

Equinet training summary

Equality Bodies providing their expert opinion in Courts

Main tips and tricks provided in the training

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Introduction

A number of Equality Bodies are currently empowered to provide expert opinions in courts. This may be an active power (the Equality Bodies are empowered to decide when and where to intervene as Amicus Curiae) or a passive power (the courts may be obliged under national law, or may request, the expert opinion of the Equality Body relating to equality and non-discrimination issues). Some Equality Bodies were granted no [legal standing](#) at the national level. The new [Directives on Standards for Equality Bodies](#) will change the latter, providing all Equality Bodies with the right to submit observations to the court, in accordance with national law and practice (Article 10(2)).

Active intervening powers are often related to Amicus Curiae interventions. “Interventions” is used 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.

Interventions can be a very useful tool for Equality Bodies to showcase their specific expertise and added value in the area of equality and human rights. They can also be a means to influence proceedings even when the Equality Body is not a party or does not have legal standing in front of a court. Moreover, interventions can be used by an Equality Body as an important tool to contribute to and actively promote the development of the law.

General considerations

- Have clear internal [guidelines](#) on the procedure
- Be [aware of the legal context](#) in which you operate because this has an impact on the form and context of the submission
- [Communication about and publishing](#) interventions, at the appropriate stage, maximises the impact beyond the individual case
- [Know the process and the different stages](#) an intervention may entail depending on the court (for instance, do you need to submit a request to intervene?)

Selecting cases for intervention

Selecting cases for intervention (primarily for Equality Bodies with active intervention powers, but it may also be relevant for those with passive intervention powers, in case they can, but are not obliged to respond to a court’s invitation to intervene) requires effective monitoring mechanisms in place to become aware of relevant cases. Monitoring activities could include:

- Monitoring of judicial databases
- The request of a party/court
- Liaising with civil society and other partners
- Monitoring media reports

The selection of cases should be based on different considerations, such as the following:

- **Practical considerations**
 - Time: Date of hearing and capacity within the timeline
 - Strength and nature of a case
 - Potential success of the litigation and court alignment
 - Ability to get access to all necessary documents
- **Financial and human resources**
 - Costs of intervention vs budget available
 - Workload of employees
 - Number of pending cases, including priority cases
- **Added value of the intervention**
 - Specific expertise of the Equality Body and past experience with similar cases or legal issues
 - Alignment with strategic priorities of the Equality Body
 - The ability of a case to develop the ‘arc’ of case law in a specific area
- **Stage of the proceedings**
 - Depending on the jurisdiction and personal experience litigating, there might be arguments in favour of intervening at lower or higher courts

The leave to intervene

- Strict deadlines may apply
- Brief and succinct – less is more, 3-5 pages
- Content:
 - Brief description of your Equality Body
 - Reasons for interest in intervening
 - How are you planning to assist the court (general ideas, not details)
- Correspond with the parties and the court, try to receive all relevant documents
- Be mindful of the timeline and start preparing the intervention asap, if necessary before you receive approval to intervene

The content of the intervention

The content of the intervention will depend on the type of intervention a court allows. Equality Bodies need to be aware whether an intervention should include merely legal arguments or whether

it can actually engage with the impact of the law in a specific situation, i.e. the merits of the case. Depending on the legal context in which you operate, you could consider the following:

Do

- Make the submission as clear as possible to ensure that your position is understood
- Make sure that your intervention is aligned with your Equality Body's strategic and previous positions
- Keep in mind the strategic goals and consequences which go beyond the individual case
- Showcase the specific expertise and value of you as an Equality Body, such as knowledge on the application of different frameworks of international/comparative law (consider submitting an information request through Equinet!)
- Ensure your intervention has added value. Do not just repeat the legal arguments of the parties or known facts
- Assist the court to make a decision – be clear on the practical implications of your recommended outcome and make sure that your submission and the arguments you bring are clearly related to the specific case at hand. Consequently, you should stay within the confines of the case as argued by the parties (unless the court expressly permits otherwise)
- Intervene in the name of equality and human rights
- Add information related to legal interpretation and real-life or contextual information
- Adapt the content and the way it is presented to the court
- Consider and include questions asked by the court (if applicable)
- Consider coordinating with other interveners to make sure that interventions complement each other

Do not

- Bring irrelevant legal arguments (even new legal arguments in some legal traditions) or arguments that are too general
- Clearly side with one of the parties
- Lodge evidence
- Rely on theoretical or ethical arguments that are not backed by data

Post judgement

- **Publishing** interventions maximises the impact beyond the individual case and increases the visibility of your work, apart from acting as a basis for future progress in the law
- Have a clear **communications** strategy in place, including a press release that should be shared within 24 hours from the judgment
- Consider the added value in continuing with a certain case should it be appealed

Special case: Defending advice submitted to courts orally at court

Most of the time, interventions are submitted in writing. Nonetheless, the Equality Body may have an interest/be invited by the court to present interventions orally in court. This can be an important factor in boosting the intervention. It is therefore important to keep in mind:

- Added value of an oral intervention
- National legislation regarding who can intervene orally in court
- The speaking order and time, considering that interveners often get little time to speak. The Equality Body may wish to avoid a speaking order that suggests they are intervening on the side of one of the parties (e.g. speaking right after the claimant and before the defendant)
- How to deal with a change in the direction of the case that happens during the oral hearing
- How to deal with questions from the court
 - Consider guidance delivered by the court prior to the intervention
 - Make sure that in replying to questions, you do not accidentally contradict prior positions
 - Prepare for the unexpected. Try to predict different directions the hearing may take to minimise the need for improvisation

Special case: Amicus Curiae in front of the European Court of Human Rights

Amicus curiae

As an Equality Body, you do not have to be granted intervening powers or legal standing at the national level to submit an intervention to the ECtHR.

Timeline

- The deadline for the request to intervene is 12 weeks after the communication of the case
- The deadline to draft the submission is typically 3 weeks after the request is granted
- It is possible to ask for more time, however, the decision on this lies under the discretion of the Court

Language: English or French

Length: Maximum 10 pages, excluding annexes (use endnotes instead of footnotes!)

Manner of filing

- Both the request to intervene and the submission must be sent by fax and/or post to the Court

- Ask the Court in the request to intervene to also communicate via email to receive information quicker

Content of the intervention

- The intervention should not include any comments on the facts or merits of the case
- The intervention can provide
 - Information on the interpretation of international norms by other jurisdictions
 - Information through comparative law
 - Information on the law and practice at the national level
 - Information on relevant data, statistics and the situation on the ground
- The intervention should link the principles to the Court's own precedents where possible

Interventions under Rule 9

Under Rule 9, National Human Rights Institutions and Civil Society Organisations may submit to the Committee of Ministers [communications](#) with regard to the execution of judgments according to Article 46(2) ECHR. When drafting the submission, you should include:

- A brief description of the case
- The aim of the communication
- A response to the State's action plan
- Which actions you are proposing

Other useful resources

- ECtHR Practice Direction -Third-party intervention under Article 36 §2 of the Convention or under Article 3, second sentence, of Protocol No. 16
- Frédérique AST, [Equality Bodies as Amicus Curiae Guidelines to the Moldovan Equality Council for Preventing and Eliminating Discrimination and Ensuring Equality to Write an Amicus Curiae Brief](#), Council of Europe
- Equinet, [Strategic Litigation Handbook](#)