submits *amicus curiae* briefs to the Court, especially the Supreme Court. For instance, in 2019, the Irish Equality Body submitted an *amicus curiae* brief that sought to support the Supreme Court in their interpretation of reasonable accommodation for employees under the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and EU law.

The Defender of Rights in France submitted an *amicus curiae* brief to the Paris Labour Tribunal in 2017 about a case of sexual harassment. Adopting a legal and sociological approach, the French Equality Body looked at sexual harassment in a holistic way, considering the deep economic vulnerability of the victims who were working as cleaners in trains that demonstrated a gendered hierarchy of functions and positions that also fostered a culture of sexual harassment.

Many Equality Bodies may also **represent victims of discrimination in Court**. Given their unique position, expertise and powers they can ensure that the victims' experiences are heard and that their rights are protected. This in turn provides for better access to justice to rights-holders and creates a more just and equitable society.

The Swedish Equality Ombudsman brought to Court an airline (Braathens Regional Airlines) representing the victim of discrimination. The national Courts sent a request for a preliminary ruling to the Court of Justice of the European Union during the process, which gave the Court the option to clarify EU anti-discrimination law (the right to effective remedy) for all Europeans.

The Finnish Non-Discrimination Ombudsman represented a young man sentenced to 6 months in prison by the Municipal Court after he refused to do both military and civil service, because of his pacifist beliefs. The Finnish Non-Discrimination Ombudsman defended the conscientious objector in the Helsinki Court of Appeal in May 2017 in order for the Court to apply an exemption from military and civil service that only applied to Jehovah's Witnesses to him too.

Some cases would remain unaddressed if Equality Bodies are not given the power to **bring cases in their own name** (in defence of the right to equality). The Anti-discrimination Directives already contain a provision (Defence of Rights) establishing that organizations with a genuine interest should be granted legal standing. The Court of Justice of the European Union ruled that this may also include litigating in the absence of a specific or identifiable complainant in the Feryn case, brought to Court by one of the Belgian Equality Bodies (predecessor of **UNIA**). This is also a very well-known practice in other areas of law, such as Consumer or Data protection law.





Cases in which victims do not have comparable data to understand that they have been treated less favourably than other persons based on a discrimination ground (such as those affected by discrimination related to AI systems or equal pay, for instance), cases of discrimination in which the victims are too afraid to come forward given a hostile environment or fear of re-victimization of discrimination (like those related to harassment) are particularly important examples of the necessity of such litigation powers.

The Danish Institute for Human Rights

filed a claim with no identifiable victim against the Danish Agency for Labour Market and Recruitment to The Board of Equal Treatment because of their use of a profiling tool for job-seekers that used an implemented algorithm to create data profiles based on personal data including origin to predict whether an unemployed citizen was at risk of long-term unemployment.

The Office of the Commissioner for Human Rights of the Republic of Poland was able to successfully bring to Court several municipalities regarding their declarations to be free from "LGBT ideology", adopting so-called "anti-LGBT" resolutions even in the absence of an individual victim seeking the annulment of the resolutions against the "LGBT ideology".

Other resources:

-  [Strategic Litigation Handbook](#)
-  [Standards for National Equality Bodies advance Equality for all: FAQ](#)
-  [Discussion paper: Equality Bodies working on cases without an identifiable victim: Actio popularis](#)
-  [Moving forward the European Commission's proposals for Directives strengthening Equality Bodies](#)