

Equinet training summary

Equality Bodies using Situation Testing

3-4 June 2024, Vilnius



Author

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Objectives and structure of the training

Equinet held on 3-4 June 2024 an in-person training in Vilnius about using discrimination tests – such as situation and correspondence testing – to examine and prove discrimination (see the [website](#)). In total, 35 members of the Equinet Working Groups on Research and Data Collection as well as Policy Formation participated in the training. The participants came from 14 countries in Europe, representing a good geographical balance.

The training was delivered by Prof. Pieter-Paul Verhaeghe from the Vrije Universiteit Brussel. Prof. Verhaeghe has more than 10 years' experience with conducting situation and correspondence tests for both academic, monitoring, awareness-raising and legal purposes. In his work, he often collaborates with Equality Bodies, NGOs and governments.

The general goals of the training were to teach participants how they could apply discrimination tests and to exchange best practices between the participating countries. During the training, these tests were discussed in relation to several discrimination grounds, including race, ethnic origin, sex, (trans)gender, disability, age and sexual orientation. More specifically, the training had five objectives, divided over five sessions.

1. To shed light on the different types of discrimination tests, their multiple purposes and their advantages and disadvantages.
2. To teach participants how they could design sound discrimination tests, ranging from operationalizing the discrimination ground, over contacting the alleged perpetrators, to finding similar profiles or composing comparable CVs.
3. To inform participants about the methodological, statistical, and practical challenges to conduct discrimination tests for research or awareness-raising purposes.
4. To discuss how discrimination tests could be applied for legal purposes, together with their legal pitfalls.
5. To share thoughts about the ethical, financial and political reasons why discrimination tests aren't used more often.

These five objectives were determined on the basis of the trainer's experience, the strategic plans of the Equinet organizers, and a needs assessment of the participants during the preparation of the training. During the needs assessment, a clear need was identified for a hands-on training and a discussion of the issues of applying discrimination tests for legal purposes.

Mutual learning and sharing experiences stood central during the two days. In each session, there was room for discussion and exercises. In addition, several experts from the participating Equality Bodies took the floor to present promising practices. During the session about applying discrimination tests for research and awareness-raising, there were presentations from Steffen Shah (Germany – FADA) about testing for digital discrimination, Sandra Konstatzky and Charlotte Christoph (Austria – Ombud for Equal Treatment) about conducting situation testing to examine rental discrimination in Austria, and Jakub Konecny (Czech Republic – Public Defender of Rights) about situation testing to assess the accessibility of public buildings for persons with disabilities.

Furthermore, Rik Reusen (Belgium – Unia) shared the best practice of legal testing to proof discrimination on the Belgian housing and labour markets.

Summary of activities

Session 1. Discrimination tests: What, Why and How?

- The session started with the challenges of proving discrimination, and how discrimination tests could address these challenges.
- Afterwards, the central elements of the two main tests were explained, together with their advantages and disadvantages: correspondence testing (without personal contact) and situation testing (with personal contact). Both types are field experimental methods which are considered as valid and reliable to examine discrimination. The application of both tests was illustrated with academic studies given by the trainer and case-studies shared by the participants. A particular point of attention – raised by participants – was the psychological safety and legal protection of testers in the case of situation testing. Situation testers are often volunteers or EB employees. The repeated confrontation with discrimination could be potentially psychologically burdensome for them. A debriefing with attention for this issue is, therefore, recommended. In addition, it could not be excluded that in some countries, authorities or tested organizations (e.g. employers or realtors) start legal procedures against the EB and their testers. If so, these legal consequences should be anticipated.
- In addition, the method of mystery shopping was outlined, together with its advantages and disadvantages. This method originates from the private world in which commercial or production processes were tested with mystery guests but can also be applied to test discrimination. Although mystery shopping has been much less used to examine discrimination, examples were also given.
- Finally, four purposes were distinguished for which discrimination tests could be used: 1) The aim of academic research (examining levels and patterns of discrimination at the aggregated level, with their causes, mechanisms and consequences), 2) The aim of policy evaluation (monitoring discrimination levels over time and across countries/cities at the aggregated level), 3) The aim of tackling discrimination without legal procedures (raising awareness about the problem at the individual or aggregated level), and 4) The aim of collecting proof for (extra-) legal procedures at the individual level.

Session 2. How to design sound discrimination tests?

- Four methodological challenges were addressed during the session: representativeness ('Who should be tested?'), internal validity ('How to signal the discrimination ground?' and 'How can we make tests comparable?'), external validity ('How to contact the alleged perpetrators?'), and detection ('How to avoid detection or suspicion?').
- With respect to the representativeness, the session started with outlining the importance of composing a good sampling frame with clear in- and exclusion criteria. Bad or biased

sampling frames could result in wrong conclusions (e.g. tests show no discrimination, while there is discrimination in reality, and vice versa). Therefore, several sampling frames were discussed with the participants with respect to the housing and labour market, education, nightclubs and restaurants. Moreover, the difference between proactive and reactive testing was explained.

- The operationalization of the discrimination ground refers to making the ground under scrutiny clear in a reliable way without being suspicious. This challenge was amply illustrated with the ground of ethnic origin during two interactive group exercises, which is often signaled through the names of the candidates. It is recommended to select popular names and test the perception of the names beforehand (not only with respect to their ethnic origin, but also the perception of their social class and level of religiosity). Moreover, the operationalization of other grounds (family composition, transgender identity, sexual orientation, physical or psychosocial disability, and age) was discussed in groups during a third group exercise. From this exercise, it appears that the operationalization is always very context-dependent: what works in one country, doesn't necessarily work in another. Many of these groups can be signaled in the message to realtors or the CV to employers, for example:
 - Family composition: In the rental application, one can subtly refer to the composition of the family (e.g. "I am looking for a dwelling for me and my two kids" in the case of a single parent vs. "We are looking for a dwelling for us and our two kids" in the case of a couple with children).
 - Transgender identity can be signaled in the rental application or on the CV by referring to the 'old' name of the candidate (e.g. Christian (born as Christina) or Jean (born as Jeannine)).
 - Sexual orientation could be explicitly included on the CV if a marital status field would be included (e.g. in the case of a male applicant 'cohabiting with Thomas last name') or subtly through volunteering activities (e.g. "Hobbies: basketball and member of a particular LGBTQI+ organization"). In the case of a rental application, the message can be signed by two same-sex names.
 - Disabilities are often explicitly mentioned in messages to employees and real estate agents.
 - Age can be explicitly mentioned on the CV. In the case of a rental application, you can refer to the time flexibility of the candidate to visit the rental dwelling because of his/her retired situation.
- In addition, tips and tricks were shared about how to make CVs and applications of two candidates comparable. For the labor market, the general rule is the randomization of CVs across test- and control groups. Existing templates for CVs can easily be found on the internet or from the large software companies (e.g. Word). For specific higher-educated profiles, it can be useful to take a look on LinkedIn to explore what job candidates usually mention on their CVs. In addition, artificial intelligence has a big potential to be used in the future to create CVs and motivation letters. A particular challenge in Switzerland and Germany is that it is illegal to fake educational certificates. For these countries, the trainer advises to just

mention the educational level, but not create fake certificates. In addition, it is usually also the case that candidates upload profile pictures (here, you can use existing ones or create fakes through artificial intelligence again).

- In respect of contacting the alleged perpetrators, three ways of contact were differentiated, each time with their peculiarities: by e-mail, by phone and in-person.
- In general, after applying for housing or a job, it is recommended – if applicable – to politely decline any concrete invitation for a job interview or rental visit. Reasons for declining the invitation could be that the candidate already found a rental unit or a job. We recommend this in order to keep the ‘nuisance’ for employers and landlords as small as possible. In addition, we want to prevent that a bad image of perpetrated groups is reproduced by not showing up for an interview or visit. However, this is again very country- and situation-dependent. In some countries, it is common, for example, that mails of landlords are not answered.
- Finally, the session ended with discussing best practices for designing discrimination tests and worst-case scenarios for when the tests are detected. Although it almost never happens that carefully designed and executed discrimination tests are detected, the trainer provided the following options: 1) Don’t admit as long as possible that you are performing discrimination tests (at least until the whole project is done). Here, one can simply not answer the e-mails or voice mails in which the detection is uttered. 2) Admit the discrimination test, explain why it is ethically defensible and it is important to do this without informed consent.

Session 3. Applying discrimination tests for research or raising awareness

- During this session the potential of discrimination testing was shown by the trainer with the case-study of Ghent. In this Belgian city, discrimination tests are already applied for almost a decade on the rental housing market. The focus was on discrimination on the basis of ethnic origin and disability. The tests were carried out for academic, monitoring, awareness-raising and legal prosecution purposes. The application of discrimination testing came along with a significant decrease of rental discrimination in both short- and long-term. The policy consisted of five concrete steps to tackle discrimination:
 - Step 1. Uninformed, proactive academic tests among real estate agents
 - Step 2. Tackling discrimination by informing the real estate agents
 - Step 3. Informed, proactive legal tests among real estate agents
 - Step 4. Reactive legal tests among 12 discriminatory agents
 - Step 5. Legal procedure against 2 discriminatory agents with evidence from the pro- and reactive legal tests

In step 1 and 2 correspondence tests were conducted by academics (the rental candidates were fictitious), in step 3, 4 and 5 a local NGO in Ghent performed correspondence and situation tests (here the candidates were volunteers), under the guidance of the academics. Everything was paid for by the local government. Afterward, implications of this case-study were discussed with the participants, such as the applicability in other contexts (it is possible, except for extreme situations), the legal aspects (see session 4) and other discrimination grounds. Special attention was paid to the difference between exclusion on the basis of the level of income of rental candidates (which is not illegal) and on the ground of the source of income (which is considered as illegal discrimination in Belgium).

- In the next part, three Equality Bodies presented other applications of discrimination tests across Europe:
 - Steffen Shah (Germany – FADA) talked about testing for digital discrimination in Germany.
 - Sandra Konstatzky and Charlotte Christoph (Austria – Ombud for Equal Treatment) shared their experiences with conducting situation testing to examine rental discrimination in Austria.
 - Jakub Konecny (Czech Republic – Public Defender of Rights) outlined their usage of situation testing to assess the accessibility of public buildings for persons with disabilities.

Session 4. Applying discrimination tests for legal purposes

- This session started with outlining the difference between aggregated testing and individual testing. For legal purposes, individual testing is required. One aims to say something about the behavior of an individual actor (e.g. a specific employer, landlord or nightclub) and not about a group/market/sector at the aggregated level.
- In general, one legal test with unequal treatment is sufficient as proof to establish the presumption of discrimination. As a consequence, the burden of proof is shifted, and the alleged perpetrator should disprove the discrimination. However, it is recommended to establish a very strong proof with more than one test to convince the judge of the presumption of discrimination.
- Two approaches to collect strong evidence were discussed:
 - Multiple tests per actor with statistical inferences at the individual level. From a statistical simulation, it appears that usually 10 correspondence tests are needed per single agent. The number of tests depends on the pattern of discrimination, the level of non-response (both candidates are not invited) and the required level of significance (how much certainty do you want). This last component is also a political or societal choice: What level of statistical certainty do we accept from situation tests? 95% certainty that discrimination happened – that may even be too high? Even 80-90% may be acceptable, but we have to keep in mind that this may lead to sanctions.

- The main caveat of this approach is that only for some specific markets multiple tests per agent are feasible (among real estate agents with many rental advertisements).
- Strong test designs at the individual level, such as trio-testing, the combination of correspondence testing with mystery shopping, and the combination of multiple sources of evidence in general are advisable (including data mining and complaints of victims).
- A few additional issues are important to consider in the case of legal testing. These issues are again dependent on the legal context of your country. So, there is no common answer for the questions below and strategic litigation is recommended.
 - Testing with fictitious candidates instead of real people is much more efficient. However, it is uncertain to which extent the judge would accept proof gathered with fictitious candidates.
 - To which extent is it allowed to record phone calls or film tests without consent?
 - How identical do test and control groups have to be? Only in terms of content of the application, or also in terms of the form (e.g. precise ending phrase, lay-out etc.). In Belgium, this appeared to be dependent on the specific judge.
- In the next part of this session, Rik Reusen (Belgium, Unia) shared the best practice of legal testing to proof discrimination on the Belgian housing and labour markets.
 - Unia's goal is to conduct pro-active testing with individual consequences on a big enough scale to change the behaviour of employers, schools, real estate agents or night club owners that do discriminate.
 - He focused on the strong example of the city of Ghent and precisely on the recent legal testings that have been conducted on the labour market. In this case, there was collaboration between an NGO, Unia, the local government, and the academic sector. Following the test results, Unia will send out a formal notice to circa 20 discriminatory employers asking for elements that could explain the difference in reaction without it being discrimination and requesting preventive measures that would effectively prevent this from happening again. If the answer falls short, a civil lawsuit will be initiated by Unia.

Session 5. Why are discrimination tests not used more often?

- The central issue during the final session was the observation that discrimination tests are not yet widely used, although they are excellent instruments to examine, monitor and proof discrimination on the basis of several grounds.
- The trainer first addressed a few ethical concerns, among which the issues of so-called 'provocation' or 'entrapment', the absence of informed consent, and the potential 'nuisance' of tested organizations and testers. In addition, attention was paid to a few political objections against the use of discrimination tests. With respect to the political context, it is crucial to have a convincing narrative to 'sell' discrimination tests (especially when it

concerns racial and ethnic discrimination). A potential narrative could be built around the defense of human rights. Here, it is important to include many discrimination grounds to make the narrative as inclusive and encompassing as possible. In the case-study of the Belgian city Ghent, an explicit choice was made to test on different grounds, some of which are widely accepted in society (public opinion is generally against discrimination on the basis of disability) and others more polarizing (e.g. ethnic discrimination). In addition, a coalition was built to create and sell the narrative between a local NGO, an EB, the local government and the academia. Finally, one could also choose to start with academic testing, subsequently followed by testing to raise awareness, and finally end with legal testing (the most controversial form of discrimination testing).

- During the session there was much room for discussion. Participants shared several concerns with respect to the use of correspondence tests, such as:
 - The lack of financial and/or personnel resources to conduct correspondence and situations. This is a problem for both equality bodies and civil society organizations.
 - The national legal frameworks to conduct tests are often unclear, especially with respect to use discriminations for legal purposes. Although it has already been used in several court cases in national member states and for European courts, there is still much uncertainty in some countries. Hence, there is room for strategic litigation to clarify the legal contexts.
 - There are also concerns with respect to the safety and psychological protection for the testers (often employees or volunteers) in the case of situation testing. They should not bear negative consequences of participating in discrimination tests, and psychological care should be given afterwards (e.g. how to cope with the repeated experience of being discriminated during the testing?).
 - A potential strategy for the future to overcome these concerns is to share within Equinet and its working groups (European) project calls for funds (e.g. AMIF funds); legislative initiatives or interpretations of law; and technical standards and best practices of discrimination testing.

Take-aways from the training

A few take-aways could be listed from the two-days training:

1. Discrimination tests could be used to test objectively discriminatory behaviour in different field settings (ranging from housing and hiring, to the accessibility of public buildings and the access to restaurants and nightclubs). One can test many grounds of discrimination, but the most common are ethnic origin, disability, age, gender, and sexual orientation.
2. Discrimination tests could be used for several purposes. Four aims are distinguished: research, policy evaluation, awareness raising and collecting proof for legal procedures. In other words, it is not only about studying discrimination, but also about tackling discrimination. The case-study of Ghent shows that the tests could be applied for all four objectives.
3. There is much interest to apply these tests among the Equality Bodies, but there is a need for more financial resources, protection for volunteers and legal clarifications about the concrete conditions of legal tests.
4. Two things are essential for successfully tackling discrimination through discrimination tests. One the one hand, controlling the narrative about the testing: it is about guaranteeing human rights, not about annoying employers and landlords. On the other hand, building coalitions between equality bodies, NGOs, academics, and sometimes also (local) governments. Here, they need to collaborate, each within their specific role, for the common aim of fighting discrimination.

Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gov.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gov.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 Ombudswoman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudsman 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.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
ncpe.gov.mt

MOLDOVA

Equality Council
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.kszd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
bip.brpo.gov.pl

PORTUGAL

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

PORTUGAL

Commission for Equality in Labour and Employment
cite.gov.pt/web/pt

ROMANIA

National Council for Combating Discrimination
www.cncd.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.igualdad.gob.es

SPAIN

Institute of Women
www.inmujeres.gob.es

SWEDEN

Equality Ombudsman
www.do.se

UKRAINE

Ukrainian Parliament Commissioner for Human Rights
www.ombudsman.gov.ua

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

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