

JUSTICE

Country codes

| | |
|----|----------------|
| AT | Austria |
| BE | Belgium |
| BG | Bulgaria |
| CY | Cyprus |
| CZ | Czech Republic |
| DE | Germany |
| DK | Denmark |
| EE | Estonia |
| EL | Greece |
| ES | Spain |
| FI | Finland |
| FR | France |
| HU | Hungary |
| HR | Croatia |
| IE | Ireland |
| IT | Italy |
| LT | Lithuania |
| LU | Luxembourg |
| LV | Latvia |
| MT | Malta |
| NL | Netherlands |
| PL | Poland |
| PT | Portugal |
| RO | Romania |
| SE | Sweden |
| SI | Slovenia |
| SK | Slovakia |
| UK | United Kingdom |



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

This report addresses matters related to the principle of non-discrimination (Article 21), and the right to an effective remedy and a fair trial including access to justice (Article 47) falling under Titles III 'Equality' and VI 'Justice' of the Charter of Fundamental Rights of the European Union.

The FRA highlights the chapters of the EU Charter of Fundamental Rights by using the following colour code:

| | |
|---|------------------|
| ■ | Dignity |
| ■ | Freedoms |
| ■ | Equality |
| ■ | Solidarity |
| ■ | Citizens' rights |
| ■ | Justice |



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Access to justice in cases of discrimination in the EU

Steps to further equality

Foreword

To combat discrimination, people must first recognise that they have suffered a violation of their fundamental right to equal treatment and then be emboldened to seek redress, pursuing justice through accessible and effective channels. The goal must be a robust fundamental rights culture that encourages people whose rights have been infringed to stand up for themselves and lodge their complaints.

This report by the European Union Agency for Fundamental Rights (FRA) examines the process of seeking redress in cases of discrimination. It provides a sociological perspective on complaints filed on the basis of discrimination, supplementing a 2011 FRA legal report which analysed national-level court cases. By interviewing those involved in the complaints process in eight EU Member States, 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 and to issues of practical support for victims. While taking into account the context of selected EU Member States, the report suggests ways to improve the situation across the EU. If the EU is to continue on its path towards more equal societies, then access to justice must be enhanced, despite the financial crisis and government attempts to reduce spending on non-discrimination work and fundamental rights more broadly. Non-judicial mechanisms can be a cost-efficient and effective way to supplement traditional justice mechanisms.

This report contributes to making justice accessible by providing a detailed analysis of what the EU Member State bodies that deal with cases of discrimination do to support possible victims of discrimination and offer them redress. The research examines whether the measures that are in place are effective, and looks at what is needed to enhance them – aiming to leverage access to justice to secure a broader and more robust fundamental rights culture. The report analyses the factors obstructing effective remedies, such as the complexity of the complaints system, which discourage people from bringing cases and reinforce victims' feelings of helplessness. It considers, too, the factors that best enable effective remedies, such as legal advice.

FRA research findings have contributed to enriching knowledge in the discrimination field. The FRA has, for example, addressed the implications of EU legal requirements for EU Member States' data protection authorities and equality bodies. The European Union Minorities and Discrimination Survey (EU-MIDIS) concentrated on the extent of discrimination and frequency of reporting on fundamental rights violations; its results demonstrate a pattern of extensive discrimination and underreporting by selected ethnic minorities and immigrant groups. Other FRA reports have dealt with discrimination against groups such as lesbian, gay, bisexual and transgender people (LGBT), Roma, and persons with disabilities. A forthcoming report will examine multiple discrimination in access to healthcare.

The evidence from this research should prove useful for the EU when it strengthens legislation on institutional requirements and promotes improved practices, as well as for EU Member States pursuing reform of institutions and mechanisms.

Morten Kjaerum
Director

Acronyms

| | |
|----------|--|
| CEOR | Centre for Equal Opportunities and Opposition to Racism (<i>Centre pour l'Égalité des Chances et la Lutte Contre le Racisme; Centrum voor Gelijkheid van Kansen en voor Racisme Bestrijding</i>) (Belgium) |
| CPAD | Commission for protection against discrimination (<i>Комисия за защита от дискриминация</i>) (Bulgaria) |
| EHRC | Equality and Human Rights Commission (United Kingdom) |
| EU-MIDIS | European Union Minorities and Discrimination Survey |
| HALDE | Equal Opportunities and Anti-Discrimination Commission (<i>Haute Autorité de Lutte contre les Discriminations et pour l'Égalité</i>) (France) |
| IEWM | Institute for the Equality of Women and Men (<i>Institut pour l'Égalité des Femmes et des Hommes; Instituut voor de Gelijkheid van Vrouwen en Mannen</i>) (Belgium) |
| LGBT | Lesbian, gay, bisexual and transgender persons |
| NHRI | National Human Rights Institution |
| UNAR | National Office Against Racial Discrimination (<i>Ufficio Nazionale Antidiscriminazione Razziale</i>) (Italy) |



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Executive summary

This report looks at access to justice in cases of discrimination in the European Union (EU). The study's main aim is to provide insight into obstacles people who have been discriminated against face in their attempts to gain access to justice. A further aim is to explore what incentives exist to encourage potential complainants to try to access justice when warranted. The report also highlights areas for improvement, largely identified by complainants and those who provide advice on cases of discrimination, and proposes concrete measures to improve the situation.

This report views access to justice broadly, encompassing equality bodies as well as administrative and judicial institutions that deal with cases of discrimination, such as National Human Rights Institutions (NHRIs), Ombudsmen, labour inspectorates and specialised tribunals. It categorises equality bodies, which are required under EU law, as either promotion- or quasi-judicial type in nature, with the latter mandated to process complaints but not necessarily with the powers to issue a binding decision.

To capture the various models of access to justice in cases of discrimination across the EU, eight EU Member States were selected 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 diverse in history, structure, scale and institutional mandate. The research is not intended for an analysis of these specific eight systems in isolation but rather sets out to explore how such systems can apply more broadly across the EU.

For this report, 371 in-depth interviews on the basis of semi-structured questionnaires were conducted in the eight Member States. The report's conclusions and opinions are based on an analysis of the views flowing from the interviews. Specifically, the respondents were:

- 213 persons who had experienced discrimination and decided to lodge a complaint (complainants);

The complainants interviewed differed in their personal characteristics, such as gender, age and ethnicity, as well as on the ground/s under which they had experienced discrimination: a quarter on race or ethnic origin and a quarter on gender, two fifths on disability, and less than a tenth each related to religion or belief, age and sexual orientation.

- 28 persons who had experienced discrimination but decided against lodging a complaint (non-complainants);
- 95 lawyers or organisations (such as trade unions and NGOs) providing advice and assistance to complainants (intermediaries);
- 35 representatives of equality bodies (representatives).

Through these interviews and desk research, this report analyses and draws a number of conclusions clustered under three headings:

1. *structures* – the format of equality legislation and complaints mechanisms as well as structures in terms of geographical proximity to complaint mechanisms;
2. *procedures* – usability, fairness and effectiveness of procedures;
3. *support* – access to legal advice and assistance and provision of other forms of support, such as emotional, personal and moral, as well as rights awareness and accommodation of diversity, enabling access irrespective of needs such as those of persons with disabilities.

Structures

For the first of these clusters, *structures*, the report examines the legal provisions, institutional structures and paths available to potential complainants. Key research findings show that to improve access to justice, it would be beneficial to:

- make it easier for complainants to determine which institution 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 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, non-governmental organisations (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.

Collective dimensions – collective redress or complaints – Several persons who have been discriminated against join forces, reducing the individual stigma and effort of bringing a case, motivating others to take action and increasing efficiency. In such cases, organisations representing general interests, such as an equality NGO, can file complaints on behalf of individuals who are personally concerned. The individual participates either as a named complainant or anonymously.

Strategic litigation – Key cases are selected to pursue a strategic goal, such as a change in court practice. Strategic litigation is seen motivating other potential complainants to lodge complaints in similar situations. It carries the risk, however, that the bulk of cases go unresolved.

Amicus curiae – Friend-of-the-court contributions are legal briefs which offer substantive advice to help a court or similar entity reach an informed decision. The brief could include, for instance, research findings supporting the extent of discrimination in a country.

Legal standing – defines those who are legally capable of lodging a complaint.

Equality of arms – reflects the resources at the disposal of the complainant and the defendant.

Burden of proof – defines who bears the legal burden of proving a case. A shift has taken place in EU law, under which complainants no longer need to prove that discrimination actually took place, but only that it might plausibly have taken place, while the opposing side must prove that it did not take place.

Procedures

The second cluster, *procedures*, deals with fair procedures, including: timely resolution of disputes; effective remedy or redress; efficiency and effectiveness of procedures; and ‘collective dimensions’, such as broadened legal standing. Key research findings show that to improve access to justice, it would be beneficial to:

- dispense with a number of limiting factors, such as: a 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 of complainants and witnesses from victimisation; judges’ insufficient awareness of equality legislation; and the inadequate application of a new rule, namely the shift of burden of proof;

- introduce so-called collective redress, broadening legal standing;
- provide quality legal advice and assistance, protecting against victimisation and guaranteeing sufficient powers of investigation and adequate resources for equality bodies and administrative/judicial institutions;
- facilitate faster and simpler procedures as well as adequate resources to avoid undue delays and backlogs. Both the length of the procedure itself and lack of information on the possible length of the procedure often dissuade potential complainants from lodging or pursuing a complaint;
- empower quasi-judicial-type equality bodies and other administrative/judicial institutions to take legally binding decisions. This would include the ability to issue proportionate, dissuasive and effective decisions, including awarding compensation and targeting systemic problems. Efficient follow-up is linked to this;
- introduce provisions that could facilitate a return, where possible and requested by the complainant, to the situation before the discrimination took place – such as regaining a job. Respondents saw enabling remedies beyond mere and often low financial compensation as essential in this respect;
- meet complainants’ goals in discrimination cases. Complainants mentioned four preferred outcomes: termination of discrimination; recognition of discrimination; achievement of a favourable change in their situation; and prevention of discrimination to protect others in the future. Less than one-tenth of complainants mentioned monetary compensation as their primary goal.

Support

The third cluster, *support*, relates to the provision of legal advice and representation, other forms of support, awareness of rights, the creation of a ‘fundamental rights culture’, and accommodation of diversity. Key research findings show that to improve access to justice, it would be beneficial to:

- improve complainants’ abilities to access legal aid or to use legal insurance to cover costs, which intermediaries say helps determine whether complainants can access justice;
- help ensure easy accessibility and availability of legal advice and support during the entire procedure. A majority of complainants interviewed were satisfied with the legal advice and support they received and had a high opinion of the professionals who represented them, though this result may be coloured by the fact that the majority of those interviewed had decided to pursue their complaint and had also volunteered to take part in this study;



- 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. Almost half of the complainants said, however, 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);
- have public bodies serve as models of good practice. Effective communication strategies, cooperation with the media and enhanced knowledge among media providers all help to encourage respect for fundamental rights. Intermediaries and complainants described the political and social climate in almost all Member States, however, as hostile towards combating discrimination and towards certain groups experiencing discrimination;
- accommodate diversity among complainants. Respondents viewed procedures to identify and adequately respond to differences in needs as well as awareness of and competence in these issues as key. Further steps must also be taken to deal with the practical implications of diversity implicit in all the grounds covered by the EU equal treatment directives.

Opinions

The European Union Agency for Fundamental Rights (FRA) has formulated the following opinions based on the findings in this report and previous research.

Earlier evidence-based advice from the FRA has underscored the need to address major under-reporting of discrimination as well as of fundamental rights violations more broadly. This report identifies a number of areas where measures could bring concrete improvements. The EU, EU Member States, institutions and mechanisms involved in providing access to justice, in this case related to non-discrimination, could all take action to improve the present situation.

Structures – minimise complexity and maximise accessibility

The EU should upgrade its legal framework to secure genuine access to justice by, for instance, ensuring the independence, to a uniform standard, of equality bodies and other institutions involved in the justice system. It should insist on genuinely effective mechanisms that are sufficiently resourced. EU Member States should review their overall national systems for accessing justice with a view to minimising complexity. The EU and its Member States should also maximise accessibility by, for instance, reducing the fragmentation of legal provisions between grounds and areas of discrimination and by making procedures simple and transparent and decisions clear and binding.

Equality bodies and other institutions with an equality remit need to maintain a competent regional/local presence, either by establishing a local presence or by supporting, linking and cooperating with local organisations or offices. While financial austerity might require streamlining, it should and need not be to the detriment of access to justice, given that non-judicial institutions can improve such access while possibly reducing the overall cost of the justice system. To reduce complexity, equality bodies should take the lead in forging networks and promoting collaboration and cross-referral between relevant justice system organisations and institutions. Such moves, however, should not compromise the institutions' independence. The internet and related tools can support and supplement such outreach initiatives.

The 2010 FRA report on *National Human Rights Institutions in the EU Member States (Strengthening the fundamental rights architecture in the EU I)*, included the following opinion:

“There is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions – such as a visible and effective overarching [institution] that can act as a hub to ensure that gaps are covered and that all human rights are given due attention.”

Procedures – enhance mechanisms and strengthen powers

To secure genuine access to justice, procedures for claiming rights need to be enhanced. The decisions of ‘quasi-judicial-type’ equality bodies, those that are mandated to process cases, should be legally binding. Even though the symbolism of decisions is important, to be effective, any redress awarded should be proportionate to the damage done and sufficiently substantive to actually compensate those injured and dissuade potential perpetrators. The redress awarded should also be able to improve the situation of the complainant as well as others in similar circumstances.

Procedural guarantees need improvement to ensure they provide for a fairer distribution of legal burdens between the parties in discrimination cases. One approach would be the proper application of the EU-legislated shift of burden of proof, which favours the complainant once a reasonable likelihood of discrimination has been established.

To encourage those who have been discriminated against to lodge complaints, the right to make a legal claim should be broadened to permit complaints by multiple claimants. Equality bodies and other justice system institutions must have sufficient resources and powers to ensure that cases of strategic importance are processed and that a critical mass of cases – sufficient to instil a ‘culture of compliance’ with equality legislation – is reached.

Reasonably fast legal proceedings followed by effective enforcement are key to good process. Thus, it is essential that equality bodies and the other relevant institutions are equipped with proper procedures, sufficient powers and adequate resources to make use of these procedures and powers. Legal inquiries should be used to examine systemic problems, in particular in areas where complainants are unlikely to come forward. Effective follow-up procedures are also needed to monitor the practices of those institutions that have been found to discriminate in a systematic way.

In the 2011 FRA report on *Access to Justice in Europe: an overview of challenges and opportunities*, the opinions included:

“The introduction of [...] quasi-judicial procedures available before some of the equality bodies, may help to ensure access to justice by providing a faster and cheaper alternative to claimants. Those Member States that have not endowed equality bodies with these powers could consider doing so. In this regard it should be noted that equality bodies require adequate resources to carry out this function.”

“Narrow rules relating to legal standing prevent civil society organisations from taking a more direct role in litigation. EU non-discrimination law requires Member States to allow associations (NGOs) or trade unions, to engage in judicial or administrative proceedings on behalf of or in support of claimants. Beyond this area of law such entities are allowed to initiate legal proceedings in only some Member States. Most Member States allow for public interest actions (actio popularis) in relation to environmental cases according to their obligations under the Aarhus Convention. This suggests that broader rules on legal standing are acceptable in principle, and Member States should consider widening their rules on standing in other areas of law.”

In the 2012 FRA report on the *Racial Equality Directive: application and challenges*, the conclusions included:

“Consideration could be given to taking measures that widen access to complaints mechanisms, including: broadening the mandate of equality bodies that are not currently competent to act in a quasi-judicial capacity; relaxing the rules on legal standing for NGOs and other civil society organisations; increasing funding for voluntary organisations in a position to assist victims. In light of the fact that victims are often reluctant to bring claims, allowing civil society organisations, including equality bodies, to act of their own motion in bringing claims to court or conducting investigations, without the consent of a victim, or without an identifiable victim, could constitute an important step towards facilitating enforcement.”

Regarding legal costs:

“Consideration should be given to alternative or complementary measures available in some Member States, such as: agreed limits on legal fees, waiving court fees for claimants in financial difficulty, and legal insurance. Consideration should also be given to promoting practices such as the delivery of support through legal advice centres or pro bono work, while ensuring that these are complimentary to and not a substitute for an adequately resourced legal aid system. The introduction of simplified procedures where individuals are not required to be represented through a lawyer should also be considered, while ensuring that adequate safeguards are in place to guarantee their rights and their ability to participate effectively in proceedings.”

Support – accommodate diversity and ensure a fundamental rights-based context

Support structures are essential for effective access to justice in cases of discrimination. Legal experts must be available to provide information, advice and guidance on available mechanisms, while counsellors are needed to provide, for example, psychological support. Here, the EU should stipulate minimum and uniform standards of support.

All those who have been subjected to discrimination should have access to support on an equal basis, irrespective of, for example, language ability or impairments. This means ensuring the availability of accessible information and assistance as well as procedures that are responsive to different needs.

Legal measures that protect against re-victimisation of complainants and witnesses must be put in place and related information provided.

Awareness-raising on equality and diversity is also important and a task for relevant institutions, such as equality bodies. From the general public to judges who deal with discrimination cases, awareness is needed on fundamental rights in general and on equality issues in specific. Judges in particular must also be informed about EU equality legislation, both with respect to the substantive content as well as to the related procedures. A fundamental rights culture should be the goal – where justified claims are not discouraged – in order to ensure access to justice for all.



In the 2010 FRA report *EU-MIDIS Data in Focus 3: Rights Awareness and Equality Bodies*, recommendations included:

“Knowledge about organisations where complaints about discrimination can be made needs to be significantly enhanced throughout the EU. In particular, Equality Bodies that have been mandated to receive complaints about discrimination should have the means and resources to be able to undertake this task in practice. Herein there is a need to review the current and planned provision of resources to Equality Bodies so that they are able to address the needs of members of the public who can report incidents of discrimination to them. In addition, Equality Bodies need the resources to undertake campaigns to advertise their existence.”

Introduction



This report provides insight into the obstacles and incentives for complainants to gain access to justice. It focuses on equality bodies but also looks at other institutions which deal with cases of discrimination, such as National Human Rights Institutions, Ombudspersons, labour inspectorates, specialised tribunals and courts. The report does not, however, examine alternative dispute resolution, in the sense of mediation, except in cases of litigation before a court or similar institutions.

The principle of non-discrimination is firmly established in EU law and EU legislation in and includes provisions relating to access to justice. For example, Article 7 of the Racial Equality Directive provides that:

“Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them”.¹

Other equality directives, such as the Employment Equality Directive,² the Gender Goods and Services Directive³ and the Gender Equality Directive (employment and occupation) recast,⁴ contain equivalent provisions.

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;

Accessing justice in a complex system: is anyone responsible?

An Austrian woman who served at a bank as an official for 40 years suffered age-related discrimination and wished to complain. She turned to the Equal Treatment Commission (*Gleichbehandlungskommission*), which is responsible for public service employees, and to the Ombudsman for Equal Treatment of Federal Officials (*Anwaltschaft Gleichbehandlung-Bund für Bundesbeamte*) in the Federal Ministry of Finance. Neither institution, however, would take on her complaint, because their mandates did not cover her case: a public employee working for a hived-off former government business. The complainant then turned to the Ombudsman for Equal Treatment in the World of Work (*Anwältin für Gleichbehandlung in der Arbeitswelt*), responsible for the private sector of commerce and industry, which also initially declined to handle her complaint for the same reason as the first two bodies, but then took action before finally resolving the jurisdictional issue.

In the end, the Austrian Ombudsman Board stepped in for the complainant, saying that questions of jurisdiction should not hinder the provision of prompt advice and help. In this case, the complainant had been an official who was later assigned for service at a hived-off undertaking supervised by the Federal Ministry of Finance. Under the law, she remained an Austrian government employee. As a result, the equal opportunities institutions she first turned to did, indeed, have jurisdiction over her case. In the end, the woman’s employer sent her a reconciliation offer which she accepted.

Source: Austrian Ombudsman Board: Annual Report – Summary 2006, pp. 91-94

1 Council Directive 2000/43/EC, OJ 2000 L 180, p. 22.

2 Council Directive 2000/78/EC, OJ 2000 L 303, p. 16.

3 Council Directive 2004/113/EC, OJ 2004 L 373, p. 37.

4 Council Directive 2006/54/EC, OJ 2006 L 204, p. 23.

- conducts independent surveys concerning discrimination;
- publishes independent reports and makes recommendations on any issue relating to such discrimination.

The body or bodies designated on the basis of the provisions of these three directives are generally referred to as equality bodies and “[...] may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights.”⁵ It is important to underscore that, as a consequence, EU law requires EU Member States to designate equality bodies.

Equality bodies can in practice be divided into two basic types: promotional or quasi-judicial.⁶ EU Member States have one or the other or both – forming three categories of systems. Promotion-type equality bodies spend the bulk of their time and resources on activities that support good practices in organisations, raise awareness of rights, develop a knowledge base related to equality and non-discrimination and provide legal advice and assistance to individual victims of discrimination. Quasi-judicial-type equality bodies, on the other hand, focus their time and resources on hearing, investigating and deciding on individual cases of discrimination. Some equality bodies also combine these two characteristics, while some states have both types of bodies. Predominantly quasi-judicial equality bodies could theoretically fall within the category of the earlier mentioned administrative/judicial institutions, but this report deals with them separately.

FRA ACTIVITY

Equality bodies as part of the fundamental rights landscape

In FRA’s Annual Report 2011, the Focus section looked at ‘Bringing rights to life: the fundamental rights landscape of the European Union’. The section described the situation at the national level and discussed equality bodies and their roles.

For more information, see the ‘Focus’ section of FRA (2012), Fundamental rights: challenges and achievements in 2011. Annual report 2011, Luxembourg, Publications Office, p. 12-16, available at: http://fra.europa.eu/fraWebsite/attachments/FRA-2012_Annual-Report-2011_EN.pdf

The EU equal treatment directives do not specify how equality bodies should be structured. The United Nations standards for human rights institutions, the Paris Principles,⁷ and the Council of Europe’s European

Commission against Racism and Intolerance’s (ECRI) General Recommendations No. 2⁸ and No. 7⁹ on ‘specialised [equality] bodies’ offer guidance on the establishment and operation of such bodies. The Annex provides an overview of designated equality bodies in the 27 EU Member States, including their type and which grounds of discrimination they are mandated to cover. Although minimum standards are lacking, EU harmonisation in this area makes it possible to compare access to justice across EU Member States.

FRA ACTIVITY

Mapping National Human Rights Institutions

The FRA mapped institutions with a human rights remit in EU Member States, focusing on NHRIs. The 2010 report underscores the diversity of institutions and provides details on ‘accredited’ NHRIs – that is, the extent of compliance of these bodies with the relevant standards, the so-called Paris Principles.

As of October 2012, 10 EU Member States have NHRIs deemed to be in full compliance with the Paris Principles and therefore holding A-status; and an additional seven Member States have institutions with B-status that could potentially become fully compliant in the near future. Of these 17, seven Member States have equality bodies that also serve as NHRIs, including Belgium, Bulgaria, Denmark, the Netherlands, Slovakia, Sweden and the United Kingdom. In 2012, the FRA also published a guide on the accreditation process and its relevance in an EU context.

For more information, see: FRA (2010b) and FRA (2012a)

This report covers only those aspects of the EU legislation mentioned that are related to accessing justice, focusing on how those discriminated against can claim their right to equality.

The scope of access to justice

In an earlier report, the FRA broke down ‘access to justice’ into five core elements.¹⁰ The five elements selected reflect the right to a fair trial and the broader right to a remedy contained in Articles 6 and 13 of the European Convention on Human Rights (ECHR), Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights and Article 47 of the Charter of Fundamental Rights of the European Union. Together, they encompass a broad concept of judicial as well as non-judicial means of accessing justice. The five elements are:

5 See, for example, Council Directive 2000/43/EC, OJ 2000, Art. 13 (1).
6 Predominantly promotion-type bodies could rightly be termed ‘promotional and legal advice’ but for convenience, this report uses the shorter form. In the literature, quasi-judicial-type bodies are sometimes referred to as ‘tribunal-type’.
7 United Nations General Assembly (1993).

8 ECRI (1997).
9 ECRI (2002).
10 FRA (2011b), p. 14.

- right to effective access to justice;
- right to fair proceedings;
- the right to timely justice;
- the right to adequate redress;
- the principle of efficiency and effectiveness.

To sufficiently address access to justice in discrimination cases at the level of detail required by this research, a further nuancing of these five elements is helpful. Research and surveys such as EU-MIDIS have demonstrated that a variety of factors contribute to low levels of reporting in cases of discrimination.¹¹

FRA ACTIVITY

Analysing non-reporting of discrimination

The FRA European Union Minorities and Discrimination Survey (EU-MIDIS), the first EU-wide survey of immigrant and ethnic minority groups' experiences of discrimination and victimisation in everyday life, sought reasons behind the underreporting of rights violations. Among the central conclusions of the 2010 report were that respondents did not know how to go about it.

- Four fifths (80 %) of all respondents (23,500 across the EU) could not think of a single organisation that could offer support to victims of discrimination – be it government, non-government or an equality body.
- When asked about the specific equality body of the country in question, nearly two thirds (60 %) had never heard of it.
- More than one third (36 %) of those who were discriminated against did not submit a complaint because they did not know how or where to do so.
- Over one fifth (21 %) of victims of discrimination did not report either because they considered the process inconvenient, bureaucratic or too time-consuming.

Source: FRA (2010a), p. 3

The concept of access to justice in cases of discrimination must reflect elements of particular relevance to victims of discrimination. These include support, not just for legal assistance and advice, but also for reporting and pursuing legitimate claims. Rights awareness and a culture of fundamental rights are other aspects of such support. Access to justice mechanisms must also accommodate the diversity among those discriminated against – whether it be varying language skills or disabilities. For victims of discrimination, effective access must incorporate approaches that reduce the stigma of individual complainants and increase the effectiveness of complaints, by allowing, for example, for 'collective dimensions', such as collective redress. Finally, effective access also hinges on procedures and institutions that are accessible. To create a framework for this research and report, the five key elements of access to justice and the more nuanced categories are clustered under three headings in Table 1: structures, procedures, and support.

Table 1: The main elements of access to justice in cases of discrimination

| | |
|-------------------|--------------------------------------|
| Structures | Complaint mechanisms and legislation |
| | Geographical distance |
| Procedures | Collective dimensions |
| | Fairness |
| | Timely resolution |
| | Effectiveness |
| Support | Legal advice and assistance |
| | Other forms of support |
| | Awareness of rights |
| | A fundamental rights culture |
| | Accommodation of diversity |

Source: FRA, 2012

For each of the three headings, this report explores barriers to, and enablers of, access to justice for those who experience discrimination both at the outset and throughout a procedure.

¹¹ FRA (2010a), p. 3.

EU legal framework: accommodating diversity

In EU equal treatment legislation, the sole explicit mention of accommodating diversity is found in the Employment Directive in relation to the ground of disability. A further exploration of the practical implications of diversity for access to justice, however, reveals the need for a broader approach to this concept, encompassing all six grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. These six grounds are listed in Article 10 of the Treaty on the Functioning of the European Union and reflect the minimum protection against discrimination coverage in EU equal treatment directives, while Article 21 of the EU Charter of Fundamental Rights includes a much longer list of grounds, including: language, membership in a national minority and property. A case in point is the draft directive on victims of crime aimed at replacing the existing Framework Decision on the standing of victims in criminal proceedings. Draft Article 5 on the right to understand and to be understood requires Member States “[...] to take measures to ensure that victims understand and can be understood during any interaction they have with public authorities in criminal proceedings, including where information is provided by such authorities.” The article should be read in light of Recital 11: “Information and advice provided [...] should as far as possible be given through a range of media in a manner which can be understood by the victim. [...] In this respect, the victim’s knowledge of the language used to provide information, their age, maturity, intellectual and emotional capacities, literacy levels and any mental or physical impairment such as those related to sight or hearing, should be taken into account.”

Each of the six grounds covered by EU equal treatment directives, or a combination of these grounds, relates to specific needs. Particular barriers may exist in connection with each of the grounds or a combination of them. Access to justice strategies need to be tailored to address the specificities of each of these, while also dealing with the shared barriers that lead to under-reporting.

Research methodology

In order to capture the various models of justice across the EU, eight EU Member States were selected for detailed fieldwork: Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Italy and the United Kingdom. This selection includes a geographic spread, a mix of ‘old’ and ‘new’ Member States and a range of justice systems. The inclusion of various types of justice systems is particularly important as this highlights the diversity of equality bodies in terms of history, structure, scale and mandate.¹²

Charter of Fundamental Rights of the European Union

Article 21 – Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

A literature review in 15 EU Member States supplemented this research. In further seven EU Member States, including Estonia, Greece, Latvia, the Netherlands, Poland, Portugal and Sweden, a literature review only was conducted.

Peer review of methodology and facts was an integral part of this process. Equality body representatives, other stakeholders and the researchers involved met twice in 2011, once at the start and again towards the end of the project. The purpose of the report was to analyse the overall EU situation. Participants agreed that opting to cover just eight states did not contradict that purpose, as it was unnecessary to delve into the details of each state to gain an overarching picture.

The FRA, together with a contracted central research team, was responsible for research design and guidance. The central research team was a consortium of the Human European Consultancy and the Ludwig Boltzmann Institute of Human Rights. From the consortium, research was conducted under the project management of the Human European Consultancy (Marcel Zwamborn, Kantjil

¹² For an overview of reports related to equality bodies, see the list of references at the end of the report. See also the website of the network of equality bodies (Equinet): www.equineteurope.org. For a report focusing on independence, effectiveness, and good practices, see: Ammer, M. *et al.* (2010).



Janssen and Ivette Groenendijk) supported by project management from the Ludwig Boltzmann Institute of Human Rights (Barbara Liegl and Katrin Wladasch). The consortium's central research team and main contributors to a draft version of this report were Ashley Terlouw, Barbara Liegl, Katrin Wladasch and Niall Crowley. They were assisted in the respective Member States by a team of researchers: Austria (Barbara Liegl, Katrin Wladasch and Monika Mayrhofer), Belgium (Julie Ringelheim, Victoria Vandersteen and Jogchum Vrieling), Bulgaria (Margarita Ilieva, Daniela Furtunova and Stoyan Novakov), the Czech Republic (Pavla Boučková and Miroslav Dvořák), Finland (Tuomas Ojanen, Milla Aaltonen and Outi Lepola), France (Daniel Borillo and Vincent-Arnaud Chappe), Italy (Mario Di Carlo and Marco Alberio) and the United Kingdom (Caroline Gooding and Jane Aston). The FRA drafted the final report.

The FRA would also like to acknowledge the contribution of the representatives of equality bodies, other relevant organisations and individuals who took part in the research and the peer review process. It also thanks the many persons who experienced discrimination and were willing to come forward and share their stories.

Fieldwork

The fieldwork, carried out in 2011, consisted of face-to-face and telephone interviews with 371 persons. In each of the eight Member States, a minimum of 46 interviews were conducted. The four groups of people interviewed were:

1. complainants – those who felt they had been discriminated against and had pursued a complaint (213 interviews);
2. non-complainants – those who felt they had been discriminated against but then decided not to lodge a complaint, or lodged a complaint, but then withdrew it during the procedure (28 interviews);
3. intermediaries – lawyers, organisations such as non-governmental organisations (NGOs), trade unions, and victim support organisations and other professionals involved in advising and supporting complainants (95 interviews);
4. representatives – of equality bodies and administrative and judicial institutions (35 interviews – with equal distribution between bodies if more than one per Member State).

The majority of complainants interviewed for this report were identified as such because they had brought a claim under equal treatment legislation; only 28 were non-complainants, or those who had opted not to lodge a complaint. The group of complainants interviewed is not representative of all people who have experienced

discrimination, since research shows that many people who experience discrimination do not lodge a complaint. Three fifths of those interviewed were women and another three fifths had university degrees.

Moreover, the composition of the group of complainants was atypical: almost half of the complainants and non-complainants were approached and interviewed after equality bodies named them as potential respondents. The selection thus over-represents those who have experienced discrimination and lodged a complaint with or via an equality body.

Like the group of complainants, the group of intermediaries represented an atypical selection. Representatives of equality bodies, complainants or the contributing researchers' professional network suggested the respondents in this category and their numbers were small. Lawyers represented the largest group among the intermediaries interviewed, including lawyers specialised in equal treatment law. Lawyers and representatives of NGOs were interviewed in all eight Member States.

Other characteristics of all the interviews:

- three fifths were conducted in capital cities;
- most involved face-to-face interviews (261) but, to accommodate respondents and allow for a more balanced geographical spread, the research also used telephone interviews (105) and some interviews combined both techniques (5).

Of the complainants and non-complainants, the following characteristics applied:

- more than three fifths were women;
- three fifths had a university level education.

As to the grounds on which the complainants and non-complainants had experienced discrimination, one quarter concerned race or ethnic origin, and another quarter, sex. A fifth related to disability, while 5-10 % respectively of those interviewed experienced discrimination based on religion or belief, age and sexual orientation. Also, the complainants and non-complainants interviewed did not cover all fields recognised under the EU equality directives, such as housing.

The relative non-representative nature of the respondent sample was anticipated. It is in line with both the research design and the aim of the research: to gain insight into obstructing and enabling factors for complainants to pursue complaints and gain access to justice in general. The fact that the sample of complainants interviewed had a higher level of education than society in general does not contradict the finding that the systems are complex to access – on the contrary. Still,

where the sample of respondents is of significance to the outcome, the report raises these concerns. The conclusions and opinions of this report are based on an analysis of the collective view flowing from the interviews with the four categories of respondents.

Structure of the report

This introductory section deals with the main methodological issues relating to the report: the elements of the concept of access to justice and research methodology. Chapter 1 provides an overview of the access to justice systems in the eight selected Member States.

The following three chapters (2-4) correspond to the three main clusters of the core elements of access to justice: structures, procedures and support. Each of these chapters first describes the experiences and views of complainants and non-complainants followed by the views of representatives and intermediaries. Representatives work at equality bodies and administrative/judicial institutions while intermediaries are, for example, lawyers and NGOs. These groups are only broken down into their component parts when necessary.

Specifically, Chapter 2 analyses the findings on institutional structures and the paths available to complainants, and considers the geographical accessibility of support or complaint mechanisms. Chapter 3 examines the findings on procedures, including broadened legal standing, fair proceedings, timely resolution of cases, effective remedies and redress and efficiency and effectiveness of procedures. Chapter 4 looks at support in cases of discrimination, focusing on legal advice and assistance, and including emotional, personal and moral support as well as awareness of rights and accommodation of diversity. Examples of promising practices collected during fieldwork are interspersed throughout the report in text-boxes. The report also quotes some of the interviews.



1

Systems of justice: examples from EU Member States



The EU directives on equal treatment and non-discrimination require EU Member States to ensure the availability of judicial and/or administrative procedures to people who consider themselves victims of discrimination under the scope of the directives.¹³ To facilitate comparisons, the justice systems in cases of discrimination in the eight selected EU Member States can be grouped, like the equality bodies, into three categories: predominantly quasi-judicial type, predominantly promotion type or a mix of these two types.¹⁴ Under this classification scheme, equality bodies are coupled with courts as well as other institutions with an equality remit.

Type 1: Quasi-judicial-type equality bodies and courts

Systems of this first type provide two ways of obtaining a decision in cases of discrimination, either through equality bodies or courts. The advantage of quasi-judicial-type equality bodies over courts is that their procedures are 'low threshold': less costly, simpler and more specialised in cases of discrimination. Quasi-judicial-type equality bodies may, however, have limited powers to impose sanctions or award compensation. In addition, to be legally binding, such decisions may need to be referred to a court of law. Diverting discrimination cases to quasi-judicial-type equality bodies also risks hindering mainstream courts from developing expertise in the area of equality and forging jurisprudence.

Type 2: Promotion-type equality bodies and courts

Such systems provide assistance to victims of discrimination in accessing the justice system, promoting rights awareness among potential complainants and fostering a culture of fundamental rights in society. Such systems, however, do not offer complainants a choice of paths for redress of discriminatory treatment; a victim can only obtain a decision through the courts.

Type 3: Promotion-type and quasi-judicial-type equality bodies and courts

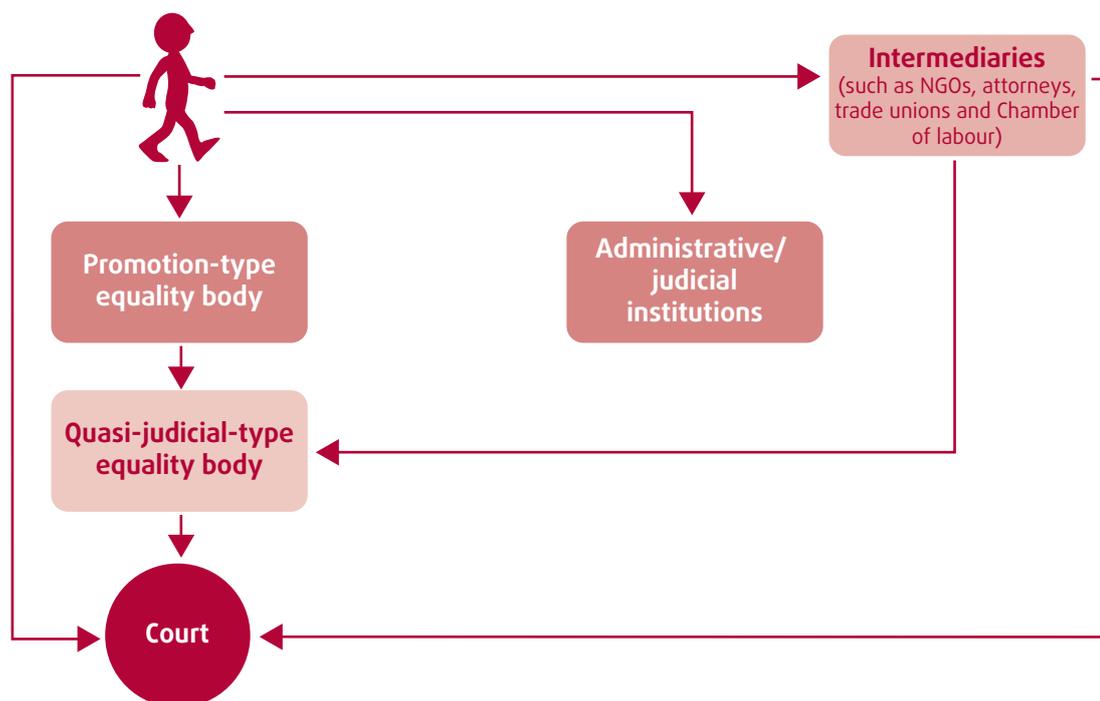
These systems offer the same two paths as in Type 1 but are supplemented by a promotion-type equality body.

To facilitate comparison, a model figure provides a schematic picture of the different paths available to access justice. An arrow leaving a box within the Figure indicates an institution as the final stage of a path.

¹³ European Commission (2010), p. 64.

¹⁴ Please note that in this chapter national legislation will be referenced in full in the footnotes and will thus not be listed in the bibliography; for further information, see the country thematic studies on access to justice, available online at: <http://fra.europa.eu/en/country-report/2012/country-thematic-studies-access-justice>.

Figure 1: Paths to access justice – model template



Source: FRA, 2012

The following figures (Figures 2-9) illustrate the various routes a complainant must take through the justice system and also depict the role of intermediaries, promotion-type equality bodies or other entities involved. In most systems equality bodies or other administrative/judicial institutions also provide for various means of alternative dispute resolution, but this research does not deal with this topic.

Neither the figures nor the descriptions can cover all available routes or paint a comprehensive picture. This overview focuses on the role of equality bodies and other institutions with an equality remit but does not address the structures and procedures at provincial, regional or municipal level. The pictures, therefore, sketch out a simplified overview of what in actual fact can be quite complex.

In addition to the description of each state's justice system, the report provides a brief overview of the main equal treatment legislation and bodies with an equality remit. It also describes the competences of these bodies and the procedures to lodge and pursue discrimination claims.

1.1. Type 1 – quasi-judicial-type equality bodies and courts

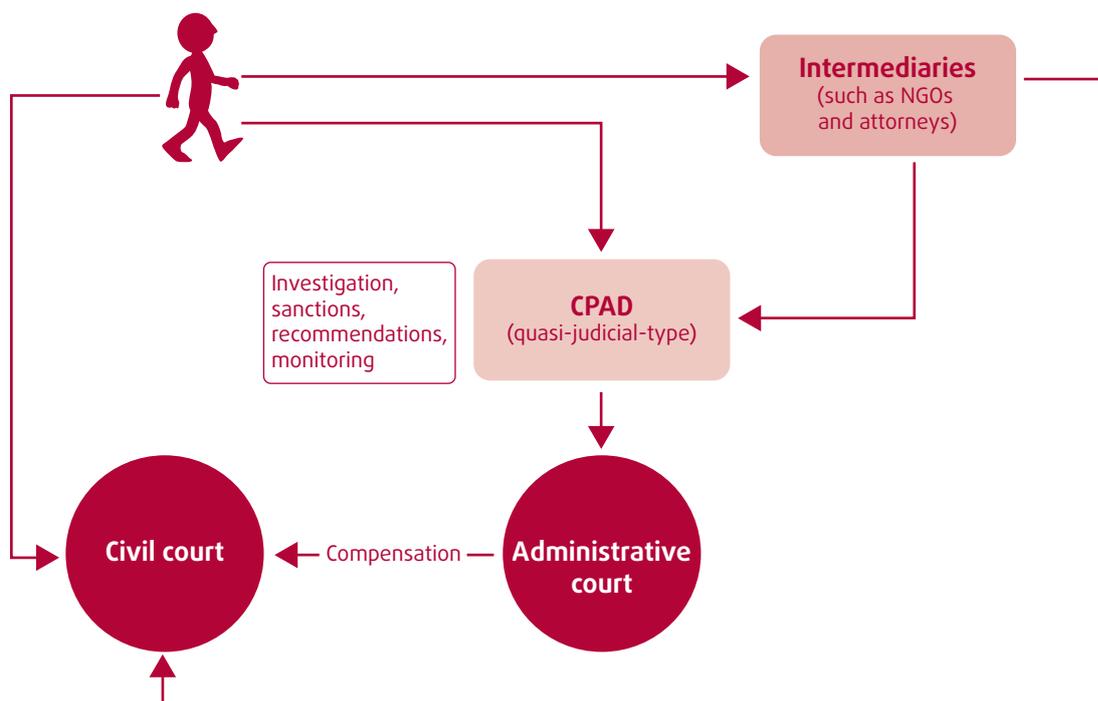
1.1.1. Bulgaria

Bulgaria transposed the Racial Equality Directive, the Employment Equality Directive and the Gender Goods and Services Directive through a single legal instrument, the 2004 Protection against Discrimination Act (*Закон за защита от дискриминация*) and the creation in 2005 of the Commission for Protection Against Discrimination (CPAD) (*Комисия за защита от дискриминация*), a quasi-judicial-type equality body.¹⁵

The law covers all six grounds of the EU equality directives as well as all other grounds protected by law or international treaties, including sex, ethnic origin, religion or belief, age, sexual orientation, disability, nationality, genetic characteristics, education, political affiliation, personal or public status, family status and property. The protection covers all areas for which EU equal treatment directives envisage protection, such as in employment, and applies that protection explicitly to all fields.

¹⁵ Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004). Last amended: SG 58 of 31 July 2012.

Figure 2: Paths to access justice – Bulgaria



Source: FRA, 2012

The Commission for protection against discrimination has a mandate to hear and investigate complaints from victims of discrimination as well as from third parties, and to start proceedings on its own initiative. CPAD issues legally binding decisions and mandatory instructions for remedial or preventive redress. The equality body can make recommendations to public authorities, including for legislative change, and can assist victims of discrimination. CPAD may also carry out independent research and publish reports.¹⁶

When a complaint is filed, CPAD initiates proceedings. Admissible cases begin with a fact-finding stage and, after a public hearing, CPAD decides on the merits of the case. CPAD cannot, however, award compensation; courts alone can do this. Once a decision determines that discrimination has occurred, the courts can, like CPAD itself, order the termination of discriminatory action, remedial action and future action or inaction. Complainants can approach courts (after an administrative court decision, a civil court must be approached) either initially or following a CPAD decision in order to claim compensation.

NGOs offer guidance, financial assistance, and other kinds of support to complainants before CPAD and the courts. Some NGOs also act on behalf of complainants or intervene as a third party in proceedings.

1.2. Type 2 – promotion-type equality bodies and courts

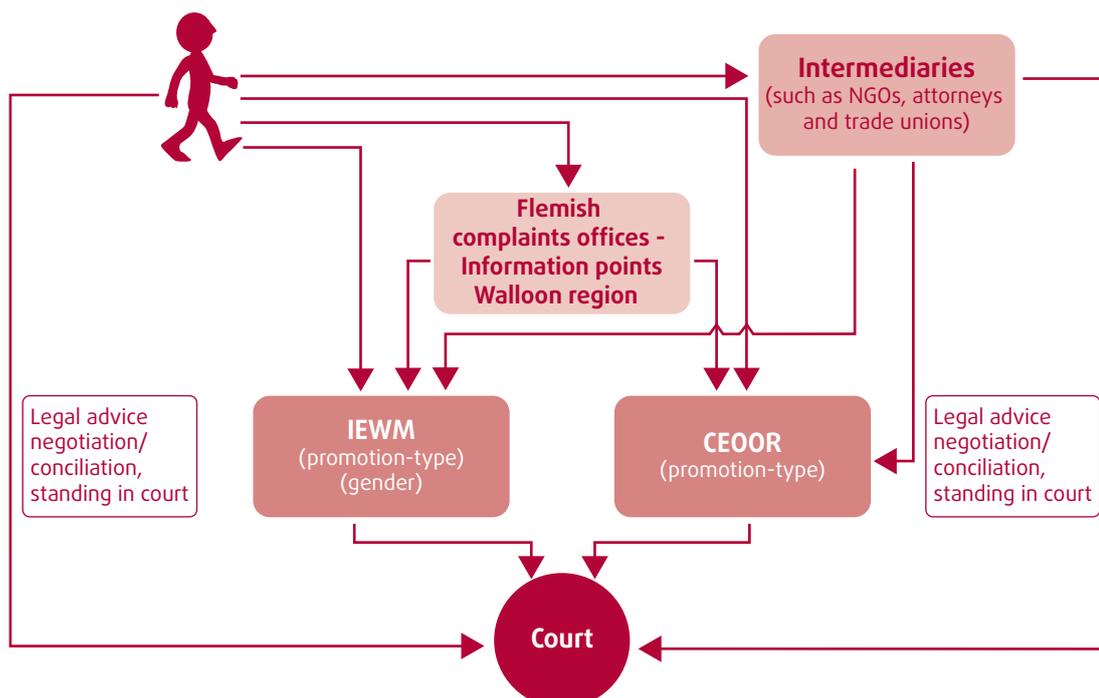
1.2.1. Belgium

Belgium transposed the Employment Equality Directive at the federal level with the Anti-Discrimination Act of 2007,¹⁷ which covers, in addition to the six grounds recognised in the EU directives: civil status, birth, wealth, political conviction, trade union membership or affiliation, language, actual or future state of health, physical or genetic characteristics and social origin.

¹⁶ European Commission (2010), p. 76.

¹⁷ Belgium, Act of 10 May 2007 aimed at combating particular forms of discrimination (*Loi tendant à lutter contre certaines formes de discrimination; Wet van 10 mei 2007 ter bestrijding van bepaalde vormen van discriminatie*), Belgian Official Journal (*Moniteur belge*) (30 May 2007). Last amendment: Act of 6 June 2010 Belgian Official Journal (*Moniteur belge*) (1 July 2010).

Figure 3: Paths to access justice – Belgium



Source: FRA, 2012

It transposed the Racial Equality Directive by means of the Anti-Racism Act¹⁸ and the Gender Goods and Services Directive and the Gender Equality Directive by means of the Gender Act.¹⁹

A wide range of largely corresponding legislation is in force at the level of the Communities and the Regions, which have their own legislative competences due to Belgium's federal structure. Legislation provides for protection in the areas of labour and goods and services as well as for economic, social, cultural or political activities.

Merging equality bodies

In July 2012, the Belgian government decided to create an 'inter-federal' institution, which will handle the work of the three regional entities, embrace both the CEOOR and the IEWM as well as a centre on migration.

For more information, see: www.diversite.be/?action=artikel_detail&artikel=772

There are two key institutions, both promotion-type equality bodies, at federal level: the Centre for Equal Opportunities and Opposition to Racism (CEOOR) (*Centre pour l'Égalité des Chances et la Lutte Contre le Racisme; Centrum voor Gelijkheid van Kansen en voor Racisme Bestrijding*) with competence for all the grounds referred to in the Anti-Discrimination Act, except sex and language, and the Institute for the Equality of Women and Men (IEWM) (*Institut pour l'Égalité des Femmes et des Hommes; Instituut voor de Gelijkheid van Vrouwen en Mannen*) with competence for the ground of sex. The Flemish Community also offers local complaints offices at the municipal level which provide initial legal advice. The Walloon region plans a similar system.

The CEOOR and the IEWM both act as the first point of reference for complainants in discrimination cases. If the respective institution deems itself to be competent in the case, it launches an examination procedure and, together with the complainant, decides how to deal with the case. In order to establish the facts of a case, the CEOOR may rely on the investigative powers of other authorities, such as the federal and regional labour inspectorates. It can opt for negotiation or conciliation, or a transferral of the case to a competent court.

¹⁸ Belgium, Act of 10 May 2007 aimed at combating particular forms of racism and xenophobia (*La loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme et la xénophobie (modifiée par la Loi du 10 mai 2007, MB 30 V 07); Wet tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden*), Belgian Official Journal (*Moniteur belge*) (30 May 2007). Last amendment: Act of 6 June 2010, Belgian Official Journal (*Moniteur belge*) (1 July 2010).

¹⁹ Belgium, Act of 10 May 2007 aimed at combating discrimination between women and men (*Loi tendant à lutter contre la discrimination entre les femmes et les hommes; Wet ter bestrijding van discriminatie tussen vrouwen en mannen*), Belgian Official Journal (*Moniteur belge*) (30 May 2007). Last amendment: Act of 6 June 2010, Belgian Official Journal (*Moniteur belge*) (1 July 2010).

1.2.2. Czech Republic

The Czech Republic used the Anti-discrimination Law of 2009²⁰ to transpose the Racial Equality Directive, the Employment Equality Directive, the Gender Goods and Services Directive and the Gender Equality Directive. The law provides for protection against discrimination on grounds of sex, race, ethnicity and nationality, religion, belief and opinions, age, sexual orientation and disability.

The scope of protection encompasses access to employment, employment and working conditions, dismissals and pay in both public and private sectors. It covers labour relations, membership and involvement in an organisation of workers or employers, self-employment, vocational training and education at all levels, access to health, housing, social security, social advantages and access to goods and services.

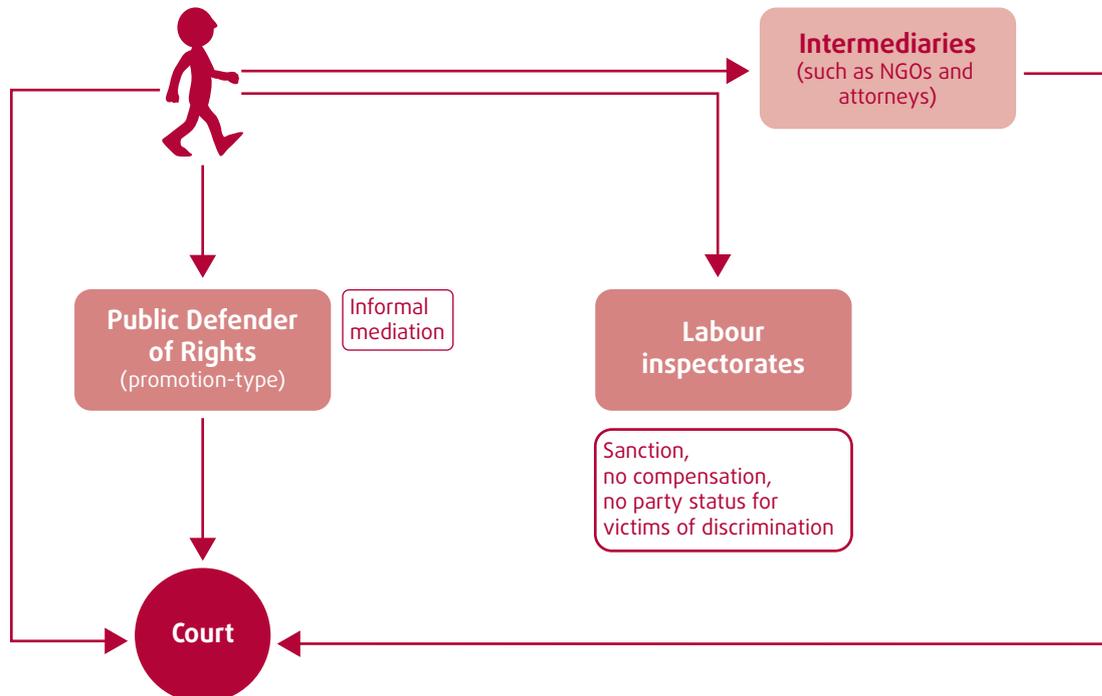
The Czech equality body is the Public Defender of Rights (*Veřejný ochránce práv*), a promotion-type equality body. Its tasks include providing assistance to victims of discrimination, conducting research and publishing reports and recommendations.

The Public Defender of Rights provides protection in relation to discrimination on grounds of sex, ethnic origin, religion and belief, age, sexual orientation, disability and nationality. The 2004 Law on Employment²¹ and the 2005 Law on Labour Inspection²² lay down specific provisions for protection against discrimination. The Law on Employment defines the role of the labour offices, which are competent to investigate cases of discrimination before a labour contract is concluded.

The Public Defender of Rights can provide mediation where appropriate and can investigate directly in cases where the involvement of public bodies is presumed. Labour inspectorates investigate discrimination complaints in the area of employment. They also initiate administrative proceedings and impose sanctions, although there is no compensation foreseen for victims. Victims of discrimination can complain to the labour inspectorates, helping to trigger the launch of proceedings, but they have no rights other than to be informed whether or not discrimination was established.

In order to gain redress and compensation, victims of discrimination must approach the courts, where NGOs and trade unions can represent them.²³

Figure 4: Paths to access justice – Czech Republic



Source: FRA, 2012

²⁰ Czech Republic, Law No. 198/2009 Coll. (Official collection of laws), Anti-discrimination Act (*Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*).

²¹ Czech Republic, Law No. 435/2004 Coll., Law on Employment (*Zákon č. 435/2004 Sb., o zaměstnanosti*).

²² Czech Republic, Law No. 251/2005 Coll., Law on Labour Inspection (*Zákon č. 251/2005 Sb., o inspekci práce*).

²³ Czech Republic, Law No. 99/1963 Coll., Civil Procedure Code (*Zákon č. 99/1963 Sb., Občanský soudní řád*), Section 26, para. 1 and 3.

1.2.3. France

France transposed the EU equal treatment directives in stages using various means. It transposed the Racial Equality Directive and Employment Equality Directive through non-discrimination legislation in 2001, 2004 and 2008 as well as via legislation modernising social law in 2002 and 2005.²⁴ It transposed the Gender Goods and Services Directive and the Gender Equality Directive by the Anti-Discrimination Act of 2008, completing the transposition of all EU non-discrimination directives, including the missing elements in previous transpositions.²⁵

In addition to the six protected grounds under the EU equality directives, France provides protection against discrimination for origin, family or marital status, way of life, genetic characteristics, physical appearance, health, pregnancy, surname, political opinion and trade union activity.

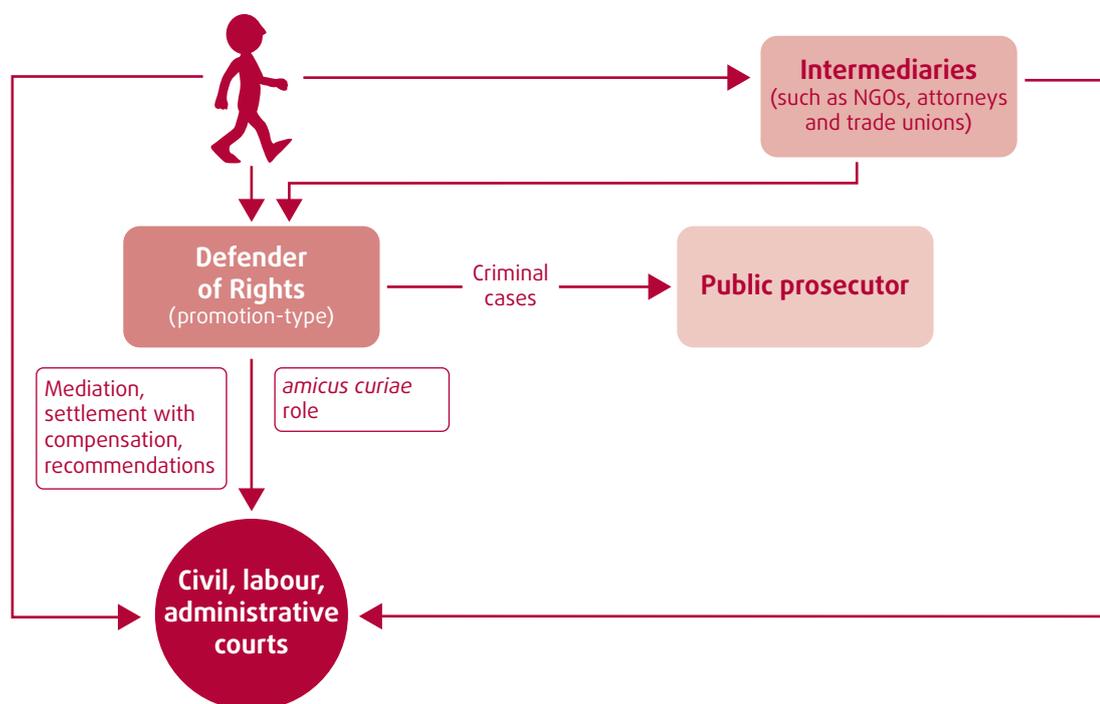
Protection applies to areas such as access to goods and services, including housing, healthcare and the employment sector.²⁶ An extended scope that covers social protection, social advantages, education, access to health

services, and goods and services applies only to the grounds of ethnic origin and race.

France established an institution with competence for all these areas and grounds of discrimination as an independent statutory authority in 2004.²⁷ It mandated the Defender of Rights (*Défenseur des droits*), a promotion-type equality body, to combat all forms of discrimination and to promote equality. On 1 May 2011, it absorbed into the institution the former Equal Opportunities and Anti-Discrimination Commission (*Haute Autorité de Lutte contre les Discriminations et pour l'Égalité*, HALDE).

The Defender of Rights may propose a fine payable as indemnity to the victim in cases of discrimination punishable under the criminal code. Both the perpetrator and victim must agree to the fine and the public prosecutor's office must also approve.²⁸ Public prosecutors' offices all have non-discrimination departments with a deputy prosecutor in charge of enforcing the state's criminal policy in discrimination cases and a delegated representative of the state prosecutor in charge of processing discrimination complaints.

Figure 5: Paths to access justice – France



Source: FRA, 2012

24 France, Law 2001-1066 of 16 November 2001 (*Loi n° 2001-1066 du 16 novembre 2001*); Law 2004-1486 of 30 December 2004 (*Loi n° 2004-1486 du 30 décembre 2004*); Law 2005-102 of 11 February 2005 (*Loi n° 2005-102 du 11 février 2005*).

25 France, Law 2008-496 of 27 May 2008 (*Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*); see also European Commission (2009c), p. 34.

26 France Criminal Code (*Code pénal*), Art. 225.

27 See above, Law 2004-1486 of 30 December 2004 on the creation of the Equal Opportunities and Anti-Discrimination Commission (consolidated) (*Loi n° 2004-1486 du 30 décembre 2004 portant création de la Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (Consolidée)*).

28 France, Law 2006-396 of 31 March 2006 on equal opportunities (*Loi n° 2006-396 du 31 mars 2006 pour l'égalité des chances*), Art. 41.

Given the 2011 institutional changes, victims of discrimination can now choose either to file their complaint with the Defender of Rights, with the option of mediation or its assistance in further proceedings, or directly with a court. The Defender of Rights provides advice on legal options and helps to establish evidence (including through so-called situation testing, also referred to in some contexts as 'mystery shopping') – comparable situations with and without an element of discrimination, such as a foreign family name in applying for a job. It has investigative powers, such as taking evidence from witnesses, questioning other relevant persons, visiting sites and requisitioning documents. If requests for information are not complied with, the Defender of Rights may issue a formal order to reply within a set time. In the event of non-fulfilment, its Chair may refer the case to the interlocutory judge who can order investigatory measures. The Defender of Rights assists in making the choice of the most appropriate procedural option. This can include mediation by the institution itself in order to reach a settlement agreement. In criminal cases, the Defender of Rights can refer the case to the public prosecutor for a decision if it has established a case of discrimination under the criminal code.

In cases initiated by parties before a civil or administrative court, the Defender of Rights can present a legal analysis to the competent court. At the request of the judge or of one of the parties, it may also present observations. It may ask the court to be heard as an expert institution, which does not make it a party to the lawsuit but can be interpreted as a friend of the court role (*amicus curiae*).

With respect to claims that are not subject to legal proceedings, the Defender of Rights can recommend to perpetrators of discrimination that they modify their practices or indemnify complainants. If such a recommendation is ignored, the Defender of Rights can publish a special report with its decision, pointing out the lack of follow-up.

1.2.4. Italy

Italy has two main non-discrimination laws, both dating from 2003. One transposes the Racial Equality Directive,²⁹ the other, the Employment Equality Directive.³⁰ These laws provide protection against discrimination on the six grounds recognised by the EU equality directives.³¹ The scope of application is limited to that required under the equal treatment directives.

Italy implemented the Gender Goods and Services Directive through legislation in 2007,³² by adding 10 articles to the Code of Equal Opportunities (*Codice delle Pari Opportunità*).³³ It transposed the Gender Equality Directive in 2010.³⁴

Institutional assistance is provided for the grounds of sex and ethnic origin or race. The Minister of Labour (*Ministro del Lavoro e della Previdenza Sociale*) in consultation with the Minister for Equal Opportunities (*Ministro delle Pari Opportunità*) appoints Equality Counselors (*Consigliere/i di parità*) at provincial, regional and national level with a remit for issues of equal treatment of men and women in the labour market.³⁵

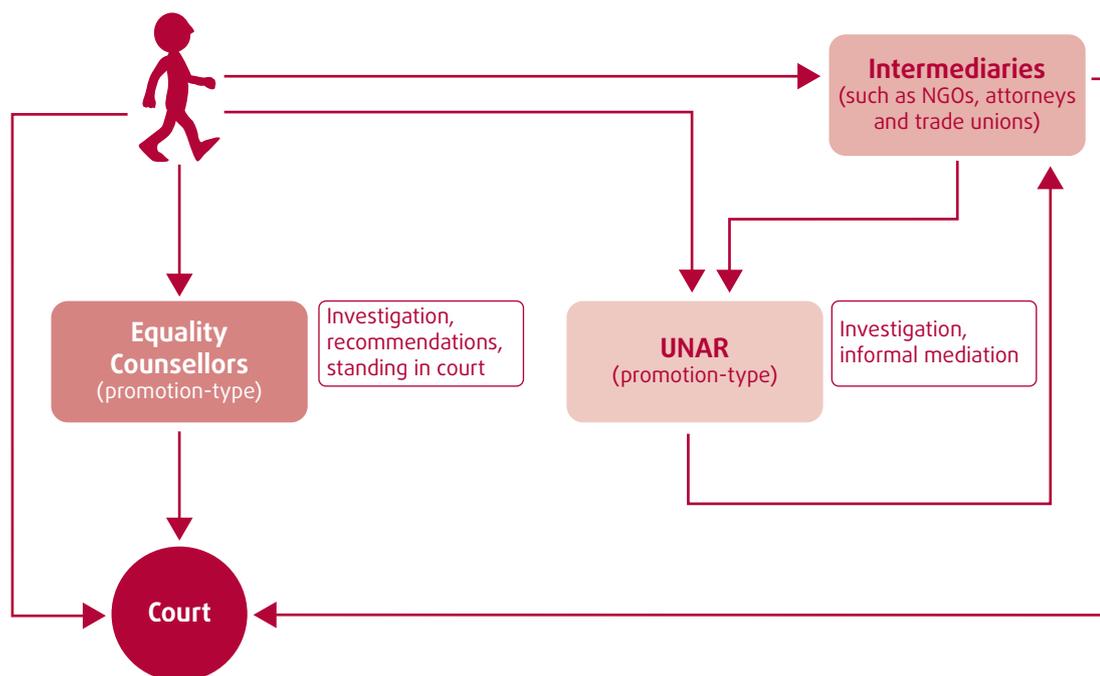
Austerity-driven cuts slow equality work

Due to budget cuts, the Italian Government stopped in July 2012 all secondments to UNAR from other departments – slowing down its operations dramatically. The number of staff dropped as a consequence to four from 13.

For further information, see: www.arcigay.it/36987/appello-a-governo-e-partiti-non-cancellate-unar/

- 29 Italy, Legislative Decree (*Decreto Legislativo*) No. 215/2003 (9 July 2003). Other relevant legislation include Legislative Decree (*Decreto Legislativo*) No. 286/1998 (25 July 1998), dealing with immigration and provides a definition of discrimination and Legislative Decree (*Decreto Legislativo*) No. 198/2006 (11 April 2006), the code on equal opportunities.
- 30 Italy, Legislative Decree (*Decreto Legislativo*) No. 216/2003 (9 July 2003).
- 31 Other relevant legislation includes the Legislative Decree (*Decreto Legislativo*) No. 286-1998 (25 July 1998) on immigration provides the first definition of discrimination and regulates the special features of the specific judicial procedure and the code of equal opportunities, dealing with gender equality in the field of employment.
- 32 Italy, Legislative Decree (*Decreto Legislativo*) No. 196/2007 (6 November 2007).
- 33 Italy, Legislative Decree (*Decreto Legislativo*) No. 198/2006 (11 April 2006); European Commission (2009b), p. 92.
- 34 Italy, Legislative Decree (*Decreto legislativo*) No. 5/2010 (25 January 2010).
- 35 Italy, Law (*Legge*) No. 125/1991 (10 April 1991), modified by Legislative Decree (*Decreto legislativo*) 196/2000 (23 May 2000) and by Legislative decree (*Decreto legislativo*) No. 5/2010 (25 January 2010).

Figure 6: Paths to access justice – Italy



Source: FRA, 2012

The National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazione Razziale*, UNAR), a promotion-type equality body, was established in 2003.³⁶ Its mandate comprises the prevention and elimination of discrimination on grounds of race or ethnic origin, the promotion of positive action and the undertaking of studies and research. Based on a policy directive by the Ministry of equal opportunities (*Ministro delle Pari Opportunità*), the office began in 2010 to include in its awareness-raising activities information on discrimination on grounds of age, disability, sexual orientation, ‘transgenderism’, religion and belief. At the level of the provinces and regions, UNAR has established non-discrimination offices and focal points in some locations in cooperation with local authorities and NGOs. These provide first-stage legal advice, counselling and mediation.

Equality Counsellors, for the ground of sex, exist at national and regional levels, and are mandated to receive complaints, provide counselling and offer mediation services. They also have the power to ask an employer suspected of discrimination with a collective impact to develop and implement measures to remove discriminatory practices.³⁷ If the Counsellor considers that the

employer has not implemented these measures adequately, then they can be made enforceable and the case brought to court (an action that is complementary to bringing the case directly to court).

The Equality counsellors cooperate with Labour inspectors (*Ispettorati del lavoro*) who have investigative powers to establish facts in discrimination cases.³⁸ The Equality counsellors also have legal standing in court cases with collective impact if no individual victim can be identified.³⁹

Cases of discrimination on grounds of race or ethnic origin can be referred to UNAR, which initiates investigation procedures and offers informal mediation procedures. UNAR has no legal standing in court, but it can refer victims of discrimination to NGOs and other legal entities listed in a national register of organisations which are entitled to provide legal representation and take action in the general interest of a group.

Regular courts alone can make decisions about the discriminatory content of an action, regulation or other matter. Court procedures follow the general rules of civil procedures.

The Italian Equality Counsellors have legal standing in cases of collective impact when no individual victim can be identified.

³⁶ Italy, Legislative Decree (*Decreto legislativo*) No. 215 (9 July 2003).

³⁷ Italy, Code of Equal Opportunities (*Codice delle Pari Opportunità*), Legislative Decree (*Decreto Legislativo*) No. 198/2006 (11 April 2006), Art. 37.

³⁸ Based on the establishment of a technical liaison board with the Office of the Director General for Inspection Activity of the Ministry of Labour (*Ufficio del Direttore Generale per l’attività ispettiva del Ministero del Lavoro*).

³⁹ Italy, Code of Equal Opportunities (*Codice delle Pari Opportunità*), Legislative Decree (*Decreto Legislativo*) No. 198/2006 (11 April 2006), Art. 37.

Special provisions are in place for cases of discrimination on grounds of sex, race, ethnic origin, citizenship, religion, disability and, only in relation to employment, also for the grounds of age, sexual orientation and transgender identity.⁴⁰ Complainants can file with first-instance civil courts without legal representation. After a short and informal procedure, judges can: order the termination of discriminatory conduct; the removal of the effects of discrimination; the payment of compensation, including non-material damages; and the publication of the judgment in a national newspaper.

1.2.5. United Kingdom

In the United Kingdom, the situation of justice in cases of discrimination in England, Wales and Scotland differs from that in Northern Ireland.

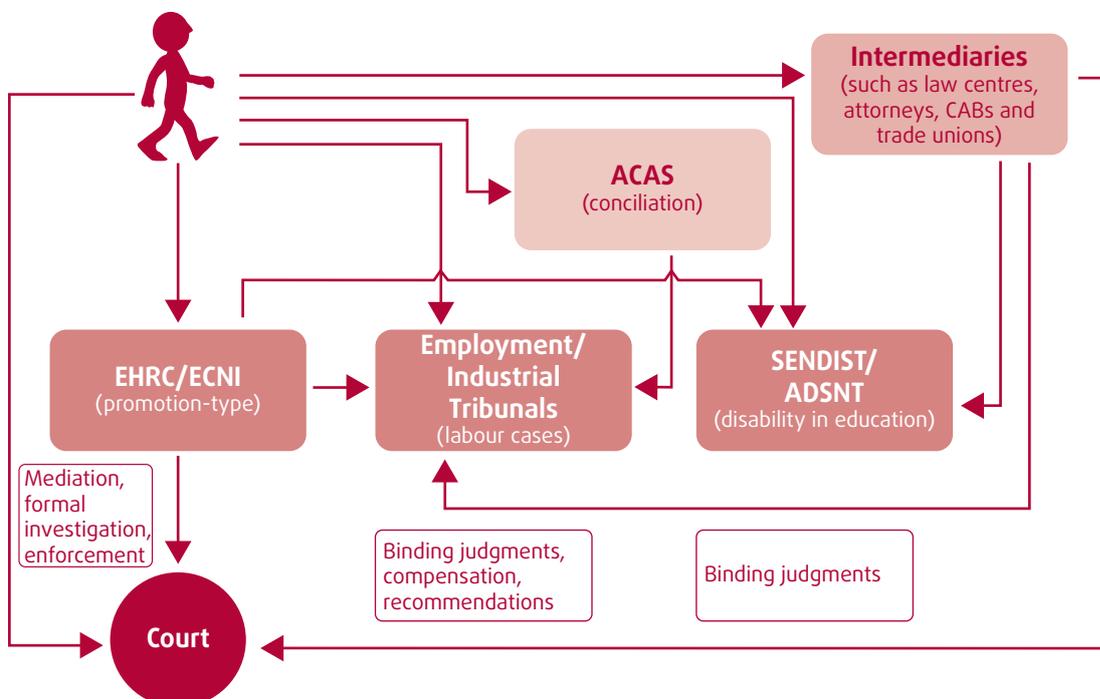
In England, Wales and Scotland, the Equality Act 2010⁴¹ unified, simplified and extended all previous non-discrimination legislation⁴² and transpositions of the EU equal treatment directives. The Act prohibits discrimination on the grounds of age, disability, sex, gender-reassignment, religion and belief, sexual orientation, pregnancy and maternity, race and marriage/civil partnership as well

as multiple discrimination. It prohibits discrimination on these grounds in relation to employment and occupation, education, transport, housing, associations and access to goods and services, with the latter yet to come into force for the ground of age. The Act also imposes a duty on public authorities in fulfilling their functions and carrying out their tasks to have due regard for promoting equality, eliminating discrimination and fostering good relations.

The Equality Act 2010 also imposes a duty on public authorities that in fulfilling their functions and carrying out their tasks they have due regard to promoting equality, eliminating discrimination and fostering good relations.

The Equality and Human Rights Commission (EHRC), a promotion-type equality body, was established in 2007 with competences for the protection of discrimination on the six grounds of the EU equality directives: race, disability, sex, age, sexual orientation, religion and belief. Other specific grounds covered are pregnancy and maternity, marriage and civil partnership, sexual orientation and gender-reassignment. The EHRC provides assistance to victims of discrimination on all these grounds.

Figure 7: Paths to access justice – United Kingdom



Source: FRA, 2012

40 Pirazzi, M. (ed.) (2008).

41 United Kingdom, Equality Act 2010, available at: www.legislation.gov.uk/ukpga/2010/15/contents.

42 United Kingdom, Equal Pay Act (1970), Sex Discrimination Act (1975), Race Relations Act (1976) and the Disability Discrimination Act (1995).

It took over the functions and powers of three equality commissions, covering race, disability and equal opportunities for men and women.

The United Kingdom government is consulting on a reform of the EHRC. Proposals include the provision of the public helpline and legal support grants to be managed directly by the government rather than the EHRC.⁴³

Northern Ireland transposed the EU equal treatment directives through a number of legal acts.⁴⁴ The Equality Commission for Northern Ireland (ECNI), a promotion-type equality body, is competent for discrimination on grounds of age, disability, sex, political belief, religion, race and sexual orientation. Established in 1999, it has similar powers and functions to the EHRC.

Claims in the field of employment must be filed at employment tribunals in England, Wales and Scotland and at industrial tribunals in Northern Ireland. For cases concerning religion or political opinion, Northern Ireland established specific 'fair employment tribunals'. These tribunals have judicial competence with the power to issue legally binding opinions. Procedures are less legalistic and allow for lay representation. Complainants can receive written reasons for the tribunal's judgment, which must include, among other things, relevant findings of fact and a concise statement of the applicable law and how the law has been applied. To enforce tribunal decisions the standard court system must be used.

An Advisory, Conciliation and Arbitration Service offers conciliation in every employment dispute that is filed with employment tribunals in England, Wales and Scotland. The service can also offer conciliation in cases where no claim has yet been filed. In practice, the service notifies every complainant that it has appointed a conciliator who will seek to agree a case settlement to avoid the need for a formal hearing.

Disability cases in the field of education can be filed at the Special Educational Needs and Disability Tribunal in England, Wales and Northern Ireland and at the Additional Support Needs Tribunals in Scotland. These tribunals have relatively informal procedures and can

make binding judgments. There are no fees for initiating a claim at any of these tribunals.

Cases of discrimination in other fields must be processed via the mainstream court system. Claims for less than GBP 5,000 (about € 6,200 as of November 2012) may be diverted to the small claims arbitration procedure. Under this simplified procedure, losing parties do not have to pay the costs of the winning side and lay representation of complainants is permitted.

1.3. Type 3 – promotion-type and quasi-judicial-type equality bodies and courts

1.3.1. Austria

In Austria, the 2004 Equal Treatment Act (*Gleichbehandlungsgesetz*)⁴⁵ ensures the transposition of the EU equality directives. A separate act⁴⁶ regulates the two equality bodies: the Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*), a promotion-type equality body, and the Equal Treatment Commission (*Gleichbehandlungskommission*), a quasi-judicial-type equality body. These bodies are mandated to handle issues of equal treatment: in the labour market, for men and women; in the labour market, on the grounds of ethnic origin, religion or belief, sexual orientation or age; in fields beyond the labour market on grounds of sex or ethnic origin.

Austria provides protection against discrimination for all the six grounds recognised under EU law, as well as multiple discrimination in the area of employment. For the grounds of ethnic origin, sex and disability, Austria grants a wider scope of protection against discrimination in access to goods and services. Austria restricts further protection in the fields of education, health and social protection to discrimination on grounds of ethnic origin.

In most instances complainants have two choices. They can bring their case before the Equal Treatment Commission, which can issue a legally non-binding decision (*Prüfungsergebnis*) on whether or not the treatment in question was discriminatory. Alternatively, they can go to the competent civil, labour or social welfare court and claim damages. Victims of sexual harassment can take the alleged perpetrator to a criminal court.⁴⁷ Complainants can obtain assistance from the Ombud for Equal Treatment, NGOs or, in employment cases, the Chamber of Labour.

43 When referring to the EHRC's mandate and activities in the different chapters of this report, we report on the actual situation at the time of writing. Changes may, however, have taken place. More information on the consultation process and the EHRC response can be accessed at: www.equalityhumanrights.com/about-us/vision-and-mission/government-consultation-on-our-future/.

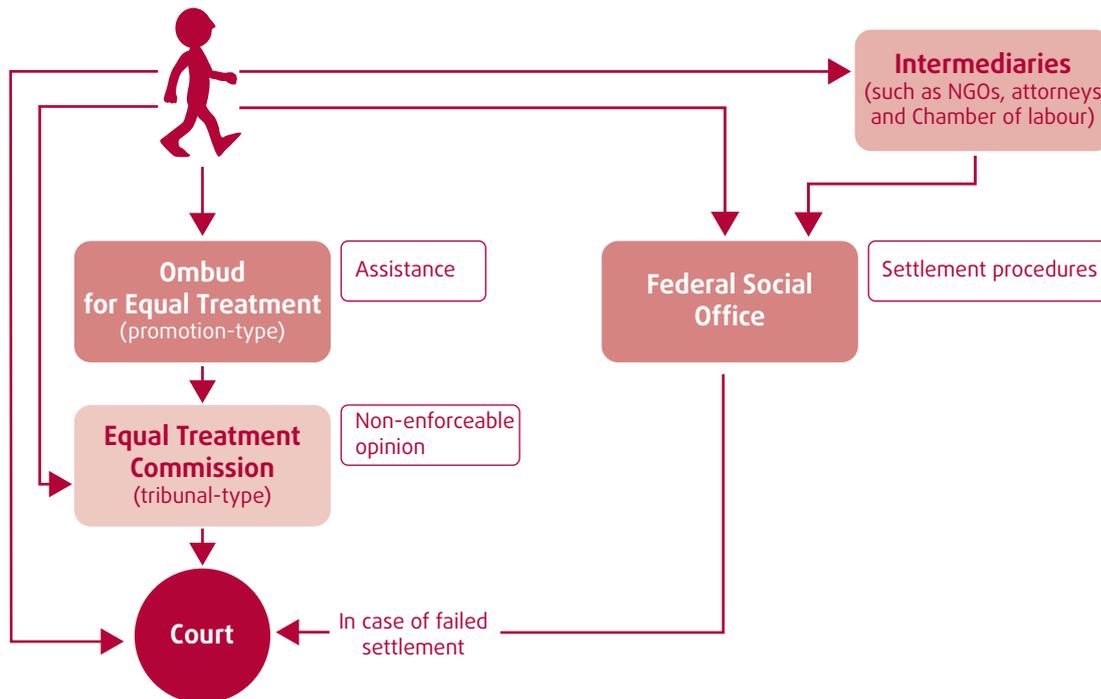
44 The main Northern Ireland laws in relation to discrimination are: Equal Pay Act 1970; Sex Discrimination Order 1976; Disability Discrimination Act 1997; Race Relations Order 1997; Fair Employment and Treatment Order 1998; Northern Ireland Act 1998; Equality (Disability, etc.) Order 2000; Employment Equality (Sexual Orientation) Regulations 2003; Special Educational Needs and Disability Order 2005; Disability Discrimination Order 2006; Employment Equality (Age) Regulations 2006; The Equality Act (Sexual Orientation) Regulations 2006.

45 Austria, Equal Treatment Act (*Gleichbehandlungsgesetz*), BGBl. I 66/2004, last amended BGBl. I 7/2011.

46 Austria, Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*, GBK/GAW-Gesetz), BGBl. Nr. 108/1979, last amended BGBl. I Nr. 7/2011.

47 Austria, Penal Code (*Strafgesetzbuch*), Art. 218.

Figure 8: Paths to access justice – Austria



Source: FRA, 2012

In cases of discrimination on the ground of disability, the complainant must contact the Federal Social Office (*Bundessozialamt*) before filing a claim with a court. The Federal Social Office is obliged to initiate a settlement procedure, which must be attempted before a claim can be filed.⁴⁸

1.3.2. Finland

Finland transposed the Racial Equality Directive and the Employment Equality Directive by adopting the Non-Discrimination Act (*Yhdenvertaisuuslaki*) in 2004.⁴⁹ The legislation prohibits discrimination on the basis of the six grounds of the EU equality directives as well as nationality, language, health or other personal characteristics. The Act on Equality between Women and Men (*Laki naisten ja miesten välisestä tasa-arvosta*)⁵⁰ covers the prohibition of discrimination based on sex.

The scope of protection for all grounds includes: employment, access to self-employment and occupation, conditions for access to employment, employment and working conditions and vocational guidance; education, access to education, all types of vocational training and retraining; and membership of and involvement in an organisation of workers or employers. Discrimination

on grounds of ethnic origin is also unlawful in the fields of health and social services, social benefits and advantages, military or civilian service, including voluntary military service for women, and provision of housing and other supply of services and goods available to the public. Discrimination on the grounds of sex is prohibited in all areas of life, with exceptions solely for relationships in private life and religious practices.

In Finland, the Ombudsman for Equality is looking into ways of following up this FRA report on *Access to justice in cases of discrimination in the EU – Steps to further equality with one at the national level*.

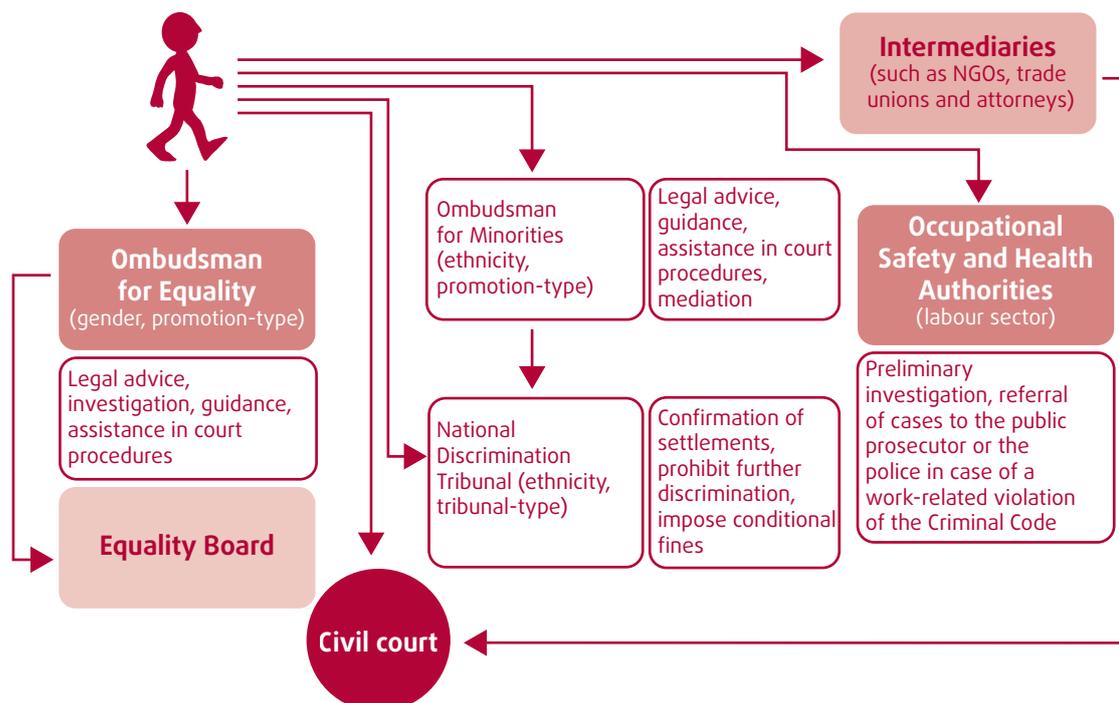
The Ombudsman for Equality (*Tasa-arvovaltuutettu*), a promotion-type equality body, supervises compliance with the principle of non-discrimination on the grounds of sex. It is empowered to provide advice and assistance to victims of discrimination on this ground. In addition to counselling, its competences cover investigations into individual cases, including data collection, requests for clarifications and workplace inspections. The Ombudsman can also take the case to the Equality Board (*Tasa-arvolautakunta*), which can prohibit anyone from continuing or repeating the discriminatory practice. The Board may also impose a penalty on the party to whom the prohibition applies.

⁴⁸ Austria, Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*), BGBl. I Nr. 82/2005, last amended BGBl. I 7/2011.

⁴⁹ Finland, Non-Discrimination Act (*Yhdenvertaisuuslaki*) 2004/21 (1 February 2004).

⁵⁰ Finland, Act on Equality between Women and Men (*Laki naisten ja miesten välisestä tasa-arvosta*) 1986/609 (8 August 1986), with major revisions in 2005.

Figure 9: Paths to access justice – Finland



Source: FRA, 2012

The Ombudsman for Minorities (*Vähemmistövaltuutettu*), a promotion-type equality body, can be asked for assistance in cases of discrimination on grounds of ethnicity and is empowered to issue guidance and advice in order to stop discrimination, to take measures to achieve reconciliation and to request clarifications of the matter from the suspected perpetrator. Furthermore, if the penalty is not paid, the Ombudsman can take the case to the National Discrimination Tribunal (*Syrjintälautakunta*), a quasi-judicial-type equality body. The National Discrimination Tribunal is entitled to hear a case on grounds of ethnicity, to confirm settlements between parties, to prohibit further discriminatory action and to impose conditional fines. Individuals may also take cases themselves to the National Discrimination Tribunal.

The most significant difference between the powers of the Ombudsman for Minorities and those of the Ombudsman for Equality is that the latter also covers discrimination in working life. Both Ombudsmen may assist a person who has been subjected to discrimination in judicial proceedings, if the matter is considered to be of considerable importance. The Office of the Ombudsman for Minorities has rarely used this option and the Office of the Ombudsman for Equality has never used it.

NGOs do not play a notable role in judicial or administrative processes, but trade unions are important actors in the field of employment discrimination.

Cases of discrimination on all grounds protected by law in the fields of occupation and employment can be referred to the regional Occupational Safety and Health Authorities (*Aluehallintovirastojen työsuojelun vastuualueet*). Following a preliminary investigation, if the case is deemed to violate the prohibition of work-based discrimination provided in the Criminal Code (*Rikoslaki*), they can forward the case to the public prosecutor for consideration of charges or to the police for investigation.

Furthermore, they may inform the complainant about the possibility of filing a claim with the courts in order to claim compensation on grounds of the Non-Discrimination Act.

1.4. Summary of findings

All EU Member States have transposed the EU equal treatment directives into national law and designated a body or bodies to ensure access to justice in discrimination cases. Given the institutional autonomy of the Member States within the EU, the directives do not prescribe a specific structure. There are consequently many differences in the structures established.

Table 2: Overview of bodies with equality remit in eight EU Member States

| EU Member State | Year of adoption of main legal instrument(s) in relation to the EU equality directives | Name of body in English (acronym) | Name of body in national language | Year of establishment of body | Also accredited as NHRI – with status | Quasi-judicial-type (Q) or promotion-type (P) |
|-----------------|--|---|--|-------------------------------|---------------------------------------|---|
| AT | 2004 | Ombud for Equal Treatment | <i>Anwaltschaft für Gleichbehandlung</i> | 1991 | | P |
| | | Equal Treatment Commission | <i>Gleichbehandlungskommission</i> | 1979 | | Q |
| BE | 2007 | Centre for Equal Opportunities and Opposition to Racism (CEEOR) | <i>Centre pour l'Égalité des Chances et la Lutte contre le Racisme/ Centrum voor Gelijkheid van Kansen en voor Racisme Bestrijding</i> | 1993 | B-status | P |
| | | Institute for the Equality of Women and Men (IEWM) | <i>Institut pour l'Égalité des Femmes et des Hommes/ Instituut voor de Gelijkheid van Vrouwen en Mannen</i> | 2002 | | P |
| BG | 2004 | Commission for protection against discrimination (CPAD) | <i>Комисия за защита от дискриминация</i> | 2005 | B-status | Q |
| CZ | 2009 | Public Defender of Rights | <i>Veřejný ochránce práv</i> | 2001 | | P |
| FI | 2004 | Ombudsman for Equality | <i>Tasa-arvovaltuutettu</i> | 1987 | | P |
| | 2001 | Ombudsman for Minorities | <i>Vähemmistövaltuutettu</i> | 2001 | | P |
| FR | 2001/2004/2008 | Defender of Rights | <i>Défenseur des droits</i> | 2008 | | P |
| IT | 2003/2007 | Equality Counsellors | <i>Consigliere/i di parità</i> | 1991 | | P |
| | 2003 | National Office Against Racial Discrimination | <i>Ufficio Nazionale Anti-discriminazione Razziale</i> | 2003 | | P |
| UK | 2010 | Equality and Human Rights Commission | | 2007 | A-status | P |
| | 2000/2001 | Equality Commission for Northern Ireland | | 1999 | | P |

Source: FRA, 2012

FRA ACTIVITY

Reporting on the application of the Racial Equality Directive at national level

The FRA launched its report on *The Racial Equality Directive: application and challenges* in January 2012. It provides an overview of the application of the directive in laws and practices of the 27 EU Member States, including an analysis of obstacles and possible solutions.

For more information, see: FRA (2012b)

The justice systems in discrimination cases in EU Member States can, however, be characterised by three different types (with examples provided from the eight selected states): quasi-judicial-type equality bodies and courts (Bulgaria); promotion-type equality bodies and courts (Belgium, the Czech Republic, France, Italy and the United Kingdom); and hybrid systems with both promotion-type and quasi-judicial-type equality bodies and courts (Austria and Finland).

Even within these three categories, equality bodies play a range of roles and offer a variety of paths to access

justice. The paths available depend on the national context as well as on the type of case and ground of discrimination.

Regular courts remain key institutions for people seeking to uphold their rights. Nevertheless, equality bodies and administrative/judicial institutions play an important role in all systems, with promotion-type bodies facilitating access to the courts or other institutions that hear cases and with quasi-judicial-type bodies hearing cases themselves in less formal procedures. Equality bodies may also process or assist in a number of cases, ranging from a few thousand in France to a few hundred in Finland.

Table 2 offers an overview of the main specialised bodies with an equality remit covered in this chapter. It provides information on the year the main legislation transposing the EU equality directives took effect, the year the body was established, whether the body also serves as an accredited National Human Rights Institution (NHRI) in accordance with the Paris Principles, and if it is predominantly quasi-judicial or promotion-type in nature.

Table 3 offers a comparative overview of redress possibilities in selected EU Member States, mapping which institutions award material and non-material damages, sanctions as well as non-financial forms of reparation.

Table 3: Overview of possible redress in eight EU Member States

| EU Member State | Compensation for material damages | Compensation for non-material damages | Sanctions | Non-financial forms of reparation |
|-----------------|-----------------------------------|---------------------------------------|--|---|
| AT | Courts | Courts | Very limited (by district authorities, for discriminatory advertisement) | Yes (by the Equality Treatment Commission) |
| BE | Courts | Courts | Yes (criminal if by public servants and in cases of racial discrimination in employment) | Yes (as part of a settlement) |
| BG | Courts | Courts | Yes (by the Commission for Protection against Discrimination, CPAD) | Yes (by the CPAD as remedy or as part of a settlement) |
| CZ | Courts | Courts | Yes (by labour inspectorates) | Yes (as part of a settlement) |
| FI | Courts | Courts | Yes (National Discrimination Tribunal or the Equality Board) | Yes (both equality bodies can issue advice on how to stop discrimination) |
| FR | Courts | Courts | Courts (criminal) | Yes (by the Defender of Rights, as part of a settlement) |
| IT | Courts | Courts | Yes (only in criminal cases related to race/ ethnic origin and religion) | Yes (by equality counsellors and courts) |
| UK | Courts and tribunals | Courts and tribunals | No (introduction of such under discussion) | Yes (by specialised tribunals) |

Source: FRA, 2012

When observing the eight systems, a number of features appear relevant and worthy of emulation. Among these are the following, with one EU Member State example provided for each, clustered under structures, procedures, and support.

Structures

- Adopt a single law that merges a number of pieces of legislation on specific grounds of discrimination, providing an easier overview of paths to access justice (United Kingdom).
- Legislate broader grounds of discrimination, including explicit references to multiple discrimination, as well as areas where discrimination is prohibited beyond those required by the EU equality directives (Bulgaria).
- Put in place a coherent system(s) that makes it easy to know where to turn (France).
- Mandate equality body or bodies as both quasi-judicial-type and promotion type (Austria).

Procedures

- Endow quasi-judicial-type equality bodies with powers to adopt legally binding decisions (Bulgaria).
- Enable promotional-type equality bodies to draw on the investigatory powers of other authorities (Belgium).
- Empower quasi-judicial-type equality bodies to initiate investigations on their own (Bulgaria).

- Invest equality bodies with a broad range of investigative powers (France).
- Require equality bodies to submit friend-of-the-court briefs to advise courts on expert matters (France).
- Lower threshold to access justice through courts and simplify court procedures for cases of discrimination (Italy).
- Provide equality bodies with a wide range of options to remedy cases of discrimination (France).
- Publish court judgments in media (Italy).
- Mandate equality bodies to issue fines to enforce non-discrimination (Finland).

Support

- Provide equality bodies or similar entities with legal standing if no individual victim can be identified (Italy).
- Mandate quasi-judicial-type equality bodies to hear complaints also by third parties (Bulgaria).
- Allow organisations such as NGOs to represent victims in courts (Czech Republic).
- Oblige all public authorities to promote equality (United Kingdom).

The three following chapters deal with structures, procedures and support respectively, on the basis of the field research conducted.

“It is difficult to know the right institutions and when you have many options, how do you know which one to choose? You also need a lot of courage and bear the social consequences of complaining.”

(Complainant, Finland)

The relatively low numbers of complainants who raised the system’s complexity, compared to the higher numbers of representatives and intermediaries in Section 2.1.2., stems in part from the fact that a large majority of complainants interviewed had indeed pursued their complaints. Other possible factors include the relatively high level of education and reliance on legal advice – both of which are likely to facilitate understanding the complexities.

2.1.2. Views from representatives and intermediaries

In almost all eight Member States, representatives of institutions considered that equal treatment legislation and access to justice paths in discrimination cases are either too complex or insufficiently clear. In Belgium, Italy and the United Kingdom, representatives of equality bodies frequently suggested revising legislation to reduce complexity. With respect to French and Italian legislation, the representatives thought that the concept of discrimination itself was in need of clarification. They also viewed the range of institutions in Austria as overly complex.

Intermediaries in all EU Member States except Bulgaria raised the issue of the complexity and fragmentation of legal provisions on equal treatment. They saw the complexity of procedures as less of an issue. In Austria, NGOs in particular viewed legislation’s complexity as an obstacle to good legal advice: the complexity stems primarily from differing legal provisions at federal and provincial level. They also expressed concern that no equality body was responsible for supporting complainants on some discrimination grounds, specifically age, religion or belief and sexual orientation outside employment. This gap creates a form of hierarchy among the

rights. Intermediaries in other states saw similar problems. A broad spectrum of Italian intermediaries, for example, expressed their discontent with fragmented and unclear legal provisions. They attributed this in particular to the hierarchy of the protection of grounds and the different definitions of discrimination depending on the ground concerned. In the United Kingdom, several intermediaries identified the complexity of both laws and procedures as obstacles, with legal provisions on disability and equal pay particularly unclear.

FRA ACTIVITY

Finding shared concerns between access to justice in discrimination cases and multiple discrimination in healthcare

A FRA report on multiple discrimination also highlights major concerns in relation to access to justice.

For more information, see: http://fra.europa.eu/fraWebsite/research/projects/proj_multiplerediscriminationhealthcare_en.htm

Italy has different procedures for the ground of sex than for other grounds of discrimination, making cases of multiple discrimination highly complex. Interviewees said it was particularly difficult to identify the responsible body in cases of multiple discrimination.

2.2. Geographical distance

Access to a dispute resolution body is influenced by the physical distance between the potential complainants and the dispute resolution bodies. Physical mobility, financial resources and time available determine whether or not complainants pursue an incident of discrimination. Geographical distance to a complaint or support mechanism represents another hurdle.⁵¹

2.2.1. Views from complainants

The selection of complainants and non-complainants for this research focused on capturing those who lived in the same city with such a body and those who did not; it did not aim for proportionality with the total number of those living in the same city with a dispute resolution body. Among the complainants interviewed, about two fifths lived in a city with a dispute resolution body, a quarter lived an hour away and a further quarter lived more than an hour away. Less than a tenth of the complainants interviewed had to travel more than five hours.

FRA ACTIVITY

Developing a toolbox on joined-up governance

This FRA project aims to develop a toolbox of ‘joined-up’ methods based on research that has tested how to improve collaboration between levels of government authorities: the toolbox shows how to achieve best a shared responsibility for fundamental rights.

For more information, see: http://fra.europa.eu/fraWebsite/research/projects/proj_joinedupgov_en.htm

⁵¹ A recent report by Equinet includes a chapter on the advantages of and the ways to organise local presences. See Equinet (2011b).

Given this distribution of respondents, it is perhaps not so surprising that complainants from only a few countries identified the distance to legal advice and assistance as an obstacle to justice: specifically, those from Austria, France, Italy and the United Kingdom.

Promising practice

Representing equality bodies in regions

The Bulgarian equality body, the Commission for protection against discrimination, has regional offices that provide information to potential complainants about rights and procedures and reinforce awareness-raising initiatives.

For more information, see the Bulgarian specialised human rights bodies section on the E-justice portal, available at: www.kzd-nondiscrimination.com/layout/index.php/za-nas/regionalni-predstaviteli

2.2.2. Views from representatives and intermediaries

In almost all eight Member States, representatives of institutions explicitly pointed to outreach work as a necessity to improve proximity to the complainants. Austrian representatives identified cooperation with community organisations and NGOs as a feasible way of reaching out to potential complainants. During its first two years, the Bulgarian body, a predominantly quasi-judicial-type institution, toured the areas where discrimination was most prevalent. This outreach work prompted such an increase in caseload, however, that the body found it impossible, given limited resources, to keep up this activity. The equality body in France designated local volunteers to bring it nearer to potential complainants. In the United Kingdom, the equality body EHRC funds 92 law centres and Citizens Advice Bureaux. Budget cuts planned for 2012, however, threaten this outreach work.

Intermediaries in all the EU Member States surveyed, with the sole exception of Italy, raised the issue of geographical proximity to potential complainants. Austria and Finland have umbrella NGOs which try to increase proximity through their member organisations in different regions. Trade unions in Austria, Finland, Italy and the United Kingdom, which have a network of employee and union representatives, are relatively close to potential complainants.

Promising practice

Reaching out to the more inaccessible

The Equality Commission for Northern Ireland reaches out to Travellers to better accommodate their needs. Instead of expecting them to come to official buildings, it goes to them as well as offers adapted procedures.

For more information, see, e.g.: www.equalityni.org/sections/default.asp?secid=1&cms=News_Campaigns+Archive_Traveller+Focus+Week+2010&cmsid=1_109_162&id=162

2.3. Summary of findings

Complainants have one single path in Bulgaria but must choose among seven in Austria. Information and support are essential for navigating through these often complex systems. The complainants interviewed had managed to pursue their cases and were therefore not overly concerned about the issue of where to turn. Representatives of institutions as well as intermediaries that drew on their experience, however, emphasised the complexity of legal systems. Intermediaries considered structures as especially complicated when a number of equality bodies covered different grounds of discrimination, which particularly complicated cases of multiple discrimination. They saw the non-existent or diverging definitions of concepts of discrimination, a hierarchy of grounds, long or open lists of grounds and the fragmentation of legal provisions between grounds or areas of discrimination as impeding access to justice.

Many of the representatives of equality bodies mentioned proximity to potential complainants as a factor in promoting access to justice and referred to the development of strategies for overcoming the distance challenge. To bridge geographical distances, they suggested strategies such as: establishing first contact points near where discrimination typically occurs to provide initial advice; and making use of existing structures, such as employee representatives, trade unions, lawyers and NGOs.

Promising practice

Studying options for local anti-discrimination advisory services

The Ombudsman for Minorities in Finland assessed in a 2011 report how to best handle local outreach – something deemed necessary to promote equality more effectively.

For more information, see: Regional development of anti-discrimination advisory services Report 2011, available at: [www.poliisi.fi/intermin/vvt/home.nsf/files/Alueellinen%20neuvonta_englanti/\\$file/Alueellinen%20neuvonta_englanti.pdf](http://www.poliisi.fi/intermin/vvt/home.nsf/files/Alueellinen%20neuvonta_englanti/$file/Alueellinen%20neuvonta_englanti.pdf)

Obstacles related to structures were:

- complainants' difficulties in establishing which paths to follow to access justice and which institution to which a complaint should be addressed;
- the complexity of definitions and provisions in equal treatment legislation;
- the complexity caused by differing equality provisions at federal level and at provincial level (where applicable);
- the lack of institutions with a mandate in relation to some of the grounds covered by EU equality directives and the hierarchy between grounds generated by this discrepancy;
- geographical distance to relevant complaints body.

Enabling factors related to structures were:

- regional offices as part of an equality body or as separate but linked entities;
- access to legal advice prior to lodging a complaint to enable an effective navigation of the justice system and identification of best entry point;
- support of regional or local organisations by the equality body; cooperation between equality body and NGOs or community organisations;
- cooperation agreements and cross-referral systems between institutions to support complainants in navigating the justice system;
- outreach services by equality bodies through regional offices, cooperation with NGOs or intermediaries.



3

Procedures



Procedures refer to legal and non-legal processes before a court, predominantly quasi-judicial-type equality body or administrative/judicial institutions, during which cases are lodged, parties are informed, evidence is presented and facts determined. This chapter describes the findings of the research with regard to four elements of access to justice in relation to procedures:

- ‘collective dimensions’;
- fairness;
- timely resolution;
- effectiveness.

This analysis draws principally on complainants’ interviews related to the specific procedures they experienced.

3.1. ‘Collective dimensions’

Research shows that discrimination, similar to fundamental rights violations in general, is often not reported to any authority nor claimed through a formal mechanism. Much can be done to remedy this situation and foster a stronger fundamental rights culture in which people do report violations of rights such as equality and non-discrimination. Accepting a wider range of complainants to bring a case, through collective redress,⁵² or broadening so-called legal standing, can improve procedures. Another possibility is that equality NGOs are empowered to bring cases for general discrimination when no specific victim is known, such as with discriminatory advertisement. More generous standing rules could also

lead to collective redress, where several persons who have been discriminated against can join forces.

Strategic litigation, under which key cases are pursued in order to set a precedent, offers an additional route to improve procedures. A ‘friend-of-the-court’ submission, or *amicus curiae*, is a related tool in which an expert offers substantive advice in a legal brief to help a court or similar entity reach an informed decision.

European Court of Human Rights: broadened legal standing

A man of Roma origin felt offended by the language a published dictionary used about his ethnic group. When considering the admissibility of his application, the Grand Chamber of the European Court of Human Rights (ECtHR) accepted in *Aksu v. Turkey* (No. 4149/04, judgment of 15 March 2012) that, even though the applicant was not personally targeted by the impugning remarks and expressions, he could have felt offended by the remarks about his ethnic group and confirmed that his rights under the European Convention of Human Rights had been violated. It follows that standing before the Court is granted not only to those directly targeted by discriminatory language (hate speech) but also to members of a group, even when they are not personally targeted.

For more information, see: ECtHR, *Aksu v. Turkey*, No. 4149/04, judgment of 15 March 2012

⁵² Also referred to as collective complaints; the European Commission uses the term collective redress, see European Commission (2011). See also: European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens’ rights and constitutional affairs (2012).

Promising practice

Providing peer-support structures online

A United Kingdom NGO created a web-based emotional/personal peer support system for complainants.

For more information, see: www.rnib.org.uk/Pages/Home.aspx

3.1.1. Views from complainants

“There are positive and negative sides to not being anonymous. The downside [to being known] is the publicity. I was made redundant after that and I felt that it may have disadvantaged me in getting other jobs in the future.”

(Complainant, United Kingdom)

About a quarter of the complainants interviewed said that they hoped that the complaints they filed changed matters beyond their own personal situation. They hoped that their complaints would also in future protect other potential victims against discrimination, establish equal treatment and equal rights and raise awareness of discrimination. A small proportion of complainants interviewed also perceived themselves as role models. By taking action and fighting discrimination, they wanted to encourage others in similar situations to lodge complaints.

Streamlining anti-discrimination forces

The Council of Europe monitoring body for the European Social Charter, the European Committee on Social Rights, is mandated to process collective complaints from, for instance, civil society organisations.

For more information, see: www.coe.int/T/DGHL/Monitoring/SocialCharter

“I believe that it would be easy to get more people involved. At work there were also other women that felt that they had experienced discrimination. A class action [collective redress] would be more powerful.”

(Complainant, Finland)

A large majority of the complainants would have liked to lodge their complaint as part of a collective redress action, with some respondents in Austria, Bulgaria and Italy saying they had indeed lodged their complaints collectively. They argued that collective redress raised the complaint above the level of the individual, giving it more weight. Collective complaints also alleviated the fears associated with complaining as an individual.

Complainants found the peer support from collective complaints helpful in the preparatory phase of a case as well as in seeing a complaint through. A group is better able to substantiate evidence and can share the procedure's costs and risks. Complainants believed collective redress offered a more effective route to eliminating structural discrimination than individual complaints, achieved greater impact and encouraged others to fight discrimination as a group. The greater visibility and publicity surrounding such cases could also raise societal awareness of discrimination.

The few counter arguments provided focused on the challenges of convincing victims of discrimination to take part in collective redress and on organisational issues necessary for establishing an aim and a common strategy.

Promising practice

Enlisting people tackling similar discriminatory experiences

A non-governmental organisation (NGO) in the Czech Republic, *Vzájemné soužití*, works with discriminated communities to bring together larger numbers of victims with similar cases. The NGO strives to create an environment of mutual support and facilitates a discussion of goals to be achieved.

For more information, see: www.vzajemnesouziti.estranky.cz/

3.1.2. Views from representatives and intermediaries

Representatives of institutions rarely brought up collective redress during interviews. Intermediaries referred more often both to it and to the use of *amicus curiae*, or friend-of-the-court briefs. In Austria, Belgium, Finland, France, Italy and the United Kingdom various intermediaries called for the introduction or improvement of collective redress.

Using hypothetical comparators in collective redress for discrimination

To assess discrimination, courts often turn to 'comparators' to assess how institutions differ in their treatment of those with and without the protected characteristic(s) at stake. When it is not possible to identify an actual individual in relevant circumstances, courts use 'hypothetical comparators'. Such comparators would almost certainly be easier to use in cases of collective redress, which cover a larger range of experiences.

A number of promotion-type equality bodies said that, when weighing up whether to offer advice and assistance to a complainant, they considered the case's value as strategic litigation. About one third of the intermediaries interviewed also referred to the possibility of undertaking strategic litigation to determine which complainants to provide legal advice and assistance to. Intermediaries in several EU Member States also saw strategic litigation as a tool to establish precedents that would motivate others in similar situations to lodge complaints.

Promising practices

Sharing needs, supporting solutions

One trade union in the United Kingdom has set up regional networks of members, called 'equality groups'. Equality groups share experiences and concerns in advisory forums. The union organises these forums, which draw participants from different groups and regions. The role of the forums is to reach out to members of different groups, functioning as a visible line of support, identify their specific concerns and put these on the agenda.

For more information, see: www.equalitytrust.org.uk

Influencing through the 'domino effect'

A United Kingdom NGO focusing on spreading good practice and legal compliance in relation to equal pay for women has succeeded in changing discriminatory practices in a particular sector. The organisation typically approaches key organisations in a sector, influencing their behaviour and then using the positive result to win over the rest of the sector and help impact general policy development.

For more information, see: www.closesthegap.org.uk

3.2. Fairness

This section concerns fair proceedings. It looks at the balance of power, known as the 'equality of arms', between complainants and those discriminating, shifting burdens of proof and victimisation.

3.2.1. Views from complainants

Several complainants perceived themselves to be at a disadvantage to their alleged discriminators, whose large or multinational companies deployed more resources and legal advisors than an individual complainant could muster.

One element associated with the fairness of proceedings is recognising the individual experience. This requires that institutions such as equality bodies and courts give complainants the opportunity to tell their stories and for representatives of such mechanisms, such as judges,

to listen to what they say. A majority of complainants interviewed said that they were able to either 'mostly' or 'fully' tell their stories during the procedure, but only some said they felt their story had been 'mostly' or 'fully' listened to. Complainants considered that equality bodies were best at giving them the opportunity to tell their stories and were also more attentive than courts in listening to them.

"It's robust legislation, but because it's civil law, individuals have to challenge [the situation] and companies know that [this is difficult for individuals]."

(Complainant, United Kingdom)

Some of the complainants interviewed said that because they had lodged complaints, perpetrators victimised either them or their families. Some also referred to fear of victimisation among potential witnesses.

3.2.2. Views from representatives and intermediaries

Intermediaries and representatives of institutions assessed, to a large extent, the equality of arms in the eight Member States consistently. Almost half considered that more needed to be done to guarantee complainants a sufficient counterweight in the procedures.

Inequality of arms stems chiefly, they said, from the resource imbalance between complainants and defendants. The latter tended to be better resourced, sometimes employing several lawyers, while complainants had to do with a minimum of legal advice and support. Legal representation was an absolute necessity for complainants, both to navigate the intricacies of access to justice and to be on an equal footing with the opposing side, according to many of the representatives of equality bodies and intermediaries. They therefore identified improving the legal aid system and increasing funding for legal advice and representation as key factors to guarantee equality of arms.

Virtually all the representatives of institutions stressed that measures were lacking to guarantee the provision of necessary documents to both parties, with potentially severe negative consequences for complainants. The intermediaries were slightly more positive about procedural fairness in this regard.

EU Member States are not sufficiently applying the EU law that requires a shift of burden of proof to the defendant and away from the complainant, representatives of equality bodies said. The complainant no longer needs to prove discrimination occurred, only that it might plausibly have taken place; while the defendant must now prove it did not. In Austria, they attributed this failure to the judges' lack of awareness of the concept.

In the Czech Republic, they blamed the law's lack of clarity about when and how to apply it. In Austria and Bulgaria, intermediaries also mentioned the quality of decisions by quasi-judicial-type bodies as an obstacle to accessing justice, as these decisions had important implications for any ensuing court procedure.

Representatives of institutions and intermediaries in most of the eight Member States identified complainants' fear of victimisation or retaliation as a barrier to accessing justice. These fears were seen as particularly problematic within the workplace in small professional communities, due to co-workers' hierarchical and often close relationship to the discriminating party.

Most equality body representatives believe that measures protecting complainants against victimisation are in place to some extent, but intermediaries were less convinced by the availability and effectiveness of such measures. Representatives of equality bodies in almost all eight Member States referred to the need for improved legal provisions to protect complainants against victimisation.

In Austria and Finland, respondents suggested that anonymous complaints, confidentiality of information and separate hearings for complainants and defendants could help protect complainants against victimisation. In Austria and Belgium, respondents viewed properly conducted settlement procedures as an option for reducing the risk of victimisation.

3.3. Timely resolution

Procedures that take too long or uncertainty about the length of complaints' procedures discourage potential complainants from filing. For this research, complainants were asked to assess the procedures they had gone through and representatives of institutions and intermediaries to consider the procedures as a whole and in general.

3.3.1. Views from complainants

"It was very useful that the witnesses had drafted memory notes right after the incident as the proceedings at court actually started about nine months after the [actual event]."

(Complainant, Austria)

About two thirds of the complainants provided information on the duration of their procedure. The average procedure took 17 months. Almost half achieved a final result in under a year, a large number took between two to three years while a smaller proportion waited more than three years. The procedures typically took longer when complainants had to take their case through more than one institution.

In the eight Member States reviewed, the average duration of procedures ranged from about a year in Austria, Belgium, Bulgaria and Italy to about 18 months in the Czech Republic, Finland and the United Kingdom. In sharp contrast, complainants in France had to wait almost 36 months for a resolution.

Complainants were sensitive to the length of the procedures. They often raised the issue in response to open questions on the quality of procedures, particularly court procedures.

3.3.2. Views from representatives and intermediaries

Describing the length of proceedings in the abstract is difficult, as cases vary greatly by type. Both representatives of equality bodies (Austria, Belgium, Finland and the United Kingdom) and intermediaries (Belgium, the Czech Republic, Finland, France and Italy) identified the duration of procedures as a factor that influences the willingness of complainants to take their case to a dispute resolution body.

Some representatives of equality bodies and intermediaries stressed the importance of informing the complainant at the outset of the procedure's likely duration, regardless of whether the procedures were before their own institution or a court. Unexpected delays might discourage the complainant and cause him or her to withdraw midway through the process.

Promising practice

Ending discriminatory practices: injunction procedures

Belgium can use injunction procedures to terminate discriminatory practices. Injunctions can lead to a quick court determination on whether there has been a violation of the prohibition to discriminate followed by an order to end the practice.

For more information, see: European network of legal experts in the non-discrimination field, Report on Measures to Combat Discrimination – Country Report 2010 Belgium, pp.18-19, available at: www.unhcr.org/refworld/pdfid/4ed650e52.pdf

3.4. Effectiveness

This section examines the effectiveness of procedures, including those of remedy and follow-up.

3.4.1. Views from complainants

A majority of complainants interviewed expressed themselves as either 'very content' or 'mostly content' with the procedures they had gone through. Complainants were most content with procedures with or involving equality bodies.



“Because the court is faster than the procedure at the Equal Treatment Commission, the decision of the court is legally binding, and [... I] wanted to have a sentence ‘in the name of the Republic of Austria’, [so I opted to take the case to court].”

(Complainant, Austria)

By filing complaints, complainants sought specific outcomes. They identified their main goals (without pre-defined categories provided) as:

1. termination of discrimination, such as removal of barriers and re-instatement to position lost;
2. recognition of discrimination;
3. prevention of discrimination to protect others in the future.

They also mentioned but gave less importance to other reasons, including: monetary compensation and an apology from, or punishment of, the discriminator.

“I told them that if they had apologised I wouldn’t have made a complaint in the first place.”

(Complainant, United Kingdom)

Almost three quarters of the complainants interviewed said that the outcome of the procedure was in their favour and more than half said they had almost or fully realised their goals with the complaints. Still, less than one-fifth of complainants reported that the situation had changed for the better as a result, while a small percentage said it had worsened.

“It was never about the money, it was more about the principle.”

(Complainant, United Kingdom)

Dissatisfaction with outcomes stemmed, for example, from complainants preferring a binding decision to an opinion or recommendation. Others sought recognition of discrimination.

“I lodged a complaint [with the equality body and won but] so what? Has anything changed for me? I still have to take my boy to another town [to attend school].”

(Complainant, Bulgaria)

3.4.2. Views from representatives and intermediaries

The views of representatives of institutions on the quality of procedures reflect the procedures within their bodies but also their experience with other procedures. Intermediaries’ views cover their perceptions over the range of procedures.

Representatives of institutions in all eight Member States agreed that the equality bodies’ skills and competences and judges’ knowledge and willingness to apply equal treatment legislation were essential in determining the outcome of a case. Intermediaries in all eight Member States shared the view with representatives of institutions that judges often lacked knowledge about equal treatment legislation and were not sufficiently aware of the specificities of discrimination cases.

Judges often lacked knowledge about equal treatment legislation and were not sufficiently aware of the specifics of discrimination cases.

Representatives of equality bodies and intermediaries in almost all the eight Member States considered that resources, whether at their own bodies or organisations, courts or administrative/judicial institutions, did not suffice to produce high-quality outcomes.

Representatives of institutions and intermediaries in all eight Member States agreed that powers, in particular of equality bodies, needed strengthening. They identified the need to introduce or improve powers to:

- conduct self-initiated enquiries and evidence gathering;
- launch self-initiated investigations;
- oblige defendants to provide information and cooperate;
- bring cases to court.

Intermediaries, more frequently than others, also stressed the need for bodies to be empowered to issue binding decisions.

Promising practice

Reflecting on holistic approaches to cases

The Austrian equality body – Ombud for Equal Treatment – holds annual meetings for all its employees as well as targeted follow-up sessions, drawing together staff from five different cities. An important issue on the agenda is what is called ‘inter-vision’ of cases: employees meet and reflect on cases they have dealt with. By learning from one another’s feedback on cases, the Ombud’s staff aim to improve the counselling and other support they provide.

For more information, see: Austria, *Anwaltschaft für Gleichbehandlung (forthcoming)*, *Gemeinsamer Bericht 2010/2011*, Vienna, p. 149

To determine if remedies are effective, follow-up procedures are important. The majority of representatives of equality bodies in the eight Member States reviewed said that they engaged in follow-up procedures. More equality bodies, however, took steps to monitor defendants' actions in relation to practices and procedures, rather than complainants' situations. Of the intermediaries, only one quarter agreed with the equality bodies' view that follow-up procedures were in place.

Intermediaries often criticised low compensation payments awarded after procedures, also when seen as a quantitative criterion in determining the quality of the outcome of a procedure (Austria, Bulgaria, France and Italy). Intermediaries in Austria, Finland and Italy said that compensation payments were too low and therefore not dissuasive.

3.5. Summary of findings

The research considered procedures under four headings: collective dimensions, fairness, timely resolution and effectiveness. Respondents identified collective dimensions of procedures, such as widened legal standing and strategic litigation, as important to improve access to justice. They also identified equality of arms and the shift of the burden of proof as essential requirements of fair proceedings. Both issues, however, face problems: in the first case the typically greater strength of the alleged discriminator vis-à-vis the complainant; in the second, the low awareness and insufficient application of the shift of burden of proof.

Complainants also drew their perception of equality of arms from their assessment of the attention paid their individual cases. They judged it disadvantageous when representatives of institutions, including judges, did not give them enough time or space to tell their stories or did not pay enough attention to those stories. Only half of the complainants from the sample interviewed felt that their stories had been 'mostly' or 'fully' listened to. Equality bodies seemed better equipped to meet these needs than other mechanisms.

Complainants, representatives of institutions and intermediaries alike raised fears of victimisation – such as intimidation by perpetrators – as an issue that affects fairness and throws up barriers to accessing justice.

More than a quarter of complainants brought up the lengthiness of procedures as a weak point. Representatives of institutions and intermediaries pointed out that lengthy procedures dissuaded people from lodging complaints. To manage expectations, they suggested informing complainants about the possible duration of proceedings.

As for effectiveness, representatives of equality bodies and intermediaries said equality bodies were not adequately equipped with powers to collect evidence, to oblige defendants to provide information and cooperate during proceedings or to take cases to court. The non-binding nature of some equality bodies' decisions was a major weak point, they said, arguing that a lack of resources reduced the capacity and potential impact of the equality bodies as well as other institutions.

As for a final remedy, compensation was sometimes too low to be dissuasive, representatives and intermediaries said, noting that the range of remedies available did not always reflect complainants' aspirations. When complainants are seeking to remove barriers, compensation payments may not be the most appropriate remedy, but they could play an important preventive role if they were proportionate. Decision-making bodies should have the authority to enforce compensation payments, representatives and intermediaries said.

Obstacles related to procedures were:

- lack of accessible information on existing case law;
- limited legal standing;
- insufficient guarantees of equality of arms for complainants vis-à-vis defendants;
- limited application by judges of the shift in the burden of proof as well as insufficient sensitivity;
- lack of protection of complainants and witnesses from victimisation;
- overly lengthy procedures in the system of justice;
- uncertainty among complainants at the outset of a case about length of procedure;
- non-binding decisions issued by some quasi-judicial-type equality bodies;
- lack of suitable tools beyond penalties and compensation;
- insufficient powers to remedy a situation, such as to reinstate people to their pre-discrimination situation;
- low levels of compensation awarded;
- limited follow-up on the enforcement of decisions;
- rigid rules of procedures less suitable for cases of discrimination; and
- insufficient resources available for equality bodies and other institutions with an equality remit.



Enabling factors for procedures were:

- widen legal standing, such as for collective redress, public interest litigation, and strategic litigation, allowing for a critical mass of cases to achieve change;
- effective equality of arms and speedy resolution of cases;
- improve access of complainants to relevant information and documentation held by the opposing side;
- support to judges in understanding and applying the shift of burden of proof and in developing further sensitivity to issues of diversity and discrimination;
- legal and other protection against victimisation and sufficient awareness raising in this regard;
- Improved powers of investigation, enforcement and follow-up for equality bodies and other institutions with an equality remit;
- improved and secured independence of equality bodies in order to boost credibility and effectiveness;
- binding decisions issued by quasi-judicial-type equality bodies;
- adequate resourcing of the relevant institutions in the justice system;
- use of simplified procedures to enable adapted and faster procedures;
- provision of information to the complainant at an early stage in the process as to how long the case will take;
- development of systems to make relevant case law sufficiently accessible; and
- provide equality bodies and other institutions with an equality remit with a range of tools that make sanctions and enforcement effective, including dissuasive sanctions, proportionate compensation and powers to make relevant orders to improve the situation of the claimant and others in similar circumstances.

4

Support



This chapter deals with five elements related to support in cases of discrimination:

- legal advice and assistance;
- other forms of support, such as emotional, personal and moral;
- awareness of rights;
- creating a fundamental rights culture;
- accommodation of diversity.

4.1. Legal advice and assistance

This section discusses the availability and quality of legal advice and assistance, provided primarily by promotion-type equality bodies but also by other bodies and different kinds of intermediaries. It first examines the views of the complainants interviewed on how easy or difficult it was for them to gain access to legal advice and assistance, what obstacles they encountered and to what extent legal advice and assistance facilitated navigation of the institutional system and helped them achieve their desired outcomes. Then, the section turns to the views of representatives of equality bodies, administrative/judicial institutions and intermediaries on the availability and accessibility of the legal advice and assistance they offer as well as on the evaluation of the quality of this support.

4.1.1. Views from complainants

“It is not easy to find lawyers who are specialised in cases of discrimination.”

(Complainant, Finland)

A large majority of the complainants interviewed had consulted legal experts, while just over a tenth said that they had not received any legal support. Professionals, primarily lawyers and equality bodies but also intermediaries, provided the bulk of this support. The equality bodies which provided legal advice and assistance were predominantly promotion-type equality bodies; of the eight states examined, in Bulgaria alone did the quasi-judicial-type equality body offer this service to complainants. About one third of the complainants interviewed had to discover information about the procedures themselves.

“The biggest barrier of all is the lack of good legal advice at a price that the man in the street can afford to pay. Once you’ve got that, I think you will be ok.”

“It’s so difficult for the average person to know what [ones] rights are. You need someone to tell you what’s right and wrong and the best that can come out of the situation [if you pursue action]. I thought my employers were doing wrong but they kept saying that they weren’t, so I needed to know [from a legal advisor] for sure that they were breaking the law.”

(Complainants, United Kingdom)

Among the complainants interviewed, intermediaries, the complainant’s own research or initiative and the complainant’s personal networks offered the three best avenues to find legal support. In Austria and Bulgaria, complainants most frequently mentioned individual research together with personal networks as the best ways to find legal support; in Italy, they named intermediaries.

Complainants also mentioned organisations or lawyers they were familiar with as another source of information. Some of the complainants had received support in finding legal advice from a relative or friend, an equality body, trade union or an employee representative.

In the United Kingdom, the equality body played the central role in passing on information about where to look for legal advice and assistance; in Finland, France and Italy, employee representatives and trade unions played this role.

About one third of the complainants interviewed consulted legal experts before lodging a complaint. Of these, two thirds had received legal advice by the time they lodged their complaints, while the rest sought legal advice only later, after the institution where the complaint had been lodged agreed to proceed with the case.

About three quarters of those who consulted legal experts said the support had been free of charge while the remaining complainants had to pay. A large number of those who paid had to cover those costs themselves at least in part, with only two complainants indicating that legal insurance covered those costs.

People who had lodged a complaint with an equality body took advantage of representation less often than others. Of complainants who had not received any legal support, some had thought it unnecessary to seek legal advice for what they wanted to achieve; all of these people took their cases to a promotion-type equality body. Others had either been able to obtain adequate information or already had sufficient legal knowledge of lodging a complaint. Others had not wanted a third party to get involved, feeling strongly that it was 'their case'.

Complainants were in general content with the legal advice received: almost all described themselves as 'very content' or 'mostly content'. Almost all complainants said that they would recommend this advice to a friend in a similar situation, a finding that confirms their self-described satisfaction.

The focus of the initial phase of legal advice included: explanations of the mandate of equality bodies, where and how to lodge a complaint and what it should contain, the identification of alternatives for lodging a complaint, possible outcomes arising from a complaint, subsequent steps in the procedure and information on mediation. This advice helped the complainant to clarify his or her goals and how to approach the case.

Especially helpful in the early stages, complainants said, were explanations of legal jargon and the overall system of access to justice. They also appreciated the experts' descriptions of risks and walk-throughs of what might happen during procedures.

Dissatisfaction among the complainants focused almost exclusively on counsellors and lawyers' use of technical terms and legal jargon and their failure to support the complainant in better understanding the legal situation,

options in procedures and the possible consequences of lodging a claim.

During procedures, complainants found the legal support received satisfactory advice and particularly prized well-founded legal arguments. They also valued the legal expert's advice on what to expect, how to behave and what to do during proceedings as well as his or her role in collecting evidence, drafting claims and other documents.

The complainants generally had a relatively high opinion of their legal representatives, praising their expertise, independence, clarity of communication as well as the attention they had paid to the case. Without model answers to guide them, they also attributed other positive traits to their representatives: humanity, proficiency, efficiency and proactivity.

Representatives were supportive, showing sensitivity towards particular needs, such as sign language interpreters, complainants said. They commended not only representatives' knowledge and experience in relation to discrimination and procedural issues but also their empathy. They pointed to accessibility – reachable, enough time, providing concrete answers – as another important positive factor.

4.1.2. Views from representatives and intermediaries

Almost all promotion-type equality bodies provide legal advice and assistance. The French equality body is an exception as it provides information alone and no legal advice. The Bulgarian equality body is the only quasi-judicial-type equality body in the eight Member States reviewed which provides legal advice.

Legal advice is seen as an essential element for success, especially in court procedures and before administrative/judicial institutions, according not just to the lawyers interviewed but also to NGOs and victim support organisations. Access to legal aid or the existence of legal expenses insurances is therefore important, although the scope of the latter varies greatly between EU Member States and often carries severe restrictions for cases of discrimination, interviewees said.

The lawyers interviewed emphasised the importance of the cost of legal advice. Many complainants lack financial resources and are unable to defray the costs of legal advice or assistance. Therefore those who offer legal advice for free – equality bodies, trade unions, NGOs and victim support organisations – have an important role to play. The majority of lawyers interviewed offer some free legal advice.

Representatives of equality bodies, administrative/judicial institutions and intermediaries identified several



factors that lead to good quality advice and assistance. The standing and image of the organisation offering legal advice and support, the accessibility of the services offered and the quality of the relationship to the complainants all enhance the quality of legal advice and assistance, representatives and intermediaries said.

Many of the predominantly promotion-type equality bodies, as well as NGOs, seem to offer legal advice to everyone as long as the case falls within their mandate. Representatives of equality bodies in Belgium, Bulgaria, the Czech Republic, Finland, Italy and the United Kingdom identified a few criteria they use to decide whether or not to provide complainants with legal advice.

Such criteria included, most importantly, strategic litigation. In Belgium, two other criteria played a role: namely, the alleged discrimination should have taken place in an under-reported area and the complainant should belong to an under-represented group. Equality bodies also considered the credibility of the case, chances of success, solid evidence and available institutional resources.

Promising practice

Managing expectations

To avoid unrealistic expectations and disappointment for complainants, a Belgian lawyer specialising in equal treatment procedures provides not only information on rights and procedures to potential complainants but also a calculation of costs and an estimate of the procedure's length.

Information provided through FRA research 2011

Trade unions usually offer advice only to their members; in Italy, however, the trade unions seem to have also taken on cases of migrants who were not members, according to Italian representatives and intermediaries.

Representatives of equality bodies and intermediaries in all eight Member States agreed that quality advice hinged on a number of factors. Though knowledge of legislation and the latest developments regarding case law were important, skills for providing legal advice to a variety of groups were also key. The experts should best acquire these skills by: dealing with many cases of discrimination; engaging in continuous training; and exchanging in-house experience.

Representatives of equality bodies and intermediaries found it challenging to tailor their legal advice, couching it in an easily understandable way, to the needs of specific groups of complainants, particularly one or more of the following: complainants who had a lower level of education, did not know the local language, had different cultural backgrounds, had an intellectual disability or who were in a psychologically stressful situation.

4.2. Other forms of support

This section first presents the experiences of complainants with gaining access to support other than legal, such as emotional, discusses why they sought support and to what extent they were content with the assistance received.

Secondly, it sheds light on the kind of support equality bodies, administrative/judicial institutions and intermediaries offer and their views on the quality of this support.

4.2.1. Views from complainants

"It's difficult as everyone's circumstances are different. Not everyone can look to friends and family; there needs to be additional support."

(Complainant, United Kingdom)

About half of the complainants interviewed sought support other than legal assistance. More than half of these identified family, friends and colleagues as the most important sources of such support.

Complainants discussed their experiences with family, friends and colleagues, who often encouraged them in their decision to lodge complaints or kept them going during the ups and downs of long and stressful procedures. In some cases, it was family members or friends who identified the case as discriminatory in the first place. They also occasionally provided support by drafting letters or explaining documents.

Complainants with such support – who do not feel isolated and alone – stand a much better chance of dealing with discrimination, the research findings show. In contrast, however, some complainants said that fear of victimisation in the workplace or of their families prevented them from sharing their stories and concerns with colleagues and family. In several cases the family was not supportive, either because family members feared negative consequences or because they believed, for various reasons, that the complainant should not have lodged the claim. A few complainants mentioned that, if they were ever to lodge a complaint again, they would look for support outside their families so as not to expose them to stress and anxiety.

These types of support are not institutionalised, so access tends to be informal. Often, provision depends on the capacities and skills of the individual staff member and is not part of the services on offer. Respondents most often mentioned equality bodies in Belgium, Bulgaria and the United Kingdom, as well as intermediaries in Austria, the Czech Republic and Finland as providing such support. Complainants considered this support extremely helpful.

They suggested training psychologists and other health professionals in discrimination issues after which they should offer such support explicitly.

Complainants expressed satisfaction with the emotional, personal and moral support they received. Almost all were either 'very' or 'mostly' content and two thirds said they would recommend this type of support to a friend in a similar situation.

About one fifth of the complainants identified empathy either from an intermediary or equality body as a source of personal, moral and emotional support. The complainants believed the professionals listened to, believed in and understood their stories; the complainants, therefore, appreciated what they saw as the professionals' supportive attitude.

Those complainants who had lodged their complaint together with others affected by discrimination particularly valued peer support. They listened to each other, took steps to prepare the case together and encouraged one another to continue with the procedure. Almost all complainants said they would make use of emotional, personal and/or moral support if they were ever to file a complaint again.

Promising practice

Countering stigma

An NGO working with people with disabilities in Bulgaria said that an effective way to raise awareness is to make complainants visible through media campaigns. The strategy breaks down stigmas while simultaneously emancipating victims of discrimination. It may also create a more supportive environment in general.

For more information, see: <http://chovekolubie.org/en/>

4.2.2. Views from representatives and intermediaries

Intermediaries more often provide emotional, personal and moral support to complainants than equality bodies, according to the sample interviewed. The equality bodies that tend to offer such support are the promotion-type equality bodies of Austria, Belgium, the Czech Republic, Finland and France. Some administrative/judicial institutions also offer this kind of support.

Victim support organisations and NGOs tend to offer such support, but a number of specialised lawyers also see such support as part of their services. Some of the promotion-type equality bodies which do not themselves offer such support may refer complainants to other organisations which do.

A few lawyers in Austria and Bulgaria said they saw offering moral or emotional support as both part of their duty and necessary to motivating complainants to pursue their cases.

Representatives of one victim support organisation in Belgium said it was important to keep complainants informed about their cases and enquire about their current emotional states. Other elements of such support were:

- providing face-to-face contact, which does not always occur, due either to a lack of resources or geographical distance;
- listening actively, as complainants want to tell their stories;
- motivating complainants to come back for further support;
- developing non-legal strategies to cope with multi-layered problems related to the discrimination issue, such as advice on how to overcome social exclusion.

Psychological elements of support focused on the empowerment of complainants, in particular on overcoming the sense of victimisation (France) and gaining self-confidence (Austria and Italy) through face-to-face or online peer group encounters and peer counselling (Austria, Bulgaria, Finland, France and the United Kingdom).

Without being given predefined answers, representatives of equality bodies and intermediaries identified factors perceived as contributing to the provision of high quality moral, emotional and personal support. They named adequate resources and staff skills, including sufficient time to attend to complainants' needs.

Promising practice

Supporting persons who have been discriminated against

The law faculty of Hungary's Eötvös Loránd University (ELTE) and the NGO Hungarian Helsinki Committee set up an anti-discrimination law clinic in 2008. Students at the clinic attend lectures on national and European equality law, audit proceedings in courts and equality bodies and visit NGOs active in the field. The students may then assist attorneys in discrimination cases. In 2011, the clinic moved to the Labour Law Department at Pázmány University.

For further information, see: http://helsinki.hu/Egyenlo_banasmod_szakkonyvtar/Hirek/htmls/639



Representatives of equality bodies and intermediaries also raised the issue of the close relationship between legal advice and other forms of support, noting that separating them can be difficult. They also expressed the need for more outreach to organisations that provide such support in order to effectively refer complainants to competent organisations for special kinds of emotional, personal or moral support.

Given already scarce resources for legal assistance, the provision of these other types of support poses an even greater challenge for equality bodies and intermediaries. On top of the problem of limited resources, equality bodies said their mandates do not always, or do not explicitly, mention the provision of these kinds of support. The Czech Republic's promotion-type equality body is an exception as it employs a psychologist.

Promising practice

Lending psychological support

One Bulgarian NGO includes psychologists and social workers on its staff to provide psychological support to complainants. The NGO considers such psychological support of primary importance for victims and it also encourages victims to seek legal support.

For more information, see: Bulgarian Gender Research Foundation

Personal support requires staff members who are qualified in areas other than the law. To guarantee high quality support, respondents saw interdisciplinarity in teams as well as diversity among staff, in order to accommodate diversity, as essential ingredients (Austria, the Czech Republic, Finland and the United Kingdom).

Intermediaries considered that offering moral, emotional and personal support posed risks. This was especially so if staff were not well trained in these areas, as it could result in too much personal involvement (Austria, Bulgaria and the Czech Republic) or in complainants asking for ever more support (Italy).

Promising practice

Staying in touch

Several complainants said they found it beneficial when equality bodies actively maintained contact, channelled through a single person who had responsibility for following up on the case.

4.3. Awareness of rights

This section focuses on the availability and quality of measures aimed at awareness-raising and examines the measures explicitly targeting potential complainants, seeking to inform them on: their rights under equality legislation; the existence, mandate and powers of bodies and institutions with an equality remit; how to lodge a complaint; and the procedures in place.

The section then explores the measures taken to raise awareness among complainants, potential complainants and the general public. It closes with complainants' assessment of whether such information, communication and outreach policies effectively target potential complainants.

4.3.1. Views from complainants

"I wasn't aware of the fact that my experience was a form of discrimination on the grounds of age. The counsellor of the worker's chamber pointed this out to me."

(Complainant, Austria)

Complainants acquired knowledge about their rights under equality legislation in several different ways. Almost half of the complainants interviewed learned about their rights either in school or at university or knew about their rights because this knowledge is part of common culture. They also obtained information from the internet. Some had acquired legal knowledge and insight into discrimination issues from previous claims they had lodged. Others had family and friends who had knowledge about their rights. Some just knew that they had been wronged and something had to be done about it.

About one fifth of the complainants worked in an environment in which knowledge of equality legislation is either necessary for the job or seen as part of common knowledge. Other complainants had been active in or members of organisations dealing with anti-discrimination issues, such as trade unions and NGOs working, for example, on gender, racism or disability issues.

When explicitly asked about the sources of information concerning their rights under equality legislation, complainants linked the search for this information to their concrete cases. This suggests the greater importance of targeted model judgments and information about legal provisions related to concrete cases rather than general knowledge spread more widely. About one sixth of the complainants interviewed had gained their knowledge from the media, with the same proportion obtaining information from an equality body.

One-tenth of the complainants identified lawyers as information sources; another tenth, the internet; and a further tenth, family or friends. Slightly fewer complainants identified an intermediary as their source, with similar proportions of complainants listing their own searches, the workplace or personal networks.

In Austria, Belgium and the United Kingdom, a greater number of complainants gained this kind of information from the respective equality bodies, whereas none or few of the complainants in the Czech Republic, France and Italy mentioned equality bodies as a source of information.

In Italy this gap seemed to be filled, at least to some extent, by lawyers, and in the Czech Republic, by the media and lawyers. In Bulgaria complainants turned most frequently to the internet.

The media seem to play a particularly useful role in propagating information on the existence, mandates and powers of equality bodies. They play a more important role in promoting equality bodies than in disseminating knowledge about equal treatment legislation. Media's awareness raising role is particularly strong in France. Brochures and leaflets play only a minor role as sources of information about rights.

The complainants interviewed were better educated than the general population, with some 60 % holding university degrees, and the great majority said that accessing information about their rights had not proven difficult. Some complainants mentioned, however, that while it had been fairly easy for them to obtain this information, it could be more difficult for others who are less well educated or have no specialised knowledge. In this sense, the sample is far from representative, as the majority of the complainants opted both to pursue their complaints and to share their experiences.

Once complainants learned about their rights and the existence of an equality body, they found it easier to locate an entry point to access justice. When complainants looked for concrete information on procedures, they turned primarily to equality bodies.

The great majority of complainants considered the information on rights under equality legislation to be adequate and accurate.

Complainants found that the media, lawyers, the internet, family and friends, personal resources and NGOs as the most reliable sources of information on rights under equal treatment legislation. Complainants found that legal knowledge, internet research skills, experience with complaints and the ability to understand the information provided facilitated information gathering. They also gained satisfactory information by accessing

information about similar cases. Obstacles to information gathering were the absence or inadequacy of information about where to lodge a complaint and on further steps as well as the complexity and technical nature of the language used.

4.3.2. Views from representatives and intermediaries

The intermediaries and representatives of equality bodies in the eight Member States reviewed use different channels to offer information about the services they provide. Promotion-type equality bodies primarily provide information via their websites and brochures and through networking.

Intermediaries rely to a large extent on word of mouth. Like promotion-type equality bodies, they engage intensively in networking, which includes promoting their services via NGOs which do not necessarily focus on equal treatment and anti-discrimination issues. Although intermediaries also use brochures to promote their services, they mention them less often than the internet or networking.

Intermediaries as well as equality bodies use the internet as a central communication tool, channelling information through social networks such as Facebook and Twitter. To promote successful cases, intermediaries primarily rely on the mass media, which potential complainants find easily accessible.

Most of the equality bodies – both promotion and quasi-judicial-type – have developed communication strategies on rights under the relevant equality legislation, which market the existence, character and tasks of their body and how to lodge a complaint.

Many intermediaries also perceive legal advice as a strategy for targeting potential complainants. This leads, however, to focusing information efforts on those who have already recognised that they have been treated unfairly. More than half the intermediaries actively targeted complainants while lawyers in specific were less active in this regard. Representatives of equality bodies in Austria, Finland and Italy explicitly said that they would not market their services because they could not handle more complainants than those they were already serving.

Some equality bodies do not advertise their services since they are already at maximum capacity.



Equality bodies with a clear communication strategy focused their resources on four broad strategies aimed at raising awareness among potential complainants. They:

- targeted potential complainants directly, by tailoring the information material to the needs of certain groups, such as easy-to-read material or translations into various languages, and by providing model cases in order to motivate potential complainants to take action (Austria, Belgium, Bulgaria, Finland, France and Italy);
- conducted general outreach work to increase their geographical proximity to potential complainants (Austria, Belgium, Bulgaria, Finland, Italy and the United Kingdom), by cooperating with community organisations who have expert knowledge on how to reach their specific target groups – especially where equality bodies do not have any regional offices;
- networked with and conducted workshops for victim support organisations, NGOs, municipalities and public bodies, lawyers and the police, in order to raise awareness that some of their clients may have been affected by discrimination but not have recognised it as such (Austria, Belgium, Bulgaria, Czech Republic and Italy);
- empowered persons to recognise discrimination, by holding training events for the general population that may result in participants bringing cases forward.

Representatives of equality bodies and intermediaries indicated that the following factors enhance the effective targeting of potential complainants:

- the good standing and image of the organisation;
- sufficient financial and human resources;
- accessibility of information offered;
- knowledge about which communication channels should be used and what the information should look like in order to reach groups potentially affected by discrimination;
- the proximity to potential complainants, particularly to establish trust with marginalised groups such as Roma, people living in poverty and homeless people.

As for effective methods, websites and networking brought the greatest impact. Other means mentioned included word of mouth, direct contact with potential complainants, mass media, workshops, lectures, social media, outreach via member organisations, press conferences and media targeted at potential complainants. Like complainants, representatives and intermediaries also considered brochures as the least effective approach, followed by telephone lines or help desks.

Some organisations have jettisoned less productive comprehensive approaches to focus communication strategies on narrower issues of discrimination, such as in relation to wearing religious symbols, like headscarves, or sexual orientation. Results have been promising.

According to intermediaries in several EU Member States, legal and public relations experts must work together to present model cases in an easily understandable way. They must also cultivate good relationships with the media in order to get these cases published.

4.4. A fundamental rights culture

This section looks into whether complainants perceived their social environment as supportive or hostile to their attempts to seek access to justice. It also examines what equality bodies and intermediaries do to encourage a positive attitude among the general public towards equal treatment. It examines measures aimed at developing awareness of and a positive attitude towards equality and rights to non-discrimination among the general public, and how successful these attempts are. The section also shows how complainants experience the attitudes of both family and friends and the general public towards taking action in cases of discrimination and whether these perceptions influence their decisions. Finally, the section provides an overview of how equality bodies and intermediaries perceive the current social and political climate concerning issues of equal treatment and non-discrimination.

4.4.1. Views from complainants

"[We] tested the dance club in our town [...]. We went to the disco and then tried to go inside in two groups: one Roma and one non-Roma. After the staff refused to let the Roma group in, we called the police. The police first refused to record our complaint but we insisted. When the owners of the club subsequently threatened us we decided to withdraw our complaint. Roma are still discriminated against in this club."

(Non-complainant, Czech Republic)

More than two thirds of complainants interviewed were of the opinion that society did 'not at all' or 'not entirely' expect people who had been discriminated against to take action.

Nonetheless, the same proportion said that it had been 'very easy' or 'relatively easy' to decide to lodge a claim. This high proportion should, however, be considered in the context of the sample – those participating are relatively well-educated, informed and willing to participate in the interviews, and most had also decided to pursue their complaints.

4.4.2. Views from representatives and intermediaries

Almost all promotion-type equality bodies have a strategy to develop awareness of and positive attitudes towards equality and rights to non-discrimination among the general public, much like they have the communication strategies mentioned above. Representatives from the eight Member States surveyed said they lacked the resources to employ public relations experts.

In almost all eight Member States, intermediaries described the political and social climate as hostile towards either combating discrimination or towards certain groups which are more likely to be discriminated against, such as Roma, religious minorities, people with intellectual disabilities, and lesbian, gay, bisexual and transgender (LGBT) persons. Furthermore, they pointed out that public bodies rarely function as role models. They develop anti-discrimination practices only infrequently and therefore do not contribute to the development of a fundamental rights culture.

Representatives from several equality bodies stressed the importance of the media as an essential component of any strategy targeting the general public. Several attempted to publicise strategic and successful cases via the media, including information on legal provisions as well as on the body's mandate.

Intermediaries favoured well-reasoned communication without pathos or emotions (Bulgaria and United Kingdom), the use of non-legal and non-expert language (Bulgaria and Italy) and a rights-based approach (Austria) which they said helped foster a fundamental rights culture. Establishing good cooperation with the media, supporting the development of knowledge and the adoption of a more sensitive approach to news on equal treatment and non-discrimination also helped promote a fundamental rights culture (Austria, Finland and Italy), the intermediaries said. Austrian intermediaries noted one related challenge: the media are reluctant to publicise cases if the complainant wishes to remain anonymous.

Intermediaries in particular mentioned that the media sometimes present information on minorities or on discrimination in a distorted or biased way, especially with regard to the situation of Roma, LGBT people and Muslims (Bulgaria, the Czech Republic, Finland and the United Kingdom).

Approaches taken to improve the fundamental rights culture are largely similar to and indeed overlap with strategies to boost rights awareness.

4.5. Accommodation of diversity

This section analyses the availability and quality of measures taken to accommodate diversity – what particular needs complainants must have met before lodging a complaint or participating in procedures and to what extent these needs are met in practice.

The needs of the complainants are set against institutions and intermediaries' awareness of and capacity to deal with those needs. This section examines the strategies to accommodate diversity, which target: individual complainants, various groups of complaints and complainants discriminated against on a particular ground. It also assesses the quality of those strategies.

Promising practice

Accommodating diversity

One of the Belgian equality bodies, the Centre for Equal Opportunities and Opposition to Racism, ensures accessibility not only to its offices but also in the information it provides, offering it in a variety of languages, including sign language and Braille, for example.

For more information, see: www.diversiteit.be/?setLanguage=3

4.5.1. Views from complainants

About one third of the complainants interviewed were either nationals of other EU Member States, nationals of 'third countries' or persons with an ethnic background that differed from that of the majority population in the EU Member State in which the interview was conducted. A portion of the complainants, however, received information about lodging a complaint and the related procedures in the language where the interview took place rather than in their native language, although almost all said they were proficient in the language in which they had been informed.

About one tenth of complainants said that they had particular needs that needed to be accommodated during the various stages of the complaint. These included physically accessible premises and communication needs, such as Braille, sign language interpreters or information in foreign languages.

Some required support with drafting their complaints, either because they had difficulties with the language or because it was too challenging for them to formulate the complaint.



Complainants' views varied considerably on whether their needs had been satisfied and, if so, whether they had been met in a timely manner. The number of complainants who were fully content was the same as those who were not at all content. Complainants in Austria and the Czech Republic were the least content, while those in Finland and the United Kingdom were the most content.

To improve the awareness of particular needs, complainants emphasised the benefits when equality bodies' and court staff reflected the diversity of society. They also suggested training and awareness-raising activities and the provision of easy-to-read information in a variety of languages both before complaints are lodged and during proceedings. They recommended making the premises of equality bodies, intermediaries, courts or tribunals more accessible. Concretely, they suggested putting together a checklist before a court hearing, for example, checking whether all tools to accommodate diversity are in use.

Promising practice

Assisting in formulating a complaint

The Ombudsman for Minorities in Finland pays special attention to the needs of complainants in drafting the complaint. The Ombudsman offers assistance to complainants who have difficulties in formulating and writing their complaints. Since 2004, it is incumbent on all government authorities to systematically foster equality in all activities and alter situations that prevent equality.

For more information, see: The Equality Plan, under the Non-Discrimination Act (21/2004); and see the Ombudsman for Minorities website, available at: www.ofm.fi/contact on how to submit a complaint or concern

4.5.2. Views from representatives and intermediaries

Almost all equality bodies provide information in different languages via accessible websites and easy-to-read brochures. Just under three quarters of the intermediaries included in the sample, however, use tailored strategies to provide specific groups with information on their services. Trade unions, victim support organisations and NGOs better accommodate diversity in this regard than specialised lawyers, although specialised lawyers employ such strategies more often than general lawyers.

The Austrian promotion-type equality body Ombud for Equal Treatment offers accommodation, by, for example, declining to allow spouses to translate in cases of sex discrimination. The United Kingdom equality body maintains flexibility in response to complainants access needs and is also willing to meet complainants at premises

other than its own. But few of the equality bodies had a formal procedure in place to assess and respond to the needs of each individual complainant and even fewer had such a procedure for the needs of individuals from protected groups.

Austria's quasi-judicial-type equality body has accessible rooms and, in cases of sexual harassment, can hold separate hearings for the complainant and defendant. It offers interpretation and provides staff with training skills to equip them to question traumatised young people. In the United Kingdom administrative/judicial institutions are said to respond to particular needs indicated when by completing particular sections of required forms. In Bulgaria hearings of the equality body can be held in camera or the complainant and defendant can be questioned separately in cases of sexual harassment.

FRA ACTIVITY

Disability project

The findings of the FRA project on the fundamental rights of persons with intellectual disabilities and persons with mental health problems indicate a number of barriers to accessing justice. Many respondents said that they refrained from complaining for fear of retribution or that they would not be taken seriously. Others reported negative experiences when trying to secure help from law enforcement officials and the justice system. An important obstacle to obtaining redress was lack of awareness about complaints procedures combined with a lack of formal support, particularly in institutional settings. Where interviewees had accessed justice, they highlighted self-advocacy groups as a crucial support during the process. Based on these findings, FRA identified measures to raise awareness about complaints mechanisms and to support people with disabilities to access justice and participate in judicial procedures as key to securing independent living.

For more information, see: fra.europa.eu/fraWebsite/research/projects/proj_disability_en.htm

Austria accommodates diversity by, for example, offering low threshold support without appointments, and, like Finland, by employing counsellors who speak different languages. Finland also takes more time to offer support to specific groups, explaining the situation in a more understandable fashion. Bulgaria uses intermediaries for communication; in Italy, representatives and intermediaries meet complainants at a place of their choosing, rather than at the premises of the organisation. France uses drop-in law clinics, which representatives and intermediaries said deal best with cases of discrimination.

To respond to individual needs, a number of respondents mentioned the importance of identifying those needs when providing face-to-face support.

Promising practice

Reporting on web accessibility

A United Kingdom initiative called 'Fix the web' allows people to report problems with access to websites online. The organisation commits itself to approaching owners of inaccessible websites about the problems. This is helpful, for instance, for visually impaired persons, when they are confronted with difficult-to-access websites.

For more information, see: www.fixtheweb.net/

4.6. Summary of findings

The report considers support as: legal and other forms of advice and support, awareness of rights, a fundamental rights culture and accommodation of diversity.

Legal advice and other forms of support

Complainants consult with legal experts at all stages of the complaints processes – to navigate the system prior to lodging a case, while lodging a case and during hearings. The extent to which legal advice is used suggests that this support is necessary to navigate a challenging system. Specialist lawyers highlighted the costs of legal advice as a particularly important aspect, saying many complainants lack sufficient financial resources to defray its costs. Intermediaries therefore pointed to access to legal aid or to legal expenses insurances as determining factors in accessing justice.

Among those institutions and intermediaries that offered legal support, most had a strategy to select for whom they would provide legal advice and assistance. Respondents mentioned criteria including strategic litigation, cases in under-reported themes, cases from under-represented groups, the complainant's economic situation, the chances of success and the availability of resources.

A majority of complainants expressed satisfaction with the legal advice and support they had received and thought highly of the professionals who had represented them. Essential for this satisfaction was the easy accessibility and availability of counsellors and lawyers during the whole duration of the procedure. Two fifths of complainants, however, identified this as a weak point. Representatives of promotion-type equality bodies and intermediaries realised the importance of accessibility and availability but emphasised that their resources sometimes fell short of meeting all needs.

The complainants highlighted the independence, clarity, humanity, proficiency, efficiency and proactivity of the person providing the support as key characteristics.

Representatives of institutions and intermediaries pointed to resources and skills as factors influencing the extent to which they could provide complainants with the support that motivated them to pursue their cases to their conclusion.

About half of the complainants had also had some access to emotional, personal and moral support, with family, friends or colleagues providing much of this. Promotion-type equality bodies and intermediaries also played a role. Such support was largely informal.

Complainants said they needed such support to avoid feelings of isolation when coping with an incident of discrimination. Several lawyers mentioned that emotional support had helped motivate complainants to stick with a case.

FRA ACTIVITY

Clarifying where to turn with complaints

The FRA is developing an online guide on where to turn to make a complaint or seek support, including support for victims of crime. The tool, entitled 'Complaints, legal assistance and rights information tools for you', or CLARITY, will provide signposts of where to turn at national and international levels and offer details on the advantages and disadvantages of the various options.

For more information, see: *FRA Annual Work Programme 2013*, p. 35, available here: http://fra.europa.eu/fraWebsite/about_fra/what_we_do/work_programme/work_programme_en.htm

Complainants rated empathy as an important aspect of support: they wanted their stories heard, understood and paid attention to. They also identified peer support as a further supportive factor. But they were concerned that relying on personal support from family, friends and colleagues could result in the victimisation of their family members or of themselves if colleagues reacted negatively to the complaint. Complainants preferred to receive support from professionals in an institutional context.

Obstacles related to support were:

- limitations in human, financial and time resources of those providing legal advice and assistance;
- limited accessibility to and availability of the lawyer providing legal advice and assistance;

- costs of legal advice and assistance and strict criteria governing legal aid;
- scarce resources which limit the potential of equality bodies and intermediaries;
- lack of understanding of what is involved in other forms of support, such as emotional, personal and moral;
- absence of formal provision of emotional, personal and moral support;
- risks involved in providing other forms of support through staff taking on responsibilities beyond the call of duty in areas where they are not necessarily adequately trained or supported.

Enabling factors for support were:

- availability and accessibility of legal advice and assistance at all stages of the process from navigating the system to dealing with a decision on the case;
- systems of cross-referral between organisations providing legal support as well as cross-referral with and outreach to organisations which provide emotional, personal and moral support;
- face-to-face counselling;
- qualifications of staff providing legal support and skills which encompass legal knowledge, case law and capacity to engage with the diversity of people experiencing discrimination, including employment of a diverse staff and use of inter-disciplinary teams;
- quality of the relationship developed by a counsellor/lawyer with the complainant;
- an explicit provision of emotional, personal and moral support to complainants by equality bodies or intermediaries.

Awareness of rights, fundamental rights culture and accommodation of diversity

Looking into rights-awareness it is essential for complainants to acquire knowledge about rights under equal treatment legislation and how to exercise these rights. Complainants pursued diverse processes for acquiring knowledge about their rights under equality legislation. Many of them looked up information on their own or drew on services available at work. Institutional support played a less important role in the process of acquiring knowledge about rights but had a significant effect on whether or not complaints were pursued. Guidance on how to lodge a complaint and on the procedures available would contribute greatly to enhancing access to justice.

The media was the primary source of information for many complainants on the existence, character and tasks of equality bodies. Equality bodies, in turn, were identified as a primary source of information on procedures. Complainants also used the internet, colleagues and resources available at work, other networks and lawyers.

"I [was] treated really badly and I believed it was normal to seek justice. At the beginning I tried other possibilities but they always refused in an arrogant way. [...] As for my colleagues: they did not help me at all and also started to avoid me in the office. And as for my family: they perceive a judicial procedure as very negative: a stain on the CV. They think nobody will ever hire me again and in fact that is difficult at the moment. Everybody tells me that in my place they would not have been able to stand this situation at all. They would have given up earlier."

(Complainant, Italy)

As for a culture of fundamental rights, complainants were largely of the opinion that the general public did not welcome people bringing discrimination claims. In almost all the eight states covered by the research, intermediaries also described the political and social climate as hostile towards combating discrimination and towards certain groups experiencing discrimination.

Some institutions and intermediaries have developed measures to support the development of awareness of and positive attitudes towards equality and rights to non-discrimination among the general public and promote a fundamental rights culture. To do so, they use brochures, websites, social media awareness campaigns, media presence and training workshops. This report, however, cannot assess to what extent these efforts have boosted the reporting of incidents.

FRA ACTIVITY

Diversity toolkit

The FRA has developed a toolkit on how to promote the principles of cultural diversity in broadcast organisations and on television programmes. The toolkit brings together practical elements (such as checklists and references) and good practice advice that can be used, applied and learned from.

For more information, see: http://fra.europa.eu/fraWebsite/media/materials_trainings/diversity_toolkit_en.htm_trainings/diversity_toolkit_en.htm

Complainants believed diversity could be better accommodated. Information was not provided in an accessible way and premises, including courts, equality bodies and intermediaries were not always sufficiently accessible, they said. Complainants also highlighted that neither the staff of institutions nor of intermediaries reflected the diverse nature of society. Institutions have started to develop strategies relating to accommodation of diversity by, for instance, assessing the needs of individual complainants during proceedings.

Obstacles to rights awareness, a culture of fundamental rights and accommodating diversity:

- insufficient focus among institutions with a discrimination remit to communicate their work and services;
- use of technical legal jargon in information provided;
- unclarity as to where to find relevant information, including on where to turn to complain and where to find model cases that could give guidance;
- public bodies commonly not being models of good practice in promoting equality and combating discrimination;
- political reluctance to combat discrimination and political convenience of expressing animosity towards certain groups;
- negative media reporting of groups at risk of discrimination;
- lack of resources available to equality bodies and intermediaries for promoting a fundamental rights culture;
- absence of formal procedures or checklists to identify and respond to needs in relation to accommodation of diversity at various stages.

Enabling factors for rights awareness, a fundamental rights culture, and accommodating diversity:

- good standing or 'reputation' of the institutions involved;
- existence and quality of communication strategies of relevant institutions;
- accessibility of the information, including in different languages and formats, in clear and easy to understand language;
- accommodating (barrier-free) buildings and websites;
- adapted communication to different groups (grounds of discrimination as well as types of groups, such as a particular ethnic group);
- proximity to specific groups through local offices, regular presence of representatives of relevant organisation or cooperation with NGOs;
- adequate financial and human resources for the relevant institutions;
- networking by institutions with equality organisations to strengthen public relations capacity;
- developing cooperation with and supporting a build-up of knowledge with politicians and within media providers;
- development and application of procedures by organisations with a human rights remit to identify practical needs of individual complainants and how to best respond to these;
- staff composition of institutions with an equality remit which reflects the diversity in society.



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Annex: Overview of equality bodies

Table A1: Equality bodies at national level (members of Equinet), by mandate and 'predominant type' (quasi-judicial or promotion)

| Country | Name of body in English | Name of body in national language | Grounds of discrimination | | | | | | | | | | Type | | | | |
|---------|---|---|---------------------------|-----|-----|------------|--------------------|--|---------------|------------------------|-----|-----|----------------|-----------|------------|--------------------|---------------------|
| | | | Employment | | | | | Beyond employment, such as: education, goods and services, and housing | | | | | Quasi-judicial | Promotion | | | |
| | | | Race and ethnic origin | Sex | Age | Disability | Sexual orientation | Religion and belief | Other grounds | Race and ethnic origin | Sex | Age | | | Disability | Sexual orientation | Religion and belief |
| | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| AT | The Austrian Ombud for Equal Treatment | Anwaltschaft für Gleichbehandlung | ✓ | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ | | | | | | ✓ |
| BE | Center for equal opportunities and opposition to racism (CEOOR) | Centrum voor gelijkheid van kansen en voor racismebestrijding/Centre pour l'égalité des chances et la lutte contre le racisme | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| | Institute for the equality for women and men | Instituut voor de Gelijkheid van Vrouwen en Mannen/Institut pour l'Égalité des Femmes et des Hommes) | ✓ | | | | | | | ✓ | ✓ | | | | | ✓ | ✓ |
| BG | Commission for Protection against Discrimination (CPAD) | Комисия за защита от дискриминация | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| CY | The Office of the Commissioner for Administration (Ombudsman) | Επίτροπος Διοικήσεως | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| CZ | The Public Defender of Rights (Ombudsman) | Veřejný ochránce práv | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓** | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓** | ✓ |
| DE | The Federal Anti-Discrimination Agency | Antidiskriminierungsstelle des Bundes | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| DK | The Danish Institute for Human Rights | Institut for Menneskerettigheder | ✓ | ✓ | ✓* | ✓* | ✓* | ✓* | | ✓ | ✓ | | | | | | ✓ |
| | Board of Equal Treatment | Ligebehandlingsnævnet | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ |

| Country | Name of body in English | Name of body in national language | Grounds of discrimination | | | | | | | | | | | Type | | | | |
|---------|--|--|---------------------------|------------------------|-----|------------|--------------------|---------------------|--|-----|------------------------|-----|------------|----------------|-----------|--------------------|---------------------|---------------|
| | | | Employment | | | | | | Beyond employment, such as: education, goods and services, and housing | | | | | Quasi-judicial | Promotion | | | |
| | | | Sex | Race and ethnic origin | Age | Disability | Sexual orientation | Religion and belief | Other grounds | Sex | Race and ethnic origin | Age | Disability | | | Sexual orientation | Religion and belief | Other grounds |
| EE | Gender Equality and Equal Treatment Commissioner | <i>Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik</i> | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| EL | Greek Ombudsman | <i>Συνήγορος του Πολίτη</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| ES | Race and Ethnic Equality Council | <i>Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas por el Origen Racial o Étnico</i> | | ✓ | | | | | | | ✓ | | | | | | | ✓ |
| FI | The Ombudsman for Equality | <i>Tasa-Arvovaltuutettu</i> | ✓ | | | | | | | ✓ | | | | | | | | ✓ |
| | The Ombudsman for Minorities | <i>Vähemmistövaltuutettu</i> | | ✓ | | | | | | | ✓ | | | | | | | ✓ |
| FR | Defender of Rights | <i>Défenseur des droits</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| HR | Office of the Ombudsman | <i>Uredu pučkog pravobranitelja</i> | | ✓ | ✓ | | | | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| HU | The Commissioner for Fundamental Rights | <i>Alapvető Jogok Biztosa</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| | The Hungarian Equal Treatment Authority | <i>Egyenlő Bánásmód Hatóság</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| IE | Equality Authority | <i>An tÚdarás Comhionannais</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| IT | National Office against Racial Discrimination | <i>Ufficio Nazionale Antidiscriminazioni Razziali (UNAR)</i> | | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| LT | Office of the Equal Opportunities Ombudsman | <i>Lygių galimybių kontrolieriaus tarnyba</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| LU | Centre for Equal treatment | <i>Centre pour l'égalité de traitement</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| LV | Office of the Ombudsman | <i>Tiesībsarga Birojs</i> | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

| Country | Name of body in English | Name of body in national language | Grounds of discrimination | | | | | | | | | | | Type | | | |
|---------|--|---|---------------------------|-----|-----|------------|--------------------|---------------------|--|------------------------|-----|-----|------------|----------------|-----------|--------------------|---------------------|
| | | | Employment | | | | | | Beyond employment, such as: education, goods and services, and housing | | | | | Quasi-judicial | Promotion | | |
| | | | Race and ethnic origin | Sex | Age | Disability | Sexual orientation | Religion and belief | Other grounds | Race and ethnic origin | Sex | Age | Disability | | | Sexual orientation | Religion and belief |
| | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| MT | National Commission for the Promotion of Equality (NCPE) | <i>Il-Kummissjoni Nazzjonali għall-Promozzjoni tal-Ugwaljanza</i> | ✓ | | | | | | | | | ✓ | ✓ | | | - | - |
| | Director of Industrial and Employment Relations (DIER) | <i>Dipartiment tar-Relazzjonijiet Industrijali u tal-Impieg</i> | ✓ | | | | | | | | | ✓ | ✓ | | | - | - |
| NL | The Dutch Equal Treatment Commission | <i>Commissie Gelijke Behandeling (CGB)</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| PL | Human Rights Defender / Commissioner for Civil Rights Protection | <i>Rzecznik Praw Obywatelskich</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | ✓ | | ✓ |
| PT | The Commission for Citizenship and Gender Equality | <i>Comissão para a Cidadania e a Igualdade de Género (CIG)</i> | | | | | | | | | | ✓ | | ✓ | ✓ | | ✓ |
| | Commission for equality in labour and employment (CITE) | <i>Comissão para a Igualdade no Trabalho e no Emprego</i> | ✓ | | | | | | | | | | | | | ✓ | ✓ |
| | High Commission for Immigration and Intercultural Dialogue | <i>Alto Comissariado para a Imigração e Diálogo Intercultural (ACIDI)</i> | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| RO | The National Council for Combating Discrimination (NCCD) | <i>Consiliul National pentru Combaterea Discriminarii (CNCD)</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| SE | Equality Ombudsman | <i>Diskrimineringsombudsmannen (DO)</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| SI | The Office for Equal Opportunities/ Advocate of the Principle of Equal Treatment | <i>Urad za Enake Možnosti</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓* |

| Country | Name of body in English | Name of body in national language | Grounds of discrimination | | | | | | | | | | Type | | | | |
|---------|---|---|---------------------------|-----|-----|------------|--------------------|--|---------------|------------------------|-----|-----|----------------|-----------|------------|--------------------|---------------------|
| | | | Employment | | | | | Beyond employment, such as: education, goods and services, and housing | | | | | Quasi-judicial | Promotion | | | |
| | | | Race and ethnic origin | Sex | Age | Disability | Sexual orientation | Religion and belief | Other grounds | Race and ethnic origin | Sex | Age | | | Disability | Sexual orientation | Religion and belief |
| SK | National Centre for Human Rights | <i>Slovenské národné stredisko pre ľudské práva</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| UK | Equality and Human Rights Commission (EHRC) | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| | Equality Commission for Northern Ireland (ECNI) | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

* Not exclusively

** Nationality/parental status

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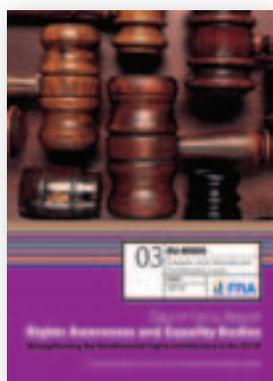
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The principle of non-discrimination is firmly established in European Union (EU) legislation and includes provisions relating to access to justice. This report by the European Union Agency for Fundamental Rights (FRA) examines the process of seeking redress in cases of discrimination. It provides a detailed analysis of what the EU Member State bodies that deal with cases of discrimination do to support possible victims of discrimination and to offer them redress. It examines the factors obstructing effective remedies, such as the complexity of the complaints system, which discourage people from bringing cases and reinforce victims' feelings of helplessness. It also considers the factors that best enable effective remedies, such as legal advice. In addressing these issues, access to justice is understood broadly. To capture the various models of access to justice in cases of discrimination across the EU, eight Member States were selected 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 report explores how aspects of these different systems can be enhanced and applied more broadly across the EU.



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