

Access to justice in cases of discrimination in the EU – Steps to further equality

Articles 21 and 47 falling under the Titles ‘Equality’ and ‘Justice’ of the Charter of Fundamental Rights of the European Union guarantee, respectively, the right to non-discrimination, and to an effective remedy and a fair trial, including access to justice.

Policy context

The principle of non-discrimination is firmly established in European Union (EU) legislation and includes provisions relating to access to justice. Article 7 of the Racial Equality Directive and other equality directives, such as the Employment Equality Directive, the Gender Goods and Services Directive, and the Gender Equality Directive (employment and occupation) recast, contain provisions to this effect.

Moreover, the Racial Equality Directive, the Gender Goods and Services Directive, and the Gender Equality Directive require EU Member States to designate a body (or bodies) which:

- provides independent assistance to victims of discrimination in pursuing their complaints;
- conducts independent surveys concerning discrimination;
- publishes independent reports and makes recommendations on any issue relating to such discrimination.

Key issues

What are the obstacles for those who have been discriminated against to gain access to justice? What incentives exist to encourage potential complainants to try to access justice when warranted? What are some of the concrete measures taken to improve access to justice in EU Member States?

Related FRA work

In addressing these questions, the European Union Agency for Fundamental Rights (FRA) approaches the concept of

access to justice broadly, encompassing judicial as well as non-judicial means of accessing justice. A FRA report, *Access to justice in cases of discrimination in the EU – Steps to further equality*, examines the process of seeking redress in cases of discrimination. It provides evidence based on fieldwork interviews concerning discrimination cases. The report supplements a 2011 FRA legal report, *Access to justice in Europe: an overview of challenges and opportunities*, which analysed national-level court cases.

Methodology

To capture the various models of access to justice in cases of discrimination across the EU, the FRA selected eight EU Member States for closer scrutiny: Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Italy and the United Kingdom. In addition to the geographic spread, this selection presents a range of systems that diverge from each other in history, structure, scale and institutional mandate. The research explores how aspects of these different systems can be enhanced and applied more broadly across the EU.

The field research comprised 371 in-depth interviews, conducted in the eight EU Member States, using semi-structured questionnaires with persons who had brought a complaint on discrimination grounds, as well as some interviews with persons who had decided not to pursue a complaint further. In addition, lawyers, representatives of non-governmental organisations (NGOs) providing advice and support to complainants and representatives of equality bodies were interviewed.

The complainants interviewed differed as to their personal characteristics – such as gender, age or ethnicity – as well as to the ground/s on which they had suffered discrimination. A quarter of complaints related to race or ethnic origin and a quarter to gender, two fifths to disability, and fewer than a tenth, respectively, to religion or belief, age and sexual orientation.

Evidence-based advice

The FRA findings reveal what appear to be systemic shortcomings in accessing justice in the EU. These relate to structures and procedures used to claim fundamental rights, as well as to issues of practical support for victims. For instance, almost half of the complainants interviewed said that they were not provided with any institutional support on how to lodge a complaint and about one quarter said they informed themselves about the relevant procedure(s). Intermediaries and complainants further described the political and social climate in almost all eight EU Member States under examination as being hostile towards many of the groups experiencing discrimination and also towards measures that aim to combat discrimination. Despite the impact of austerity measures on different public services, the FRA findings indicate that access to justice – with respect to discrimination cases – is in need of improved service provision.

The evidence from this research should prove useful for the EU when it strengthens legislation on institutional requirements and promotes improvement of existing practices, as well as for EU Member States pursuing reform of institutions and mechanisms. The following enhancements would improve access to justice.

Structures

- Make it easier for complainants to determine which institution they need to address. At present, the number of paths available makes this difficult.
- Clarify legal definitions of discrimination and standardise legal provisions regarding all grounds or areas of discrimination to simplify equal treatment legislation, both at the national and EU levels.
- Bridge the physical distance to first contact points when accessing justice. To do this, equality bodies and other institutions that deal with discrimination cases could cooperate closely with local authorities, NGOs or community organisations; establish a regular or permanent regional presence; and, possibly, use member organisations or other established networks, such as trade union or employee representatives. Institutional cooperation agreements and cross-referral systems could also help complainants navigate justice systems.

- Make greater use of non-judicial mechanisms, which can be a cost-efficient and effective way to supplement traditional justice mechanisms.

Procedures

- Dispense with a number of limiting factors, such as: the currently narrow concept of legal standing to bring a case; a lack of ‘equality of arms’ between those involved in a case; a lack of protection for complainants and witnesses from victimisation; insufficient awareness of equality legislation on the part of judges; and the inadequate application of a provision in EU law that shifts the burden of proof.
- Provide quality legal advice and assistance to victims of discrimination.
- Guarantee sufficient powers of investigation and adequate resources for equality bodies and administrative/judicial institutions.

Support

- Improve complainants’ access to legal aid or legal insurance to cover costs, which intermediaries indicate helps to determine whether complainants can access justice.
- Develop quality communication strategies, including outreach initiatives targeting particular groups and tailoring information to their specific needs. This requires adequate human and financial resources and accessible information, which avoids technical, legal jargon, when promoting rights awareness and services.
- Have public bodies serve as models of good practice. Effective communication strategies, cooperation with the media and better knowledge among media providers all help to encourage respect for fundamental rights.

Further information:

The FRA report on *Access to justice in cases of discrimination in the EU – Steps to further equality* is available at: <http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality>

For an overview of FRA’s work on access to justice, see: <http://fra.europa.eu/en/theme/access-justice>