

## Comparative study on access to justice in gender equality and anti-discrimination law

### Synthesis Report

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## Key points

The comparative study provides an overview of the situation in the 27 EU Member States and the EFTA/EEA countries (Iceland, Liechtenstein and Norway), as regards access to justice in gender equality and anti-discrimination law. It addresses procedural guarantees, the requirement for an effective, proportionate and dissuasive remedy and the effectiveness of the legal framework in practice.

- An effective access to justice is of fundamental importance for victims seeking redress when discrimination occurs. Alleged victims of discrimination may seek redress through the general judicial mechanisms and in accordance with the general national procedural rules.
- Several extra-judicial or alternative dispute settlement mechanisms such as conciliation and mediation are available at national level. Ombudsmen and equality bodies may also provide an alternative to the general courts. However, whilst there is progress in terms of awareness and promotion of fundamental rights, this is not matched by an equivalent awareness and accessibility to remedies for breaches of these rights.
- Associations, organisations or other legal entities can play a significant role in the defence of rights on behalf of or in support of the complainant. Whilst in some countries equality bodies have legal standing and can bring a case to court, in others, they can only provide assistance to the claimant, or provide observations to the court.
- The key factor setting apart discrimination cases from others is the reversed burden of proof. However, practical implementation of the requirement is problematic: discriminatory conduct is seldom formulated on paper or expressed orally in front of witnesses and may be disguised as other behaviour; despite the requirement to shift the burden of proof in anti-discrimination legislation, civil procedural laws do not expressly provide for this; lack of awareness among judges and other members of the legal profession in relation to the requirement and the means of its application inhibit the implementation of the shift in practice.
- The length of proceedings is identified as an obstacle to access to justice in quite a few countries. Most national laws do not provide a time limit for judges or other bodies to decide on a case. This usually results in very long proceedings. Where the national law sets time limits, stakeholders have reported that these are not respected in practice, due to the workload and/or scarce resources available to the courts and public bodies.
- The costs of legal representation are an important issue. In countries where legal representation entails high costs, victims may settle more quickly, accept reduced damages, or be reluctant to appeal first instance decisions. Moreover, in almost all countries national law contains the loser pays principle. Even where the principle does not apply and each side bears their own costs, these can be very significant for people without access to legal aid. In fact, legal aid is only offered to a restricted proportion of the population and is not usually available outside of judicial proceedings.
- At the national level, breaches of anti-discrimination legislation attract a variety of sanctions and the remedies available to alleged victims may be civil, administrative or criminal depending on the legal instrument on which a case is based and the type of liability which discrimination attracts in the given legal system. National experts and stakeholders consulted for this study did not consider the vast majority of sanctions in place for violations of anti-discrimination legislation at national level to be effective, proportionate and dissuasive. The effect of the costs and length of proceedings coupled with the low amount of compensation generally awarded could dissuade victims from bringing their cases forward.

## Kernpunkte

Die vergleichende Studie bietet einen Überblick über die Situation in den 27 EU-Mitgliedstaaten und den EFTA/EWR-Staaten (Island, Liechtenstein und Norwegen) bezüglich des Zugangs zum Recht in Gleichstellungs- und Antidiskriminierungsrecht. Sie bezieht sich auf Verfahrensgarantien, die Anforderung nach wirksamen, verhältnismäßigen und abschreckenden Rechtsbehelfen und die tatsächliche Wirksamkeit des rechtlichen Rahmens in der Praxis.

- Ein effektiver Zugang zum Recht ist von grundlegender Bedeutung für Opfer von Diskriminierung, die nach Wiedergutmachung streben. Mutmaßliche Opfer von Diskriminierung dürfen im Rahmen der üblichen gerichtlichen Verfahren in Übereinstimmung mit den allgemeinen Verfahrensregeln jedes Staates Rechtsbehelf einlegen.
- Eine Reihe von außergerichtlichen oder alternativen Streitbeilegungsverfahren, wie z.B. Mediation und Schlichtung, steht auf nationaler Ebene zur Verfügung. Bürgerbeauftragte und Gleichstellungsstellen können auch eine Alternative zu dem Gang vor die allgemeinen Gerichte sein. Während es zwar bemerkenswerte Fortschritte in Bezug auf Grundrechtsbewusstsein und Grundrechtsförderung gibt, sind diese jedoch nicht mit einem gleichwertigen Bekanntheitsgrad der die Verletzung dieser Rechte betreffenden Rechtsbehelfe und ihrer Zugänglichkeit verbunden.
- Verbände, Organisationen oder andere juristische Personen können eine bedeutende Rolle bei der Verteidigung der Rechte des Beschwerdeführers oder bei seiner Unterstützung spielen. Während sie in einigen Staaten Klagebefugnis haben und einen Fall vor Gericht bringen können, können sie in anderen Fällen dem Beschwerdeführer nur Hilfestellung leisten, oder dem Gericht Beobachtungen zukommen lassen.
- Das entscheidende Merkmal, das Diskriminierungsfälle von anderen unterscheidet, ist die Beweislastumkehr. Allerdings ist die praktische Umsetzung dieser Vorschrift problematisch: Diskriminierendes Verhalten wird selten schriftlich formuliert oder mündlich vor Zeugen geäußert und kann als anderes Verhalten verschleiert werden; trotz der Verpflichtung, die Beweislast in nationalen Antidiskriminierungsgesetzen umzukehren, sehen die zivilprozessrechtlichen Gesetze diese Umkehrung oft nicht ausdrücklich vor; mangelnde Kenntnis dieser Anforderung und der Klagemittel von Seiten der Richter und anderer Mitglieder des Berufsstands der Juristen hemmt auch die praktische Durchführung der Beweislastverschiebung.
- Die Verfahrensdauer ist in einer ganzen Menge von Ländern als ein Hindernis für den Zugang zum Recht identifizierbar. Die meisten nationalen Gesetzesvorschriften sehen keine Frist für Richter oder andere Einrichtungen vor, um über einen Fall zu entscheiden. Dies führt in der Regel zu sehr langen Verfahren. Im Fall, dass Fristen gesetzlich festgelegt sind, haben die beteiligten Interessensvertreter berichtet, dass diese in der Praxis aufgrund der Arbeitsbelastung und/oder der knappen Mittel der Gerichte und öffentlichen Einrichtungen nicht eingehalten werden.
- Die Kosten der Prozessvertretung sind ein ernsthaftes Problem. In Ländern, in denen Vertretung vor Gericht mit hohen Kosten verbunden ist, können Opfer das Verfahren schneller aufgeben, geschmälernten Schadensersatz annehmen, oder nur zögernd Rechtsmittel gegen die erstinstanzliche Entscheidung einlegen. Darüber hinaus enthält das nationale Recht fast aller Staaten das *loser-pays principle*, d.h. den Grundsatz wonach die unterlegene Partei die Kosten zu tragen hat. Selbst in dem Fall, dass dieser Grundsatz nicht gilt, und jede Seite ihre eigenen Kosten trägt, können die Kosten für Personen ohne Anspruch auf Prozesskostenhilfe sehr erheblich sein. In der Tat wird Prozesskostenhilfe nur einem eingeschränkten Teil der Bevölkerung zugesprochen und steht in der Regel nicht für außergerichtliche Verfahren zur Verfügung.
- Auf nationaler Ebene, führen Verstöße gegen Antidiskriminierungsregeln zu einer Vielzahl von Sanktionen, und die zur Verfügung stehenden Rechtsbehelfe, auf die mutmaßliche Opfer zurückgreifen können, können zivil-, verwaltungs- oder strafrechtlich sein, abhängig von dem Rechtsinstrument, das auf den Fall anwendbar ist, und der Art der Haftung, die Diskriminierung in dem jeweiligen Rechtssystem mit sich bringt. Nationale Experten und Interessensvertreter, die für diese Studie angehört wurden, waren nicht der Meinung, dass die mehrheitlich anwendbaren Sanktionen für Verstöße gegen Antidiskriminierungsgesetze auf nationaler Ebene wirksam, verhältnismäßig und abschreckend seien. Die abschreckende Wirkung der Verfahrenskosten und –dauer, in Verbindung mit der geringen Höhe der Entschädigungen, die generell gewährt werden, könnten Opfer davon abhalten, ihren Fall weiter voranzutreiben.

## Points clés

Cette étude comparative offre une vue d'ensemble de la situation dans les 27 Etats Membres et dans les pays EEE/AELE (Islande, Lichtenstein, Norvège) en ce qui concerne l'accès à la justice en matière d'égalité des sexes et de lutte contre les discriminations. Elle aborde la question des garanties procédurales, des conditions pour un recours effectif, proportionné et dissuasif et de l'efficacité du cadre juridique en pratique.

- Un accès efficace à la justice est d'une importance fondamentale pour les victimes cherchant à obtenir réparation en cas de discrimination. Les victimes présumées de discrimination peuvent obtenir réparation au travers de mécanismes juridiques classiques et en accord avec les règles de procédure nationales de droit commun.
- Plusieurs mécanismes de résolution des conflits extrajudiciaires ou alternatifs, telle que la conciliation, sont disponibles au niveau national. Les médiateurs et organismes nationaux de promotion de l'égalité peuvent également constituer une alternative aux juridictions ordinaires. Cependant, bien que la sensibilisation du public aux droits fondamentaux progresse, elle ne s'accompagne pas d'une connaissance des recours existant en cas de violation de ces droits et de leurs conditions d'accès.
- Les associations, organisations et autres entités légales peuvent jouer un rôle important dans la défense des droits, soit pour soutenir les plaignants soit pour agir en leur nom. Dans certains pays, les organismes nationaux de promotion de l'égalité ont le droit d'ester en justice et peuvent déférer une affaire au tribunal, tandis que dans d'autres, ils peuvent uniquement prêter assistance au plaignant ou fournir des observations à la cour.
- Le facteur clé qui différencie les cas de discriminations des autres cas est le renversement de la charge de la preuve. Cependant, la mise en œuvre pratique des conditions de celui-ci est problématique : une conduite discriminatoire est rarement formulée sur papier ou à l'oral devant témoin et n'est pas nécessairement ostentatoire; et malgré l'inscription dans la loi de l'obligation de renverser la charge de la preuve dans les affaires de discrimination, le droit national ne prévoit généralement pas formellement les conditions de sa mise en œuvre ; l'absence de prise en compte de la part des juges et autres membres des professions juridiques de l'existence de cette obligation et des moyens de sa mise en œuvre empêche l'application effective du renversement de la charge de la preuve.
- La durée des procédures est vue comme un obstacle à l'accès à la justice dans un certain nombre de pays. La plupart des droits nationaux n'impose pas de contraintes de temps aux juges et autres organismes pour rendre leur décision. Ceci donne souvent lieu à des procédures excessivement longues. Lorsque le droit national impose des contraintes de temps, les différentes parties prenantes ont signalé que celles-ci ne sont pas respectées en pratique, en raison d'une charge de travail trop importante et/ou de moyens limités au niveau des cours et organismes publics.
- Le coût de la représentation juridique est une question importante. Dans les pays où la représentation juridique implique des coûts élevés, les victimes sont susceptibles de régler l'affaire plus rapidement, d'accepter des dommages et intérêts réduits ou d'être plus réticents à l'introduction d'un appel. De plus, le droit national de presque tous les pays inclut le principe du selon lequel le paiement de la procédure incombe à la partie perdante. Même quand ce principe ne s'applique pas et que chaque partie prend en charge ses propres coûts, ceux-ci peuvent être très élevés pour les personnes ne bénéficiant pas de l'aide juridique. De fait, l'aide juridique n'est offerte qu'à une partie restreinte de la population et n'est généralement pas disponible en dehors des procédures judiciaires.
- Au niveau national, les violations des règles de non-discrimination donnent lieu à une grande diversité de sanctions. Les recours pour les victimes présumées peuvent être civils, administratifs ou pénaux suivant l'instrument juridique sur lequel l'affaire est fondée et le type de responsabilité invoqué. Les experts nationaux et les différents acteurs consultés pour cette étude considèrent que la vaste majorité des sanctions en place en cas de violation des règles de non-discrimination ne sont pas effectives, proportionnées et dissuasives. L'effet couplé des coûts et de la durée des procès et de la faiblesse des indemnisations généralement perçues peut dissuader les victimes de défendre leurs droits en justice





## Executive Summary

The principle of access to justice is of fundamental importance for victims of discrimination seeking redress. An effective access to justice is a precondition to obtaining an effective remedy.

A number of procedural guarantees have been developed by EU legislators and the Court of Justice to ensure effective access to justice in discrimination and gender equality cases. Directives 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC reflect much of the Court of Justice case-law and establish a number of key principles as regards access to justice including provisions on defence of rights, the reversal of the burden of proof and the requirement for an effective, proportionate and dissuasive remedy.

The comparative study provides an overview of the situation in the 27 EU Member States and the EFTA/EEA countries (Iceland, Liechtenstein and Norway),<sup>1</sup> as regards access to justice in cases of discrimination on grounds of gender, race or ethnic origin, religion or belief, disability, age and sexual orientation. It addresses procedural guarantees, the requirement for an effective, proportionate and dissuasive remedy and the effectiveness of the legal framework in practice.

### Judicial and extra-judicial mechanisms

The implementation of the equal treatment principle requires appropriate procedures to be put in place by the Member States.

Alleged victims of discrimination may seek redress through the general judicial mechanisms and in accordance with the general procedural rules applicable in each country. Labour courts or employment tribunals also play an important role in access to justice for victims of discrimination in the field of employment.

In addition, a number of extra-judicial or alternative dispute settlement mechanisms are available in the EU Member States and in the EFTA/EEA countries. These include the typical methods falling short of litigation, such as negotiation, mediation, conciliation and arbitration, which could provide complainants with the advantages of a swifter and cheaper access to redress.

Ombudsmen and equality bodies also provide an alternative course of action to the general courts. Whilst most Ombudsmen and equality bodies can issue non-binding recommendations, others have more extended competences including the power to impose fines that are binding in nature (e.g. the Equality Board in Finland, the Equal Treatment Authority in Hungary, the High Commissioner for Immigration and Intercultural Dialogue in Portugal and the Work and Social Security Inspection Offices in Spain).

It is crucial that the proliferation of these specific structures dealing with discrimination is accompanied by effective dissemination of information about their availability. Whilst there is noteworthy progress in terms of awareness and promotion of fundamental rights, this is not matched by an equivalent level of awareness of, and accessibility to, remedies for breaches of these rights. Victims of discrimination are not always aware of the remedies available at law and might not know how to access justice.

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<sup>1</sup> The EEA countries are not obliged to implement Directives 2000/43/EC and 2000/78/EC as they are not listed in Annex XVIII to the EEA Agreement.

## Procedural guarantees

In order to be heard by judicial authorities and obtain redress, the plaintiff must have legal standing. While common features are observed, the criteria for standing can vary quite significantly from one country to another. However, in general, individual claimants must have the requisite legal capacity and legal interest to be granted standing.

Even though victims having legal standing realise that they may have been discriminated against, it remains difficult for them to bring a case before the court on their own. Victims of discrimination often consider that theirs is an isolated case for which no action can be taken or they may fear consequences in their private or professional sphere if they appear before a court or another judicial body.

Importantly, the Directives and Court of Justice case-law provide for the defence of rights by associations, organisations or other legal entities on behalf of or in support of the complainant in enforcing the obligations under the Directives. One of the most efficient courses of action for such organisations is the ability to bring an action before the judiciary. In most countries, legal standing is only granted to associations or organisations directly linked to the field in which the dispute arises. Where such standing is provided for, the right to bring a case is applicable to associations, NGOs and non-profit organisations.

Significant variations were noted with respect to the role of equality bodies. While in some countries they have legal standing and can bring a case to court, in other cases, they can only provide assistance to the claimant, or provide observations to the court. It is noteworthy that in more than half the countries reviewed, the equality bodies are not empowered to bring claims before the court. Where they can initiate procedures, this power is usually quite limited.

The key factor setting apart discrimination cases from others is the shifting of the burden of proof. This shift occurs in effectively all countries and is reported as a significant asset in assisting victims of discrimination. Nevertheless, the practical implementation of the reversed burden of proof is not always consistent and watertight.

Once a *prima facie* case is made, the burden of proof is meant to shift to the defendant to prove that discrimination had not occurred. However, often there is no clear demarcation between the two steps of the process. The decision maker's opinion or judgment usually addresses both steps together. This effectively places the burden on the applicant to prove the case in total rather than simply *prima facie*.

The discriminatory conduct is seldom formulated on paper or expressed orally in front of witnesses. It may also be disguised as other behaviour. Moreover, despite the requirement to shift the burden of proof in national anti-discrimination legislation, civil procedural laws do not expressly provide for this. The lack of awareness among judges and other members of the legal profession with respect to the requirement and to the means of its application also inhibits the implementation of the shift in practice.

Ensuring that the reversed burden of proof is applied by general courts dealing with cases of discrimination and formalising a minimum understanding of what constitutes *prima facie* evidence would promote and facilitate access to justice by alleged victims of discrimination.

National rules relating to time limits to initiate a discrimination claim should not be less favourable than time limits for similar actions in other fields. They must not render the exercise of rights impossible in practice. However, time limits, especially before the equality bodies can be very short. This can be problematic when considering that it can take time for a claimant to become aware of discrimination and to seek legal advice. The right of action could therefore be

extinguished before the victim has the time to establish the facts of the case and decide whether a lawsuit is worth pursuing.

The length of the procedure is identified as an obstacle to access to justice in quite a few countries, some of which have been repeatedly condemned by the European Court of Human Rights for lengthy procedures. Most national laws do not provide a time limit for judges or other bodies to decide on a case. This is considered to result *de facto* in very long proceedings. In those countries where time limits are set by law, stakeholders have reported that these are not respected in practice, due to the workload and/or scarce resources available for the courts and public bodies.

The cost of proceedings is another major obstacle to alleged victims seeking redress. Procedural fees usually depend on the value of the claim. Exemptions exist in certain cases, such as for employment matters, where the procedure is free of charge in several countries. A few countries provide for exemptions specifically in discrimination cases or on the basis of the claimant's income.

The cost of legal representation is a much more important issue. In many countries it is not compulsory to be represented by a lawyer before all or some courts. Nevertheless, a person who is not represented by a lawyer is less likely to obtain adequate satisfaction before the judge. In countries where legal representation entails high costs, victims may settle more quickly, may accept reduced damages, or be reluctant to appeal first instance decisions.

Moreover, in almost all countries national law contains the principle according to which the losing party to proceedings has to pay all the costs incurred in the proceedings, including the other party's expenditure. The loser pays principle applies also in discrimination cases and can make victims reluctant to seek redress before the court. This becomes an increased problem when court fees (and thus also procedural risks) are particularly high. Moreover, even where the principle does not apply and each side bears their own costs, these can be very significant for people without access to legal aid. At the same time, the application of the loser pays principle could also act as an incentive to victims of discrimination who have a clear case with a high probability of a positive outcome in that they will be able to recover the costs incurred in pursuing their claim.

The limited availability of legal aid is another deterrent to bringing a case to court. Legal aid is only offered to a restricted proportion of the population and is not usually available outside of judicial proceedings. Victims may not be aware of what they are entitled to and who to turn to for help.

The combined effect of the costs of legal action, the risk of having to pay the costs of the defendant and the absence of easily accessible legal aid make the financial issue one of the main barriers to an effective access to justice.

## **Effective, proportionate and dissuasive remedies**

The non-discrimination Directives require sanctions applicable to infringements of the national transposing provisions to be effective, proportionate and dissuasive.

At the national level, breaches of anti-discrimination legislation attract a variety of sanctions and the remedies available to alleged victims may be civil, administrative or criminal depending on the legal instrument on which a case is based and the type of liability which discrimination attracts in the given legal system.

The typical criminal sanctions are imprisonment and fines. Administrative sanctions range from the annulment of the relevant discriminatory administrative act to the imposition of

administrative fines. Civil sanctions may consist of a mere apology or compensation aimed at making good the material and moral damage caused by the discrimination. Most importantly, there should be no upper limits for compensation as this could preclude an effective remedy.

National experts and stakeholders consulted for this study did not consider the vast majority of sanctions in place for violations of anti-discrimination legislation at national level to be effective, proportionate and dissuasive. In light of the length and costs of the proceedings as well as the emotional efforts involved in litigation the remedies typically awarded would discourage victims from taking legal action. Moreover, the absence of statistical data or the relative novelty of the national legislation which has not yet been applied in court cases makes it difficult to assess the likelihood of a discrimination claim being successful.

The effect of the costs and length of proceedings coupled with the low amount of compensation generally awarded could dissuade victims from bringing their cases forward.

## **Best practices**

Best practices include incentives, initiatives or legal provisions that are considered to have a positive outcome on access to justice and the availability of an effective remedy. In the main, the best practices noted by the national experts and stakeholders relate to legal provisions which are more favourable to alleged victims of discrimination as well as public information activities such as awareness-raising campaigns.

Best practices of a more concrete nature relate to:

- the active role of some equality bodies, NGOs and other associations especially as regards their participatory status in discrimination cases;
- mechanisms aimed at avoiding court delays and thus diminishing the length of the procedure;
- exemptions from certain procedural fees; and
- systems for the adjustment of sanctions to the specific circumstances of a given case.

## **Recommendations**

The recommendations for both national and EU level focus on:

- addressing the multiplicity of rules with respect to non-discrimination;
- broadening the remit and resources of equality bodies;
- ensuring effective, proportionate and dissuasive sanctions;
- prioritising the training and education of relevant professionals; and
- developing systems for the collection of statistical data.

## Zusammenfassung

Das Prinzip des Zugangs zum Recht ist von grundlegender Bedeutung für Diskriminierungsoffer die Rechtshilfe suchen. Ein effektiver Zugang zum Recht ist Voraussetzung für einen wirksamen Rechtsbehelf.

Eine Reihe von Verfahrensgarantien wurde von den Gesetzgebern der EU und dem Europäischen Gerichtshof geschaffen, um den effektiven Zugang zum Recht im Rahmen von Diskriminierungsfällen und Fällen, die die Gleichstellung der Geschlechter betreffen, zu gewährleisten. Die Richtlinien 2000/43/EG, 2000/78/EG, 2004/113/EG und 2006/54/EG nehmen einen Großteil der Rechtsprechung des Europäischen Gerichtshof auf, und schaffen eine Reihe von wichtigen Grundsätzen, die den Rechtszugang betreffen, einschließlich Bestimmungen über Rechtsschutz, die Umkehr der Beweislast und die Anforderung nach wirksamen, verhältnismäßigen und abschreckenden Rechtsbehelfen.

Die EWR-Staaten sind nicht verpflichtet, die Richtlinien 2000/43/EG und 2000/78/EG, umzusetzen, da diese nicht in Anhang XVIII des EWR-Abkommens verzeichnet sind.

Die vergleichende Studie bietet einen Überblick über die Situation in den 27 EU-Mitgliedstaaten und den EFTA/EWR-Staaten (Island, Liechtenstein und Norwegen) hinsichtlich des Zugangs zum Recht in Fällen von Diskriminierung auf Grund von Geschlecht, Rasse und ethnischer Herkunft, der Religion oder der Weltanschauung, einer Behinderung, des Alters oder der sexuellen Ausrichtung. Sie bezieht sich auf Verfahrensgarantien, die Anforderung nach wirksamen, verhältnismäßigen und abschreckenden Rechtsbehelfen und die tatsächliche Wirksamkeit des rechtlichen Rahmens in der Praxis.

## Gerichtliche und außergerichtliche Verfahren

Die wirksame Umsetzung des Gleichbehandlungsgrundsatzes erfordert die Schaffung angemessener Verfahren von Seiten der Mitgliedstaaten.

Mutmaßliche Opfer von Diskriminierung dürfen im Rahmen der üblichen gerichtlichen Verfahren in Übereinstimmung mit den allgemeinen Verfahrensregeln jedes Staates Rechtsbehelf einlegen. Arbeitsgerichtshöfe und Arbeitsgerichte spielen ebenfalls eine wichtige Rolle für den Zugang zum Recht von Opfern von Diskriminierung in Beschäftigung.

Darüber hinaus steht in den EU-Mitgliedstaaten und den EFTA/EWR-Staaten eine Reihe von außergerichtlichen oder alternativen Streitbeilegungsverfahren zur Verfügung. Dazu gehören die typischen streitbeilegenden Methoden, wie die außergerichtliche Verhandlung, Mediation, Schlichtung und Schiedsverfahren, welche für die Beschwerdeführer die Vorteile einer schnelleren und kostengünstigeren Wiedergutmachung haben können.

Bürgerbeauftragte und Gleichstellungsstellen können auch eine Alternative zu dem Gang vor die allgemeinen Gerichte sein. Während die meisten Bürgerbeauftragte und Gleichstellungsstellen unverbindliche Empfehlungen abgeben können, haben andere weiterreichende Kompetenzen, die auch die Befugnis zur Verhängung verbindlicher Geldbußen beinhalten (z.B. die zuständigen Gleichstellungsstellen in Finnland, Ungarn, Portugal und Spanien).

Es ist von entscheidender Bedeutung, dass die Verbreitung dieser spezifischen mit Diskriminierung befassten Strukturen durch wirksame Aufklärung über ihre Verfügbarkeit einhergeht. Zwar gibt es bemerkenswerte Fortschritte in Bezug auf Grundrechtsbewusstsein und Grundrechtsförderung, doch sind diese nicht mit einem gleichwertigen Bekanntheitsgrad der die Verletzung dieser Rechte betreffenden Rechtsbehelfe und ihrer Zugänglichkeit verbunden.

Opfer von Diskriminierungen sind sich nicht immer über die verfügbaren Rechtsbehelfe bewusst und wissen gegebenenfalls nicht, wie ihnen Zugang zum Recht gewährleistet wird.

## Verfahrensgarantien

Um von den gerichtlichen Instanzen gehört zu werden und Wiedergutmachung zu erlangen, muss der Kläger die rechtliche Klagebefugnis besitzen. Während Gemeinsamkeiten feststellbar sind, können die Voraussetzungen der Klagebefugnis erheblich von einem Land zum anderen variieren. Allgemein jedoch muss der einzelne Kläger über die erforderliche Rechtsfähigkeit und ein rechtliches Interesse verfügen, um klagebefugt zu sein.

Auch wenn die Opfer, die gesetzlich klagebefugt sind, sich ihrer möglichen Diskriminierung bewusst werden, bleibt es für sie schwierig, selbstständig ein Gerichtsverfahren anzustrengen. Opfer von Diskriminierungen sind oft der Ansicht, dass sie ein Einzelfall sind, für den keine Maßnahmen ergriffen werden können, oder sie befürchten Konsequenzen in ihrem privaten oder beruflichen Umfeld, wenn sie vor einem Gericht oder einer anderen gerichtlichen Instanz erscheinen. Es ist daher maßgeblich, dass die Richtlinien und die Rechtsprechung des Europäischen Gerichtshofs Rechtsschutz im Namen oder zur Unterstützung der Beschwerdeführer durch Verbände, Organisationen oder andere juristische Personen bei der Durchsetzung der aus den Richtlinien hervorgehenden Verpflichtungen vorsehen. Dies könnte den Zugang zum Recht von Opfern von Diskriminierung erheblich erleichtern.

Eine der effizientesten Vorgehensweisen für solche Organisationen ist die Möglichkeit, bei den Gerichten eine Klage einzureichen. In den meisten Staaten ist die Klagebefugnis nur Vereinen oder Organisationen gewährt, die direkt in dem Gebiet tätig sind, in dem die Streitigkeit entsteht. Wo solche Klagebefugnisse vorgesehen sind, ist das Recht Klage einzureichen Verbänden, Nichtregierungsorganisationen und gemeinnützigen Vereinen eingeräumt.

Wesentliche Unterschiede wurden in Bezug auf die Rolle der Gleichstellungsstellen festgestellt. Während sie in einigen Staaten Klagebefugnis haben und einen Fall vor Gericht bringen können, können sie in anderen Fällen dem Beschwerdeführer nur Hilfestellung leisten, oder dem Gericht Beobachtungen zukommen lassen. Es ist bemerkenswert, dass die Gleichstellungsstellen in mehr als der Hälfte der überprüften Staaten keine Klage bei den Gerichten einreichen können. In den Staaten in denen sie Verfahren einleiten können, ist diese Befugnis in der Regel sehr begrenzt.

Das entscheidende Merkmal, das Diskriminierungsfälle von anderen unterscheidet, ist die Beweislastumkehr. Diese Umkehr erfolgt in allen Staaten wirksam und wird als eine wesentliche Errungenschaft in der Unterstützung von Opfern von Diskriminierung gemeldet. Dennoch ist die praktische Durchführung der Umkehr der Beweislast nicht immer beständig und hieb- und stichfest.

Sobald ein glaubhafter Anschein besteht, ist die Beweislast so zu verlagern, dass der Beklagte zu beweisen hat, dass keine Diskriminierung stattgefunden hat. Es gibt jedoch oft keine klare Abgrenzung zwischen den beiden Verfahrensabschnitten. Die Stellungnahme der Entscheidungsträger oder das Gerichtsurteil fassen in der Regel beide Schritte zusammen. Dies führt dazu, dass die tatsächliche Beweislast für die Gesamtheit des Falles, und nicht nur der Anscheinsbeweis, dem Kläger auferlegt wird.

Diskriminierendes Verhalten wird selten schriftlich formuliert oder mündlich vor Zeugen geäußert. Es kann auch als anderes Verhalten verschleiert werden. Außerdem sehen die zivilprozessrechtlichen Gesetze trotz der Verpflichtung, die Beweislast in nationalen Antidiskriminierungsgesetzen umzukehren, diese Umkehrung oft nicht ausdrücklich vor. Die mangelnde Kenntnis dieser Anforderung und der Klagemittel von Seiten der Richter und

anderer Mitglieder des Berufsstands der Juristen hemmt auch die praktische Durchführung der Beweislastverschiebung.

Die Sicherstellung, dass die Beweislastumkehr von allgemeinen Gerichten, die sich mit Diskriminierungsfällen befassen, angewandt wird, sowie die Formalisierung eines Minimalverständnisses dessen, was als Anscheinsbeweis gilt, würde den Zugang zum Recht mutmaßlicher Opfer von Diskriminierung fördern und erleichtern.

Nationale Vorschriften über die Fristen zur Einleitung eines Diskriminierungsverfahrens sollten nicht ungünstiger sein als die Fristen zur Einleitung ähnlicher Verfahren in anderen Bereichen. Sie dürfen die tatsächliche Ausübung der Rechte nicht unmöglich werden lassen. Allerdings können die Fristen, vor allem vor den Gleichstellungsstellen sehr kurz sein. Dies kann problematisch sein, wenn man bedenkt, dass ein Kläger viel Zeit benötigen kann, um sich über seine Diskriminierung bewusst zu werden und juristische Schritte einzuleiten. Das Klagerecht kann daher erlöschen, bevor das Opfer Zeit hat, den Sachverhalt festzustellen und darüber entscheidet, ob es sich lohnt, eine Klage einzureichen.

Die Verfahrensdauer ist in einer ganzen Menge von Ländern als ein Hindernis für den Zugang zum Recht identifizierbar, wobei einige dieser Länder inzwischen mehrfach vom Europäischen Gerichtshof für Menschenrechte verurteilt wurden. Die meisten nationalen Gesetzesvorschriften sehen keine Frist für Richter oder andere Einrichtungen vor, um über einen Fall zu entscheiden. Dies führt *de facto* zu sehr langen Verfahren. In jenen Ländern, in denen Fristen gesetzlich festgelegt sind, haben die beteiligten Interessensvertreter berichtet, dass diese in der Praxis aufgrund der Arbeitsbelastung und/oder der knappen Mittel der Gerichte und öffentlichen Einrichtungen nicht eingehalten werden.

Die Verfahrenskosten sind ein weiterer hauptsächlicher Hindernisgrund für maßgebliche Opfer, die Wiedergutmachung anstreben. Verfahrensgebühren sind in der Regel von der Höhe des Streitwerts abhängig. Es gibt in bestimmten Fällen Ausnahmen, wie z.B. im Bereich der Beschäftigung, in denen das Verfahren in mehreren Ländern kostenlos ist. Manche Länder sehen Ausnahmen speziell in Fällen von Diskriminierung oder auf Grundlage des Einkommens des Klägers vor.

Die Kosten der Prozessvertretung sind eine noch viel ernsthaftere Hürde. In vielen Ländern ist es nicht vorgeschrieben, vor allen oder vor einigen Gerichten durch einen Rechtsanwalt vertreten zu sein. Dennoch hat eine Person, die nicht durch einen Anwalt vertreten ist, geringere Chancen vor dem Richter eine angemessene Wiedergutmachung zu erhalten. In Ländern, in denen Vertretung vor Gericht mit hohen Kosten verbunden ist, können Opfer das Verfahren schneller beilegen, geschmälernten Schadensersatz annehmen, oder nur zögernd Rechtsmittel gegen die erstinstanzliche Entscheidung einlegen.

Darüber hinaus enthält das nationale Recht fast aller Staaten den Grundsatz, wonach die unterlegene Partei die gesamten im Laufe des Verfahrens anfallenden Kosten, einschließlich der Kosten der anderen Partei, zu tragen hat. Der Grundsatz wonach die unterlegene Partei die Kosten zu tragen hat (*loser pays principle*) gilt auch in Fällen von Diskriminierung und kann Opfer davon abhalten eine Klage einzureichen. Dieses Problem wird verstärkt, wenn Gerichtsgebühren (und damit auch die mit dem Verfahren verbundenen Risiken) besonders hoch sind. Außerdem können die Kosten selbst in dem Fall, dass dieser Grundsatz nicht gilt, und jede Seite ihre eigenen Kosten trägt, für Personen ohne Anspruch auf Prozesskostenhilfe sehr erheblich sein. Gleichzeitig kann die Anwendung dieses Grundsatzes Diskriminierung Opfer deren Ausgangslage klar ist und deren Fall eine hohe Erfolgswahrscheinlichkeit hat, auch dazu anreizen, ein Verfahren einzuleiten, da sie in der Lage sein werden die anfallenden Kosten erstattet zu bekommen.

Die begrenzte Verfügbarkeit von Prozesskostenhilfe ist eine weitere Abschreckung davor, einen Fall vor Gericht zu tragen. Prozesskostenhilfe wird nur einem eingeschränkten Teil der Bevölkerung zugesprochen und steht in der Regel nicht für außergerichtliche Verfahren zur Verfügung. Es kann vorkommen, dass Opfer nicht wissen, welche Rechte sie haben und an wen sie sich wenden können, um Hilfe zu finden.

Die gemeinsame Wirkung aus den Kosten des Verfahrens, der Gefahr, die Kosten des Beklagten zu tragen und des Mangels an leicht zugänglicher Prozesskostenhilfe, führt dazu, dass finanzielle Erwägungen eines der wesentlichsten Hindernisse für einen effektiven Zugang zum Recht sind.

## **Wirksame, verhältnismäßige und abschreckende Rechtsbehelfe**

Die Antidiskriminierungsrichtlinien erfordern, dass die für Verstöße gegen die nationalen Umsetzungsregeln vorgesehenen Sanktionen wirksam, verhältnismäßig und abschreckend sein müssen.

Auf nationaler Ebene, führen Verstöße gegen Antidiskriminierungsregeln zu einer Vielzahl von Sanktionen, und die zur Verfügung stehenden Rechtsbehelfe, auf die mutmaßliche Opfer zurückgreifen können, können zivil-, verwaltungs- oder strafrechtlich sein, abhängig von dem Rechtsinstrument, das auf den Fall anwendbar ist, und der Art der Haftung, die Diskriminierung in dem jeweiligen Rechtssystem mit sich bringt.

Die typischen strafrechtlichen Sanktionen sind Freiheits- und Geldstrafen. Verwaltungsrechtliche Sanktionen reichen von der Aufhebung des einschlägigen diskriminierenden Verwaltungsaktes zur Verhängung von Geldbußen. Zivilrechtliche Sanktionen können eine bloße Entschuldigung oder Schadensersatz für den materiellen und moralischen Schaden, der durch die Diskriminierung verursacht wurde, sein. Am wichtigsten ist es dabei, dass es keine Obergrenzen für Entschädigungen geben sollte, da dies einem wirksamen Rechtsbehelf entgegenstehen kann.

Nationale Experten und Interessenvertreter, die für diese Studie angehört wurden, waren nicht der Meinung, dass die mehrheitlich anwendbaren Sanktionen für Verstöße gegen Antidiskriminierungsgesetze auf nationaler Ebene wirksam, verhältnismäßig und abschreckend seien. In Anbetracht der Verfahrenskosten und –dauer, sowie der mit dem Rechtsstreit verbundenen emotionalen Anstrengungen würden die in der Regel verhängten Rechtsfolgen die Opfer von der Klageerhebung abhalten. Darüber hinaus machen es das Fehlen von statistischen Daten oder die relative Neuheit der nationalen Rechtsvorschriften, die noch nicht in Gerichtsverfahren angewendet wurden, schwierig, die Erfolgchancen einer Antidiskriminierungsklage zu bewerten.

Die abschreckende Wirkung der Verfahrenskosten und –dauer, in Verbindung mit der geringen Höhe der Entschädigungen, die generell gewährt werden, könnten Opfer davon abhalten, ihren Fall weiter voranzutreiben.

## **Bewährte Praktiken**

Bewährte Praktiken beinhalten Anreize, Initiativen oder gesetzliche Bestimmungen, die ein positives Ergebnis auf den Zugang zum Recht und die Verfügbarkeit eines wirksamen Rechtsbehelfs haben sollen. Hauptsächlich beziehen sich die von den nationalen Experten und Interessensvertretern erwähnten bewährten Praktiken auf Rechtsvorschriften, die günstigere Regelungen für mutmaßliche Opfer von Diskriminierung vorsehen, sowie die öffentliche Verbreitung von Informationen, z.B. anhand von Sensibilisierungskampagnen.



Konkretere bewährte Praktiken beziehen sich auf:

- Die aktive Rolle von einigen Gleichstellungsstellen, Nichtregierungsorganisationen und anderen Vereinen, insbesondere hinsichtlich ihrer Beteiligung in Diskriminierungsfällen;
- Mechanismen die auf die Vermeidung von Verfahrensverzögerungen und der Senkung der Verfahrensdauer abzielen;
- Befreiungen von bestimmten Verfahrensgebühren; und
- Systeme für die Anpassung der Sanktionen an die spezifischen Umstände des besonderen Falles.

## **Empfehlungen**

Die Empfehlungen auf EU- und nationaler Ebene konzentrieren sich auf:

- Das Befassen mit der Vielzahl der Vorschriften in Bezug auf Nichtdiskriminierung;
- Die Erweiterung der Aufgaben und Mittel der Gleichstellungsstellen;
- Die Gewährleistung von wirksamen, verhältnismäßigen und abschreckenden Sanktionen;
- Die Priorisierung von Aus- und Weiterbildung von Fachleuten; und
- Die Entwicklung von Systemen für die Erfassung statistischer Daten.

## Résumé

Le principe d'accès à la justice est d'une importance fondamentale pour les victimes de discrimination cherchant à obtenir réparation. Un accès à la justice effectif est la condition préalable à un recours effectif.

Un certain nombre de garanties procédurales ont été développées par les législateurs européens et la Cour de Justice pour assurer l'accès à la justice dans les cas de discrimination et d'égalité des sexes. Les directives 2000/43/EC, 2000/78/EC, 2004/113/EC et 2006/54/EC reflètent une grande partie de la jurisprudence de la Cour de Justice et établissent un certain nombre de principes clés en matière d'accès à la justice, notamment les dispositions concernant la défense des droits, le renversement de la charge de la preuve et l'obligation d'un recours effectif, proportionné et dissuasif.

Les pays de l'EEE ne sont pas dans l'obligation de mettre en œuvre les directives 2000/43/EC et 2000/78/EC puisque celles-ci ne sont pas listées dans l'Annexe XVIII de l'Accord sur l'EEE.

Cette étude comparative offre une vue d'ensemble de la situation dans les 27 Etats Membres et les pays de l'EEE/AELE (Islande, Lichtenstein, Norvège) en ce qui concerne l'accès à la justice en matière de lutte contre les discriminations fondées sur le sexe, la race ou l'origine ethnique, la religion ou les croyances, le handicap, l'âge et l'orientation sexuelle. Elle aborde les questions des garanties procédurales, de l'obligation à un recours effectif, proportionné et dissuasif et de l'efficacité du cadre juridique en pratique.

### Mécanismes judiciaires et extrajudiciaires

La mise en œuvre du principe d'égalité de traitement requiert que des procédures adéquates soient mises en place par les Etats Membres.

Les victimes présumées de discrimination peuvent chercher à obtenir réparation au travers de mécanismes juridiques classiques et en suivant les règles de procédure de droit commun applicables dans chaque pays. Les cours et tribunaux spécifiquement en charge des litiges liés à l'emploi et au travail jouent également un rôle important dans l'accès à la justice pour les victimes de discrimination dans le milieu professionnel.

De plus, un certain nombre de mécanismes de résolution des conflits extrajudiciaires ou alternatifs est disponible dans les Etats Membres et dans les pays de l'EEE/AELA. Ceux-ci incluent les méthodes classiques de résolution alternative des litiges, telle que la négociation, la médiation, la conciliation et l'arbitrage, qui peuvent permettre au plaignant un accès à la justice plus rapide et moins onéreux.

Les médiateurs et organismes nationaux de promotion de l'égalité peuvent également constituer une alternative aux juridictions ordinaires. Tandis que la plupart des médiateurs et organismes de promotion de l'égalité délivrent des recommandations non-contraignantes, d'autres ont des compétences plus étendues qui incluent notamment la possibilité d'imposer des amendes contraignantes (par exemple le Conseil pour l'Egalité des Sexes en Finlande, l'Autorité pour l'Egalité de Traitement en Hongrie, le Haut Commissaire à l'Immigration et au Dialogue Interculturel au Portugal et l'Inspection du Travail et de la Sécurité Sociale en Espagne).

Il est crucial que la multiplication des structures spécifiquement dédiées à la lutte contre la discrimination soit assortie d'une diffusion suffisante de l'information concernant leur existence. Bien que la sensibilisation du public aux droits fondamentaux progresse de manière notable, elle ne s'accompagne pas nécessairement d'une sensibilisation et d'une accessibilité accrues aux recours existant en cas de violation de ces droits. Les victimes de discrimination ne

sont pas toujours au courant des recours disponibles de par la loi et ne savent pas toujours comment y accéder.

## **Garanties procédurales**

Afin d'être entendu par les autorités judiciaires et d'obtenir réparation, le plaignant doit avoir le droit d'**ester en justice**. Bien que l'on observe des similitudes, les critères pour avoir le droit d'ester en justice varient de manière significative d'un pays à l'autre. En général, cependant, les plaignants individuels doivent avoir la capacité et l'intérêt juridique requis pour pouvoir agir en justice.

Même si les victimes ayant le droit d'ester en justice se rendent compte qu'elles ont été victimes de discrimination, il leur reste difficile de présenter, seules, une affaire devant les tribunaux. Les victimes de discrimination pensent souvent que leur cas est isolé et qu'aucune action ne peut être entreprise, ou bien elles craignent de devoir subir les conséquences néfastes dans la sphère privée ou professionnelle d'une action devant un tribunal ou tout autre corps judiciaire.

Il est à ce sujet particulièrement important que les directives et la jurisprudence de la Cour de Justice promeuvent la **défense des droits** par des associations, organisations et autres entités légales pour soutenir les plaignants ou agir en leur nom en application des directives. Une des lignes de conduite les plus efficaces de ces organisations est leur capacité à présenter une affaire devant le corps judiciaire. Dans la plupart des pays, le droit d'ester en justice n'est accordé qu'aux associations et organisations directement en lien avec le domaine au sein duquel le conflit a lieu. Dans ce cas, le droit de présenter une affaire en justice est autorisé pour les associations, les ONG et les organisations à but non lucratif.

Des différences significatives ont été relevées en ce qui concerne le **rôle des organismes nationaux de promotion de l'égalité**. Si dans certains pays ils ont le droit d'ester en justice et d'introduire une instance devant un tribunal, dans d'autres cas ils peuvent seulement prêter assistance au plaignant ou fournir des observations au juge. On remarque que dans plus de la moitié des pays étudiés, les organismes de promotion de l'égalité n'ont pas la capacité de déférer des plaintes devant les tribunaux. Quand ils ont la possibilité d'initier des procédures judiciaires, ce droit est généralement limité.

Le facteur clé qui différencie les cas de discriminations des autres cas est le **renversement de la charge de la preuve**. Ce renversement est en place dans tous les pays et il semble constituer un atout d'importance pour aider les victimes de discrimination. Cependant, dans la pratique, la mise en œuvre du renversement de la charge de la preuve n'est pas toujours en accord avec le droit et présente des difficultés.

Lorsqu'une présomption de discrimination est établie, la charge de la preuve doit se déplacer et incomber au défendeur afin qu'il prouve qu'il n'y a pas eu de discrimination. Cependant, il arrive souvent que la démarcation entre les deux échelons de ce processus ne soit pas clairement définie. Les autorités ou juges statuant sur les cas de discrimination, à travers leurs avis ou leurs jugements, abordent généralement les deux étapes sans les distinguer. Dans les faits, ceci a pour conséquence qu'il incombe au plaignant de prouver qu'il y a eu de discrimination et non seulement d'apporter un commencement de preuve, comme le prévoit le droit.

La conduite discriminatoire est rarement formulée à l'écrit ou devant témoins à l'oral. Elle n'est pas non plus nécessairement ostentatoire. De plus, malgré l'inscription dans la loi de l'obligation de renverser la charge de la preuve, le droit national ne prévoit généralement pas formellement les conditions de sa mise en œuvre. L'absence de prise en compte de la part des juges et autres membres des professions juridiques de l'existence de cette obligation et des moyens de sa mise en œuvre empêche l'application effective du renversement de la charge de la preuve.

S'assurer que le renversement de la charge de la preuve est appliqué par les tribunaux en charge des affaires de discrimination et édicter une approche commune minimum sur ce que constitue le commencement de preuve permettrait de promouvoir et de faciliter l'accès à la justice pour les victimes de discrimination.

Les règles nationales concernant les délais pour initier une plainte en matière de discrimination ne devraient pas être moins favorables que les délais pour des actions similaires dans d'autres domaines. Elles ne devraient pas rendre l'exercice des droits impossible en pratique. Néanmoins, les délais, surtout devant les organismes nationaux de promotion de l'égalité, peuvent être très courts. Ceci peut s'avérer problématique lorsqu'on prend en compte le fait qu'un plaignant peut mettre longtemps avant de se rendre compte qu'il est victime de discrimination et avant de chercher une aide juridique. Le droit d'agir pourrait donc n'être plus valable avant même que la victime n'ait eu le temps d'établir les faits et de décider si un procès pourrait être envisagé.

La durée des procédures est vue comme un obstacle à l'accès à la justice dans un certain nombre de pays, parmi lesquels certains ont déjà été condamnés à plusieurs reprises par la Cour Européenne des Droits de l'Homme pour des durées de procédures trop longues. La plupart des droits nationaux n'impose pas de contraintes de temps aux juges et autres organismes pour rendre leur décision. Ceci donne souvent lieu à des procédures excessivement longues. Lorsque le droit national impose des contraintes de temps, les différentes parties prenantes ont signalé que celles-ci ne sont pas respectées en pratique, en raison d'une charge de travail trop importante et/ou de moyens limités au niveau des tribunaux et organismes publics.

Le coût des procédures est un autre obstacle majeur pour les victimes présumées cherchant à obtenir réparation. Les frais de procédure dépendent généralement de la valeur du litige. Dans plusieurs pays, il existe des exemptions, la procédure étant gratuite dans certains cas, notamment dans les affaires liées au droit du travail. Quelques pays permettent des exemptions dans les cas spécifiques de discrimination ou sur la base des revenus du plaignant.

Le coût de la représentation juridique est une considération importante. Dans beaucoup de pays, il n'est pas nécessaire d'être représenté par un avocat devant tous ou certains tribunaux. Néanmoins, une personne qui n'est pas représentée par un avocat a une chance plus limitée d'obtenir satisfaction face au juge. Dans les pays où la représentation juridique implique des coûts élevés, les victimes sont susceptibles de chercher à régler l'affaire plus rapidement, d'accepter des dommages et intérêts réduits ou d'être plus réticents à l'introduction d'un appel.

De plus, le droit national de presque tous les pays inclut le principe selon lequel le paiement de tous les coûts liés à la procédure, y compris les dépenses de la partie adverse, incombe à la partie perdante. Ce principe du « perdant payeur » s'applique aussi dans les cas de discrimination et peut décourager les victimes cherchant à obtenir réparation devant un tribunal. Ceci devient un problème d'autant plus important que les frais de justice (et donc les risques liés à la procédure) sont particulièrement élevés. De plus, même quand ce principe ne s'applique pas et que chaque partie prend en charge ses propres coûts, ceux-ci peuvent être très élevés pour des personnes ne bénéficiant pas de l'aide juridique. Cependant, la mise en œuvre du principe du « perdant payeur » peut également agir comme une incitation pour les victimes de discrimination dont le cas est suffisamment simple et qui ont une probabilité de gagner suffisamment élevée, dans la mesure où ce principe peut leur permettre de recouvrer les coûts engendrés par la plainte.

La possibilité limitée d'obtenir une aide juridictionnelle dissuade également les victimes de présenter leur cas devant un tribunal. L'aide juridictionnelle n'est offerte qu'à une partie restreinte de la population et n'est généralement pas disponible en dehors des procédures judiciaires.

## **Recours effectif, proportionné et dissuasif**

Les directives sur la non-discrimination requièrent que les sanctions applicables en cas de violation des dispositions de transposition nationales soit effectives, proportionnées et dissuasives.

Au niveau national, les violations des règles de non-discrimination donnent lieu à une grande diversité de sanctions. Les recours pour les victimes présumées peuvent se faire devant des instances civiles, administratives ou pénales suivant l'instrument juridique applicable à l'affaire et le type de responsabilité invoqué.

Les sanctions pénales classiques sont l'amende et la peine d'emprisonnement. Les sanctions administratives vont de l'annulation de l'acte administratif discriminatoire en question à l'imposition d'amendes administratives. Les sanctions civiles peuvent consister en une simple présentation d'excuse ou une compensation ayant pour but d'indemniser le préjudice matériel et moral causé à la victime de discrimination; l'essentiel étant d'éviter de plafonner le montant des compensations financières, ceci pouvant empêcher un recours effectif.

Les experts nationaux et les différents acteurs consultés au cours de cette étude considèrent que la majorité des sanctions en place en cas de violation des règles de non-discrimination ne sont pas effectives, proportionnées et dissuasives. Au vu de la durée et des coûts des procédures ainsi que de l'effort émotionnel que représente un litige, les réparations susceptibles d'être accordées peuvent décourager les victimes d'entamer une action en justice. De plus, en l'absence de données statistiques et dans la mesure où certaines législations sont relativement récentes et n'ont de ce fait pas pu être invoquées devant des tribunaux, il est très souvent difficile d'estimer les chances de succès d'un plaignant dans une affaire de discrimination.

L'effet combiné des coûts et de la durée des procès ainsi que de la faiblesse des indemnisations généralement perçues peut dissuader les victimes de défendre leurs droits en justice.

## **Meilleures pratiques**

Les meilleures pratiques identifiées comprennent des incitations, des initiatives ou des dispositions juridiques ayant un résultat positif sur l'accès à la justice et la possibilité d'un recours effectif. De manière générale, les meilleures pratiques relevées par les experts et les acteurs nationaux se rapportent à des dispositions juridiques offrant un régime plus favorables aux victimes présumées de discrimination ainsi qu'aux activités d'information du public telles que les campagnes de sensibilisation.

Plus concrètement, les meilleures pratiques identifiées se rapportent :

- au rôle actif de certains organismes nationaux de promotion de l'égalité, d'ONGs et d'autres associations, en particulier au regard de leur participation dans les affaires de discriminations ;
- aux mécanismes servant à éviter les délais devant les tribunaux, diminuant de fait la durée des procédures ;
- aux exemptions de certains frais de procédure ; et
- à la mise en place de mécanismes pour adapter les sanctions aux circonstances spécifiques d'une affaire donnée.

## Recommandations

Les recommandations au niveau national et européen se concentrent sur :

- le problème de la multiplicité des règles en ce qui concerne la lutte contre les discriminations ;
- l'élargissement des attributions et des ressources des organismes nationaux de promotion de l'égalité;
- la mise en place de sanctions effectives, proportionnées et dissuasives ;
- la formation et l'éducation des professionnels concernés en tant que priorité ; et
- le développement de mécanismes pour la collecte des données statistiques.

## Abbreviations

AGE	European network of around 150 organisations of and for people aged 50
AGG	General Act on Equal Treatment (Germany)
CPaD	Commission on Protection against Discrimination (Bulgaria)
DG EMPL	Directorate General for Employment, Social Affairs and Equal Opportunities
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECNI	Equality Commission for Northern Ireland (UK)
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
EUR	Euro/s
HALDE	Equal Opportunities and Anti-Discrimination Commission (France)
ICCPR	International Covenant on Civil and Political Rights
ILGA	International Lesbian and Gay Association
LGBT	Lesbian, gay, bisexual and transgender
LPaD	Law on Protection against Discrimination (Bulgaria)
NGO	Non-governmental organisation
TUC	Trade Union Congress (UK)
UK	United Kingdom





# 1. Background and context

## 1.1. Introduction

The principle of access to justice is of fundamental importance for victims of discrimination seeking redress. An effective access to justice is a precondition to obtaining an effective remedy. The substantive dimension of access to justice requires the availability of a fair and just remedy for the violation of a right, while procedural access requires a fair hearing before an independent and impartial third party.

Effective implementation of the principle of equal treatment requires appropriate procedures to be put in place by the Member States.<sup>2</sup> This comparative study provides an overview of the situation in the 27 EU Member States and in the EFTA/EEA countries (Iceland, Liechtenstein and Norway),<sup>3</sup> as regards access to justice in cases of discrimination on grounds of gender, race or ethnic origin, religion or belief, disability, age and sexual orientation. It covers the material scope of a number of Directives relevant to gender equality and anti-discrimination as well as the scope of the proposal for a new directive approved by the Commission on 2 July 2008, aimed at extending the protection against discrimination outside employment on grounds of religion or belief, disability, age and sexual orientation. At the level of practical implementation and enforcement the study highlights any obstacles to, and best practices in, promoting an efficient and effective access to justice in the field of gender equality and anti-discrimination law where the injured party may belong to a vulnerable group or the violation itself may not take on a tangible form.

In particular, the study analyses the national situation with respect to:

- Procedural guarantees, such as the burden of proof, rules concerning standing before the courts, the role of associations and other entities in judicial proceedings, time limits and duration of procedures, costs of judicial procedures and existence of legal aid.
- Requirements for an effective, proportionate and dissuasive remedy, in particular the type of sanctions (penal and/or civil) or compensation provided for under the law (including upper limits).
- The effectiveness of the legal frameworks in practice including information on the number and types of cases brought before the courts.<sup>4</sup>

The issues related to an effective access to justice also form the focus of a study carried out by the European Union Agency for Fundamental Rights entitled ‘Access to justice in Europe: an overview of challenges and opportunities’ published in 2011.<sup>5</sup>

## 1.2. Legal Framework

EU legislators and the Court of Justice have developed a number of procedural guarantees to ensure effective access to justice in discrimination and gender equality cases in EU law. There is also a general right to effective judicial protection and a personal remedy for victims of discrimination, as evidenced by the provisions in relevant Directives and the Court of Justice case-law.<sup>6</sup>

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<sup>2</sup> Recital 28 to Directive 2006/54/EC

<sup>3</sup> The non-EU members of the EEA

<sup>4</sup> Annex II contains a note on the methodology used for this study.

<sup>5</sup> [http://fra.europa.eu/fraWebsite/attachments/report-access-to-justice\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/report-access-to-justice_EN.pdf)

<sup>6</sup> Case C-33/76, *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*; Case C-432/05, *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern*; Case C-63/08 *Virginie Pontin v T-Comalux SA*; Case C-268/06, *Impact v Minister for Agriculture and Food and Others*.

Relevant Directives establishing a number of key principles as regards access to justice include:

- Requirement for an effective, proportionate and dissuasive remedy: Directive 2000/43/EC (Article 15), Directive 2000/78/EC (Article 17), Directive 2004/113/EC (Article 14), Directive 2006/54/EC (Article 25).
- Provisions on defence of rights, which include rights of associations: Directive 2000/43/EC (Article 7), Directive 2000/78/EC (Article 9), Directive 2004/113/EC (Article 14), Directive 2006/54/EC (Article 17).
- Reversal of the burden of proof: Directive 2000/43/EC (Article 8), Directive 2000/78/EC (Article 10), Directive 2006/54/EC,<sup>7</sup> (Article 19), Directive 2004/113/EC (Article 9).

The Directives incorporate much of the Court of Justice case-law developed in the area of equal treatment and anti-discrimination. For example, rules relating to the burden of proof set out in the Court of Justice case-law, such as the rule that an employer must show that a non-transparent pay policy does not discriminate on the grounds of sex, reversing the normal onus of proof,<sup>8</sup> were incorporated in Directive 97/80/EC and in Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The material scope of the relevant Directives is summarised in the table below:

*Areas and grounds covered by the relevant Directives*

Areas	Employment	Social security	Education	Access to goods and services
Grounds				
Gender				
Race and ethnic origin				
Religion and belief				
Disability				
Age				
Sexual orientation				

The Court of Justice case-law further developed the principle of effective judicial protection:

- National rules for bringing actions (for example those relating to time limits) are admissible provided that they are not less favourable than those for similar actions of a domestic nature and that they do not render the exercise of rights impossible in practice.<sup>9</sup>

[I]n the absence of Community legislation governing the matter it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing court actions for safeguarding rights which individuals derive from Community law, such rules must not be less favourable than those governing similar domestic actions (principle of equivalence) and must not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).<sup>10</sup>

<sup>7</sup> Repeals and replaces Directive 97/80/EC on the burden of proof in cases of discrimination based on sex.

<sup>8</sup> Case C-109/88 *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss* [1989] ECR 03199 (*Danfoss*); See also Case C-127/92 *Enderby v Frenchay Health Authority*, Case C-167/97 *R v Secretary of State for Employment, ex parte Seymour Smith and Perez* Case C-54/07 *Centrum voor gelijkheid van kansen en racismebestrijding v Firma Feryn NV*.

<sup>9</sup> E.g. *Ansaldo Energia and others v Amministrazione delle Finanze dello Stato*, C-279/96, C-280/96, C-281/96, paragraph 14).

<sup>10</sup> Case C-472/99, *Clean Car Autoservice GmbH v Stadt Wien, Republik Österreich*, paragraph 28. See also Joined Cases C-279/96 to C-281/96 *Ansaldo Energia and Others* [1998] ECR I-5025, paragraphs 16 and 27, and Case C-326/96 *Levez* [1998] I-7835, paragraph 18).

- No upper limits for compensation: fixing a prior upper limit may preclude effective compensation and the exclusion of an award of interests to compensate for the loss sustained is not allowed.

[R]eparation of the loss and damage sustained by a person injured as a result of discriminatory dismissal may not be limited to an upper limit fixed a priori or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of the effluxion of time until the capital sum awarded is actually paid.<sup>11</sup>

The preamble of Directive 2006/54/EC refers to Court of Justice case-law. In the absence of relevant EU rules, the Court of Justice has held that it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through EU law. However, these rules cannot be less favourable than those governing similar domestic actions or be framed in such a way as to render impossible in practice the exercise of rights conferred by EU law.

This comparative study also analyses the situation in the EFTA/EEA countries (Iceland, Liechtenstein and Norway). By virtue of the EEA Agreement, these countries must implement all EU legislation relevant to the functioning of the internal market (social policy and non-discrimination are regulated in Part V of the EEA Agreement ‘Horizontal Provisions relevant to the Four Freedoms’). Annex XVIII to the EEA Agreement lists the EU legislation in the areas of health and safety at work, labour law and equal treatment for men and women which the EEA countries must implement but Directives 2000/43/EC and 2000/78/EC are not listed. Therefore, there is no legal obligation on Iceland, Liechtenstein and Norway to transpose their requirements. On the other hand, Directives 2004/113/EC and 2006/54/EC must be implemented by these three countries.

### *International and regional instruments*

Many sources of international law refer to access to justice as a fundamental right. The United Nations Basic Principles and Guidelines relating to the Right to a Remedy and Reparation place emphasis on the State’s duty to provide victims with equal and effective access to justice. This is important both in terms of providing adequate redress to victims and in terms of deterring future violations of equal treatment. It is a fundamental human right set out in Article 8 of the Universal Declaration of Human Rights that ‘[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.’ Most of the texts adopted at the international level protecting these rights are ratified by the EU Member States and EFTA/EEA countries.

The International Covenant on Civil and Political Rights (Article 14(1)), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), the Convention on the Elimination of Discrimination Against Women (Article 2(c)) and the Convention on the Rights of the Child (Article 12(2)) all include a provision on effective protection and remedies, including through a court or tribunal. These four conventions are ratified by all 27 Member States and the EFTA/EEA countries.

It is noteworthy that the Convention on the Rights of Persons with Disabilities, which entered into force on 3 May 2008, is the only one of these international texts to expressly mention ‘access to justice’ as a right in its Article 13. However, the convention does not provide a legal definition of access to justice. Adopted in 2006, the Convention has not yet been ratified by Bulgaria, Cyprus, Estonia, Finland, Greece, Ireland, Luxembourg, Malta, the Netherlands, Poland and Romania nor has

<sup>11</sup> Case C-271/91, *M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority*. (Marshall, paragraph 30, 32).

it been ratified by any of the EFTA/EEA countries. It has however been approved on behalf of the Community by means of Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010/48/EC).

At the regional level, the European Convention on Human Rights (ECHR), including its Protocol 12, and the Revised European Social Charter constitute the basis of fundamental rights in Europe. Article 6 ECHR contains very similar wording to Article 14 of the ICCPR. As the ratification of the ECHR is a prerequisite for EU membership, this provision applies in all Member States. It also applies in the three EFTA/EEA countries. Article 13 ECHR states that '[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority'.

Article 19 of the Treaty on European Union requires Member States to 'provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

The right to an effective remedy and to a fair trial is also stated in Article 47 of the Charter of Fundamental Rights of the European Union:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

### 1.3. Legal and regulatory framework at national level

#### 1.3.1. Overview of the areas and grounds covered in each country

If for every right there must be a remedy (*ubi jus, ibi remedium*), first the right has to exist and be enforceable in the national legal system.

The table below provides a graphic illustration of the non-discrimination grounds covered in each area by enforceable anti-discrimination legislation in each of the EU Member States. The Member States have adopted legislation covering the same areas and grounds that are covered by the relevant EU Directives. As required by Directives 2000/78/EC and 2006/54/EC, discrimination in the field of employment on all grounds is prohibited under the national legislation of all Member States. As per Directive 2000/43/EC, the national legislation of all Member States applies to all areas with respect to the ground of racial or ethnic origin. In accordance with Directive 2004/113/EC the national laws of the Member States cover gender in the area of access to goods and services. The legislation of some Member States goes beyond what is covered by the relevant EU Directives and covers more grounds of non-discrimination in more areas.

### Areas and grounds covered by the EU Member States

Areas	Employment						Social security						Education						Access to goods and services						
	G	R	R	D	A	S	G	R	R	D	A	S	G	R	R	D	A	S	G	R	R	D	A	S	
Grounds <sup>12</sup>	E	B			O	E	B			O	E	B			O	E	B			O	E	B			O
Austria <sup>13</sup>																									
Belgium																									
Bulgaria																									
Cyprus																									
Czech Rep.																									
Denmark																									
Estonia																									
Finland																									
France																									
Germany																									
Greece																									
Hungary																									
Ireland																									
Italy																									
Latvia																									
Lithuania																									
Luxembourg																									
Malta																									
Netherlands																									
Poland																									
Portugal																									
Romania																									
Slovakia																									
Slovenia																									
Spain																									
Sweden																									
UK																									

In the EFTA/EEA countries, the scope of anti-discrimination legislation is more limited as these countries are not obliged to transpose Directives 2000/43/EC and 2000/78/EC. It is nevertheless noteworthy that, in the area of employment, Liechtenstein and Norway grant an equivalent amount of legal protection as the EU Member States.<sup>14</sup> In the field of employment and education, Icelandic law covers gender comprehensively and disability to some extent. In the field of access to goods and services, Norwegian law covers all grounds of discrimination, except for age and sexual orientation; in Iceland discrimination based on disability in the provision of public services is prohibited and the Criminal Code covers race, religion and sexual orientation. Liechtenstein only covers disability.

### Areas and grounds covered by the EFTA/EEA countries

Areas	Employment						Social security						Education						Access to goods and services						
	G	R	R	D	A	S	G	R	R	D	A	S	G	R	R	D	A	S	G	R	R	D	A	S	
Grounds <sup>15</sup>	E	B			O	E	B			O	E	B			O	E	B			O	E	B			O
Iceland																									
Liechtenstein																									
Norway																									

<sup>12</sup> G (gender); RE (race or ethnic origin); RB (religion or belief); D (disability); A (age); SO (sexual orientation).

<sup>13</sup> Note however that this (social security and education) only applies to national legislation on grounds of ethnic origin, i.e. § 31 of the Austrian Equal Treatment Act. Nevertheless, this provision might not be precise enough for a direct applicability (i.e. enforceable by individuals) in all the Länder. The Länder must first implement the Equal Treatment Act in their own law within their own spheres of competence. The Länder have, so far (January 2011) not completely succeeded in doing so.

<sup>14</sup> In contrast, in Iceland there are many provisions banning discrimination on the prohibited grounds, although fragmented. Still, provisions in line with the Directives concerning victimisation, positive measures, equality bodies are largely lacking.

<sup>15</sup> G (gender); RE (race or ethnic origin); RB (religion or belief); D (disability); A (age); SO (sexual orientation).

### 1.3.2. The definition of discrimination

An inherent problem with respect to remedying violations of gender equality and anti-discrimination law is the fact that discriminatory conduct does not typically take on a tangible form which can be easily proved. Injured persons may be unable to identify its occurrence or, if they do, may be under the belief that the conduct in question is related to some other factor specific to them. It is problematic that discriminatory conduct can often be disguised as legitimate conduct and that potential victims of discrimination may not be aware of their rights and of the legal pathways available to obtain justice for the wrong caused.

In this light, the definition of discrimination has significant weight. A solid understanding of the constituent elements of discrimination is an important tool in enabling society to recognise and establish its occurrence and enabling victims or their representatives to seek justice. '[D]iscrimination involves the application of different rules to comparable situations or the application of the same rule to different situations.'<sup>16</sup> Direct discrimination is defined in the EU Directives as 'where one person is treated less favourably than another is, has been or would be treated in a comparable situation'.<sup>17</sup> Indirect discrimination is defined as 'where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'.<sup>18</sup> For example, the Court of Justice has consistently held that indirect discrimination arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of far more women than men.<sup>19</sup>

Harassment also forms part of the concept of discrimination, defined as 'where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment'. Sexual harassment<sup>20</sup> in Directives 2004/113/EC and 2006/54/EC, an instruction to discriminate against persons in Directives 2000/78/EC and 2000/43/EC, or denial of reasonable accommodation also belong to the concept of discrimination.

In the Member States and EFTA/EEA countries, the definition of discrimination is an accurate reflection of that provided in the EU Directives.<sup>21</sup> In many countries, the legislation has been amended to be brought in line with the definitions set in the EU law (e.g. Czech Republic, Finland, Slovenia and Ireland). In Bulgaria, the national legislation was drafted prior to EU accession, and in accordance with the EU *acquis* and the European Convention on Human Rights.

While in most countries, the definition of discrimination covers the same elements as the Directives (direct discrimination, indirect discrimination, harassment, sexual harassment and instruction to discriminate), some broadened the content of the definition, mentioning expressly as part of discrimination: victimisation (Denmark, Hungary), less favourable treatment of a woman due to pregnancy or maternity (Greece, Latvia, Spain, the UK), unlawful segregation (Hungary), or any refusal of reasonable accommodation for people with disabilities (Belgium). In Finland, the Non-Discrimination Act implementing Directives 2000/43/EC and 2000/78/EC contains a list of grounds

<sup>16</sup> Case C-394/96 *Brown*, [1998] ECR I-4185; see also Case C-342/93 *Gillespie and Others v Northern Health and Social Services Board and Others* [1996] ECR I-475, paragraph 16.

<sup>17</sup> In Directive 2000/43/EC, Article 2, Directive 2000/78/EC, Article 2, Directive 2004/113/EC, Article 2 and Directive 2006/54/EC Article 2.

<sup>18</sup> *Ibid.* Criteria relevant to indirect discrimination were developed in Case C-170/884 *Bilka-Kaufhaus* and in later case-law e.g. Case C-381/99 *Susanna Brunnhofer v Bank der osterreichischen Postsparkasse AG*.

<sup>19</sup> Case C-444/93 *Megner and Scheffcl v Innungskrankenkasse Rheinhessen-Pfalz*, paragraph 24, Case C-343/92 *De Weerd (née Roks) and Others*, paragraph 33, Case C-100/95 *Brigitte Kording v Senator für Finanzen*, paragraph 16.

<sup>20</sup> '[W]here any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.'

<sup>21</sup> This is the case in Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Italy, Liechtenstein, Norway, Portugal, Romania, Slovakia, Spain, Sweden and the UK.



for discrimination slightly broader than in the Directives. In Ireland, grounds of discrimination include marital status, family status and traveller community; in the UK, grounds include marriage and partnership status.

### 1.3.3. Multiple discrimination

Multiple discrimination occurs when a person is subjected to discrimination on more than one ground. Defining multiple discrimination is complex and can depend on whether discrimination is understood to be cumulative (e.g. an act which discriminates on grounds of sex at the same time as an act which discriminates on grounds of race) or intersectional (e.g. discrimination against women from ethnic minorities). The existing EU anti-discrimination and equal treatment legislation does not expressly prohibit multiple discrimination, although EU Directives recognise that different grounds can intersect. By way of example reference is made to Recital 3 of the Preamble to Directive 2000/78/EC that states that '[i]n implementing the principle of equal treatment, the Community should, ..., aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.'

Multiple discrimination is a key point that emerged frequently during discussions with EU level stakeholders. Multiple discrimination seems primarily to involve the ground of gender together with some other ground or grounds. AGE highlighted the occurrence of multiple discrimination with respect to older women (age and gender) and older migrant workers (age and ethnic origin). ILGA referred to multiple discrimination faced by transgender women (sexual orientation and gender).

With specific reference to access to justice, EU stakeholders underlined that a key obstacle to an effective remedy in cases of multiple discrimination could be the fact that different judicial fora are competent at national level for specific grounds of discrimination. This creates difficulties for the victim of discrimination in determining before which court or tribunal the claim should be brought. Moreover:

- the chosen court or tribunal might be specialized in one (but not both or all) of the grounds.
- the victim may not be able to make a strong enough case on one of the grounds alone.

The national reports<sup>22</sup> confirm these difficulties and demonstrate that only six of the EU Member States (Bulgaria, Germany, Ireland, Romania, Spain, and the UK) have special provisions on multiple discrimination in their laws. None of the EFTA/EEA countries have such provisions.

The absence of specific regulation on multiple discrimination has significant implications for access to justice as some victims will have to choose one ground of discrimination on which to base their claim (for example, in countries where specific bodies deal with specific discrimination grounds only) despite the fact that their claim is much wider, and possibly more serious than can be reflected when focusing on a single issue. Court-awarded damages or compensation are affected as a result. A victim's only alternative is to pursue each ground of discrimination in the appropriate forum, although without considering the two or more relevant grounds of discrimination, the case may become frustrated. Time and money are then a further disincentive.

In the six EU Member States that have special provisions on multiple discrimination a path is cleared for such victims to access justice. Multiple discrimination is explicit in their legislation; the provisions link to the recognised grounds of discrimination and these can be combined when forming a claim. Notably, because Irish law applies the same principles and procedural rules to all grounds the bringing of claims based on multiple discrimination is facilitated - all cases are heard by the same court.<sup>23</sup>

<sup>22</sup> Available on the webpage of the European Commission

<sup>23</sup> Sections 35 and 39 of the Equality Act 2004 (as amending section 77 Employment Equality Act 1998 and section 25 of the Equal Status Act 2000) (Ireland).

Some Member States place even more importance on multiple discrimination. For example, the relevant Bulgarian law goes further by requiring State agencies to take priority measures to give victims of multiple discrimination ‘equal opportunities’ in accessing justice.<sup>24</sup> Romanian law<sup>25</sup> provides a more severe regime of sanctions in cases of multiple discrimination, enabling judges to take each instance of discrimination into account and to make an award of a suitable amount of compensation.

Germany, although recognising multiple discrimination, requires that each ground be proved individually,<sup>26</sup> whereas in the UK the claimant must show that the less favourable treatment was because of the combination alleged, as compared with how a person who did not share either of the characteristics in the combination was or would be treated.<sup>27</sup>

In other Member States the legal framework is supportive of victims of multiple discrimination and it is at least technically possible to bring a claim of multiple discrimination before the national courts (e.g. Slovakia and Slovenia). However, the national reports show that this is more of a theoretical possibility rather than something that occurs frequently in practice.

It is reasonable to conclude that explicit provisions in the national legislation would go a long way towards granting protection to victims of multiple discrimination. At the same time, an effective access to justice would be facilitated through the standardisation of procedural rules across the different grounds, including the hearing of all discrimination cases by the same judicial body.

## 2. Specific structures to access justice in anti-discrimination matters

The provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed by the non-discrimination Directives is essential to the effective implementation of the principle of equal treatment.<sup>28</sup>

Alleged victims of discrimination may seek redress through the general judicial mechanisms and in accordance with the general procedural rules applicable in each country. In addition to the general national court structures, labour courts or employment tribunals play an important role in access to justice for victims of discrimination in the field of employment.

The national reports provide overviews of the national judicial mechanisms in place for the settlement of disputes generally, as well as detailed descriptions of the competent courts for the settlement of disputes based on gender equality and anti-discrimination legislation.

It is noteworthy that the existence of courts specifically set up to deal with discrimination or fundamental rights cases is extremely sparse. In this respect reference may be made to the Equality Tribunal in Ireland which is a specialist body established to deal with discrimination cases and to the Spanish law on Integrated Protection Measures against Gender Violence which creates specific courts dealing with violence against women that examine, and, where appropriate, rule on criminal cases involving violence against women, as well as any related civil causes.

Member States must ensure that judicial procedures are available for the enforcement of the non-discrimination obligations by injured parties ‘after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures’.<sup>29</sup> A number of extra-judicial

<sup>24</sup> Article 11, paragraph 2 of the Law on the Protection against Discrimination (Bulgaria).

<sup>25</sup> Law no. 202/2002 and Government Emergency Ordinance no. 61/2008 (Romania).

<sup>26</sup> Section 4 of the General Act on Equal Treatment (AGG) (Germany).

<sup>27</sup> Section 14 of the Equality Act 2010 which will come into force as of approximately April 2011 (UK).

<sup>28</sup> Recital 29 Directive 2006/54/EC.

<sup>29</sup> Article 17 Directive 2006/54/EC.



mechanisms are available in each of the countries under review. The existence of such alternatives is consistent with the defence of rights provisions of the non-discrimination Directives.

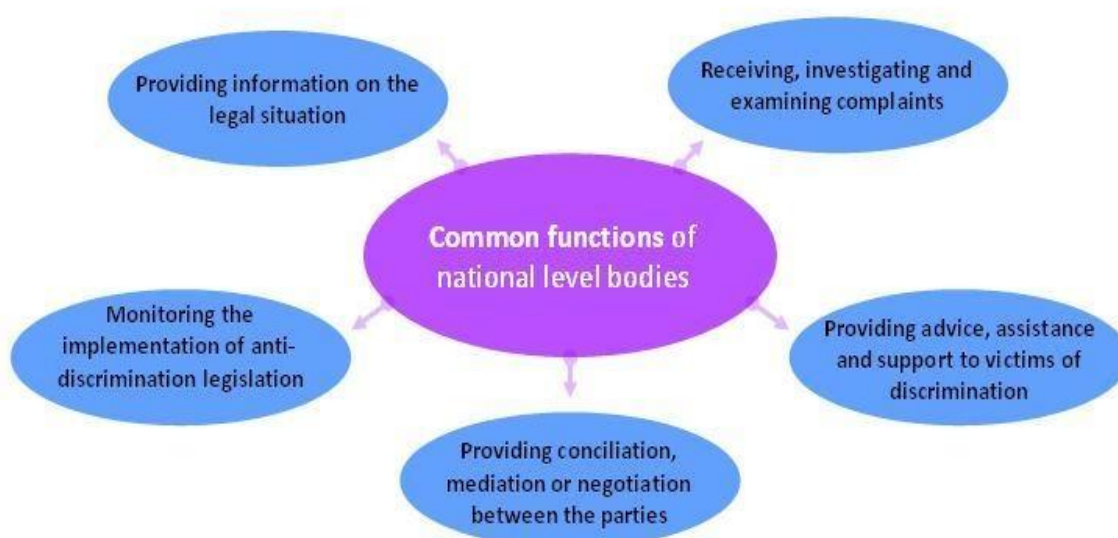
The extra-judicial or alternative dispute settlement mechanisms identified in the reports include the typical methods falling short of litigation, such as negotiation, mediation, conciliation and arbitration. These mechanisms could provide complainants with the advantages of a swifter and cheaper access to redress.

Reference may be made to the following examples of alternative dispute resolution mechanisms:

- In the Czech Republic, independent mediators are available in discrimination cases if agreed to by both parties;
- In Italy, equality advisors, trade unions and associations provide conciliation with an aim to end the discrimination. If conciliation leads to an agreement, the agreement can be enforced;
- The National Office for Conciliation in Luxembourg, formed of representatives of employers' and trade union organizations as well as representatives of the employers and the employees of the undertakings involved, assesses industrial disputes in the private sector and votes on a decision. If the conciliation process is unsuccessful, the parties can refer the dispute to an arbitration panel;
- Independent mediation centres are available in Slovakia if mediation is agreed to by both parties;
- The Advisory, Conciliation and Arbitration Service is the most well known alternative dispute resolution provider in the UK. It is involved in conciliation in collective disputes, providing facilities for settling existing or anticipated trade disputes by conciliation. It is also involved in conciliation in individual cases.

Other possibilities include recourse to institutions such as the office of the Ombudsman. In some of the countries, the Ombudsman's competence is specifically focused on the protection of fundamental rights; in others, it is a more general entity dedicated to the review of administrative actions. The equality bodies also play a role in assisting victims of discrimination seeking access to justice.

The diagram below illustrates some of the common functions performed by national level bodies such as equality bodies and Ombudsmen in the EU Member States and in the EFTA/EEA countries:



These bodies offer an alternative course of action to that provided by the general courts and often use alternative dispute resolution tools themselves. For example:

- The Federal Ombudsman on Equal Treatment and the Federal Equal Treatment Commission in Austria and the Equal Treatment Commission in the Netherlands provide conciliation and mediation services;
- Equal Opportunities Flanders in Belgium finances contact points whose mission is to find negotiated solutions in cases of discrimination;
- The Estonian Chancellor of Justice and the National Council for Combating Discrimination in Romania mediate disputes between private persons in regard to discrimination on several grounds;
- In Liechtenstein there is a mandatory, free of cost mediation body for discrimination cases whereby an appointed judge advises the parties and settles the dispute.
- The Equality and Human Rights Commission in the UK provides a conciliation service as an alternative route to court action. If a complaint is resolved during the conciliation, it can result in a binding settlement. If it is not resolved, the complainant still has the option of taking the action to court.

The tables in Annex IA summarise the principal channels in the EU Member States and in the EFTA/EEA countries of a general or special type that can be used to resolve or investigate discrimination complaints or otherwise provide assistance to alleged victims, and note their main functions and limitations.

Most of these bodies can issue non-binding recommendations whereas others have more extended competences including the power to impose fines that are binding in nature (e.g. the Equal Opportunities and Anti-Discrimination Commission in France, the Equality Board in Finland, the Equal Treatment Authority in Hungary, the High Commissioner for Immigration and Intercultural Dialogue in Portugal and the Work and Social Security Inspection Offices in Spain).

The following tables provide an overview of the relevant bodies and whether or not they have the power to issue binding decisions:

(a) in the EU Member States:

	Mechanisms and bodies	Binding decisions
Austria	Federal Ombudsman on Equal Treatment and Federal Equal Treatment Commission	
Belgium	Centre for Equal Opportunities and Fight against Racism and Institute for Equality of Women and Men	
	Equal Opportunities Flanders	
Bulgaria	National Ombudsman	
	Local ombudsmen	
	Commission on Protection against Discrimination	✓
Cyprus	Commissioner for Administration (Ombudsman)	
Czech Rep.	Independent mediators	✓
	Labour Inspectorates	✓
	Czech Trade Inspectorate	✓
	The Public Defender of Rights (Ombudsman)	
Denmark	Mediation in courts	
	Board of Equal Treatment	✓
	Danish Institute for Human Rights	
	Parliamentary Ombudsman	✓
Estonia	Labour dispute committees	✓
	Chancellor of Justice	
	Gender Equality and Equal Treatment Commissioner	
Finland	Ombudsman for Equality	
	Equality Board	✓

	Ombudsman for Minorities	
	Discrimination Tribunal	✓
France	Equal Opportunities and Anti-Discrimination Commission (HALDE)	✓
	Defender of Rights (law in progress of adoption)	
Germany	Certified conciliation bodies (Bavaria, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein)	✓
	Federal Agency	
	Anti-discrimination agencies of states and cities (Brandenburg, Berlin and Hamburg, and the cities Frankfurt (Main), Munich and Cologne)	
	Federal Government Commissioner for Matters relating to Disabled People	
	Commissioners of the states and municipalities for matters of disabled people	
	Federal Government Commissioner for Migration, Refugees and Integration and Commissioners for integration of the states and the municipalities	
	Federal and states' commissioners for gender equality of administrative bodies and courts	
Greece	Labour Inspectorate	
	Ombudsman, Consumer Ombudsman, Equal Treatment Committee	
Hungary	Ombudsman for Civil Rights and Minority Rights Ombudsman	
	Equal Treatment Authority	✓
	National Office for Education	✓
	Health Insurance Inspectorate	✓
	Regional National Public Health and Medical Officer Service	✓
	National Consumer Protection Authority	✓
	Independent Law Enforcement Complaint Board	
	National Labour Inspectorate	✓
Ireland	Equality Mediation Officers	
Italy	Equality Advisors (provincial and regional, national)	
Latvia	State Labour Inspectorate	✓
	Ombudsman	
Lithuania	Equal Opportunities Ombudsman	
Luxembourg	The mediator of the Grand Duchy of Luxembourg (Ombudsman)	
	The National Office for Conciliation	✓
Malta	Commissioner for Administrative Investigations (the Ombudsman)	
	National Commission for the Promotion of Equality	
	National Commission Persons with Disability	
Netherlands	Equal Treatment Commission	
	National Ombudsman	
Poland	Human Rights Defender (Ombudsperson)	
Portugal	Commission for Equality in Labour and Employment	
	Commission for Citizenship and Gender Equality	
	Authority for the Labour Conditions	✓
	Commission for Equality and Against Racial Discrimination	
	High Commissioner for Immigration and Intercultural Dialogue (ACIDI)	✓
	National Institute for Rehabilitation, I.P.	
	Ombudsman	
Romania	National Council for Combating Discrimination	✓
	Peoples' Advocate (Ombudsman)	
	National Agency for Equality of Opportunities between Women and Men	
Slovakia	Public Defender of Rights (Ombudsman)	
	Slovak National Centre for Human Rights	
	Independent mediation centres	✓
Slovenia	Human Rights Ombudsman	
	Advocate for the Principle of Equality	
Spain	Work and Social Security Inspection Offices	✓
	Ombudsman	
Sweden	Ombudsman of Justice and Chancellor of Justice	
	Equality Ombudsman	✓
	Board against Discrimination	✓
United Kingdom	Advisory, Conciliation and Arbitration Service (ACAS)	✓
	'Compromise agreement'	✓
	Equality and Human Rights Commission and Equality Commission for Northern Ireland	✓

(b) in the EFTA/EEA countries:

	Mechanisms and bodies	Binding decisions
Iceland	Parliamentary Ombudsman	
	Gender Equality Complaints Committee	✓
Liechtenstein	Mandatory, free of cost mediation body for discrimination cases	
Norway	Equality and Anti-Discrimination Ombudsperson and Equality and Discrimination Tribunal	*
	Parliamentary Ombudsman	

\* The Equality Tribunal may issue binding decisions directed to private parties only

For more detailed information see the study on equality bodies, commissioned by the Commission and finalised in 2010.<sup>30</sup>

The number of bodies and channels through which disputes can be settled shows the complexity of accessing justice for victims of discrimination. Although the existence of specific structures dealing with discrimination is a positive fact that benefits alleged victims, it is crucial that the proliferation of these mechanisms is accompanied by effective dissemination of information about their availability. A recurring issue raised by the EU level associations is that whilst there is noteworthy progress in terms of awareness and promotion of fundamental rights, this is not matched by an equivalent level of awareness of, and accessibility to, remedies for breaches of these rights. Often, victims of discrimination are not aware of the legal remedies available and do not know how to access courts or alternative mechanisms for defending their rights.

More importantly, the tables above illustrate that many of these channels do not result in a binding solution to the dispute and thus may not always constitute a real alternative to court action. Moreover, recourse to such channels could in effect result in a prolongation of the time period from the occurrence of the discriminatory act to the obtaining of an effective remedy by the victim. Where methods of alternative dispute settlement do not result in a successful resolution of the dispute, the alleged victim will have to pursue the claim through judicial procedures.

The Court of Justice has held that the principles of equivalence and effectiveness and the principle of effective judicial protection do not preclude ‘national legislation which imposes prior implementation of an out-of-court settlement procedure, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs – or gives rise to very low costs – for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.’<sup>31</sup>

### 3. Procedural guarantees

#### 3.1. Legal standing and participatory status

In order to have access to court and eventually to obtain redress, the plaintiff must have *locus standi*. While common features are observed, the criteria for standing can vary quite significantly from one

<sup>30</sup> <http://ec.europa.eu/social/main.jsp?catId=642&langId=en>

<sup>31</sup> Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08, *Rosalba Alassini v Telecom Italia SpA* (C-317/08) and *Filomena Califano v Wind SpA* (C-318/08) and *Lucia Anna Giorgia Iacono v Telecom Italia SpA* (C-319/08) and *Multiservice Srl v Telecom Italia SpA* (C-320/08),

country to another, especially when it comes to the role of associations and equality bodies. In general, individual claimants must have the requisite legal capacity and legal interest to be granted standing.

The role of the equality bodies in the initiation of a procedure is very important in some countries, whilst in others this possibility is not foreseen by the law. With regards to associations and trade unions, in a few cases, access to courts and administrative authorities to challenge discriminatory conduct is facilitated if certain criteria are met. In other cases, associations and organisations have to show an interest, similarly to individuals.

Tables summarising the legal situation with regard to legal standing and participatory status of individuals, equality bodies and associations and other organisations in the EU Member States and the EFTA/EEA countries are found in Annex IB to this report.

### 3.1.1. Individual victims of discrimination

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, even after the relationship in which the discrimination is alleged to have occurred has ended.<sup>32</sup>

This requirement, found in all the non-discrimination Directives, ensures that Member States provide access to justice to persons considering themselves victims of discrimination. This right is recognised in the national laws of the Member States. The requirements that must be satisfied as a pre-condition to *locus standi* are established in their national laws or through case-law and have a direct influence on facilitating or hindering an effective access to justice.

#### *Legal capacity*

In quite a few countries,<sup>33</sup> legal capacity is mentioned as a pre-requisite for access to judicial bodies. Legal capacity relates to the ability of persons to exercise their rights independently, and the criteria to assess it are usually legal personality, age (above 18) and the health status of the person (i.e. the ability to protect personal interests and to make decisions to this end independently). Persons lacking legal capacity can be represented by another person designated to protect their interests.

This condition inhibits access to justice by certain categories of persons (children and disabled persons) that might often be victims of discrimination. As highlighted by the European Disability Forum,<sup>34</sup> the recognition of their legal standing before a court is a major obstacle for disabled persons (in particular the mentally disabled), as they are not necessarily considered legally capable. The recognition of the legal capacity of disabled persons is thus a key element to their obtaining legal standing before a court. It is to be noted that in Norway for instance, mentally disabled persons have legal capacity in principle.

Article 12 of the Convention on the Rights of Persons with Disabilities deals with 'equal recognition before the law' indicating that 'States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life'. This provision is a first step at the international level towards the recognition of legal capacity of disabled persons. Nevertheless, not all the EU Member States and none of the EFTA/EEA countries have ratified this Convention, and the

<sup>32</sup> Directive 2000/43/EC, Article 7(1); Directive 2000/78/EC, Article 9(1); Directive 2006/54/EC, Article 17(1), slightly different wording, requiring only judicial procedures as a recourse available to persons whose rights have been infringed, Directive 2004/113/EC, Article 8(1); Proposal for a Directive COM(2008)246 final, Article 7(1).

<sup>33</sup> Austria, Cyprus, Czech Republic, France, Latvia, Liechtenstein, Norway, Poland, Romania, Sweden.

<sup>34</sup> Interview carried out on 19 April 2010.

application of this rule in the national legal systems of the parties may encounter some obstacles in terms of interpretation and practical implementation.

### *Legal interest*

In all three EFTA/EEA countries and in all the Member States, except for Austria, the Czech Republic and the United Kingdom, individuals seeking to initiate a case based on discrimination have to show an interest in having the matter solved by the adjudicating body. The interpretation of the concept of 'interest' can vary significantly from one country to another.<sup>35</sup>

With respect to individuals, in Estonia, Finland, Italy, Poland and Sweden, legal standing is granted only to the person designated as the victim of discrimination. This is understood as the person against whom the discriminatory act or omission was committed. This rule applies to a different extent in each country.

Legal standing before the general courts in Estonia and in Poland is granted only to victims of discrimination (a legitimate interest is sufficient for individuals and associations to bring a claim before the equality body). Similarly, in Italy, legal standing in certain criminal proceedings is granted only to the victim of discrimination. In Iceland and in France on the other hand, persons considering themselves victims can go before the equality body.

Legal interest is the criterion used in all other countries. Legal interest usually includes personal, direct, actual and legitimate interest. In Belgium and in France, it also includes an 'effective' and 'concrete' interest, and in Italy, a 'current' interest.

The UK has a different approach to legal standing. In 2004, a pre-acceptance procedure was introduced to avoid inadmissible claims to employment tribunals.<sup>36</sup> This process is designed to filter out claims that cannot be accepted because the claimant has not submitted the claim on an approved form, or has not given all the required information. The pre-acceptance procedure is not intended and does not have the effect of scrutinising the claimant's legal standing. The main requirement to commence a claim in the county court, on the other hand, is to submit the appropriate claim form, giving details of the claimant, the defendant, and the particulars of the claim – which should state the facts on which the claim relies. It is also necessary for the claimant to pay a court fee. There is no formal requirement to establish legal standing in the county court. However, the court has general powers of case management, including the power to strike out the whole or part of a statement of case which discloses no reasonable grounds for bringing or defending a claim or which is an abuse of the process of the court or otherwise likely to obstruct the just disposal of the proceedings. A discrimination case can be brought by existing employees, job applicants, workers employed on a contract personally to execute any work, contract workers or concession workers, and trainees. However, one important condition of entitlement is that the employment must fall within the territorial scope of UK labour legislation.

Many national reports raised the fact that, even though victims having legal standing realise that they may have been discriminated against, it still remains difficult for them to bring a case before the Court on their own. This is related to problems of perception (e.g. Bulgaria, Portugal), the complexity of the legal framework and procedures (Austria, Czech Republic), the potential consequences of appearing in court in the victim's private or professional life (Bulgaria, Finland) or the unwillingness of victims to stand in front of their oppressors in court (Bulgaria).

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<sup>35</sup> In Case C-343/92 *M. A. De Weerd, née Roks, and others v Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen and others* the Court described persons falling within the scope *ratione personae* of the Directive and those affected by discrimination in a national provision through another person who himself falls within the scope of the Directive as having an interest.

<sup>36</sup> The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 SI 2004/1861, as amended

### 3.1.2. Legal entities

Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.<sup>37</sup>

This provision in the non-discrimination Directives enables legal entities to have legal standing in discrimination disputes if they can demonstrate a legitimate interest. According to the Court of Justice, this provision ‘does not preclude Member States from laying down, in their national legislation, the right of associations with a legitimate interest in ensuring compliance with that directive, or for the body or bodies designated pursuant to Article 13 thereof, to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant. It is, however, solely for the national court to assess whether national legislation allows such a possibility.’<sup>38</sup>

The following paragraphs provide an analysis of the application of this criterion and the implementation of the right to legal standing of associations, organisations and other legal entities on the one hand *(a)* and of equality bodies on the other hand *(b)*.

#### *(a) Associations, organisations and other legal entities*

Various factors, such as the lack of awareness of their rights and possibilities of action, the complexity of their case and financial limitations, may make it difficult for victims of discrimination to seek justice by themselves. In this perspective, associations and organisations dedicated to the assistance of victims of discrimination can play a crucial role in safeguarding the rights of the members of civil society subjected to discrimination.

#### *Initiation of a case*

One of the most effective tools for such organisations is the ability to institute an action before the judiciary. In Ireland, the Netherlands and Slovenia, associations or organisations cannot initiate a case; only individuals have legal standing. This considerably diminishes the role they could play in ensuring an effective access to justice. In other countries, legal standing is usually limited to certain types of organisations or to certain types of actions.

In most countries, legal standing is only granted to associations or organisations directly linked to the field in which the dispute arises (employment, access to goods and services, etc.). Where such standing is provided for, the right to bring a case is applicable to associations, NGOs and non-profit organisations. Trade unions also have the possibility of bringing discrimination cases in the employment field in Belgium (so-called interest groups), Bulgaria, Cyprus, Finland, Italy, Latvia, Malta, Norway, Romania and Spain.

In quite a few countries, organisations seeking to initiate a claim must show certain criteria, more or less stringent, have been respected. Interest is one of these. Proving a legitimate interest is sufficient for initiating some types of actions for associations in Iceland, Malta and Spain, for workers’ organisations in Cyprus and is one of the conditions for legal standing of associations and other organisations in Norway and in Romania.

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<sup>37</sup> Directive 2000/43/EC, Article 7(2); Directive 2000/78/EC, Article 9(2); Directive 2006/54/EC, Directive 2006/54/EC, Article 17; Directive 2004/113/EC, Article 8(3); Proposal for a Directive COM(2008)246 final, Article 7.

<sup>38</sup> Case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn V*, paragraph 27.



In the UK, associations with sufficient interest may bring judicial review actions under administrative law against public authorities. Such claims for judicial review can only be brought against public authorities or public bodies – i.e. bodies established by statute or otherwise exercising a public function, because the essence of a judicial review claim is for the court to supervise the exercise of public power, not purely tort or contract. In recent years the UK courts have interpreted the requirement of sufficient interest generously: associations have brought important actions against public authorities through judicial review proceedings. The courts have identified a number of relevant factors, such as the importance of maintaining the rule of law, the nature of the breach of duty and the extent of the claimant's interest in the issues. It would appear from recent cases that pressure groups or individuals with no private interest who raise an issue of public importance that would not otherwise be raised, are also considered to have sufficient standing. In *R (On the application of Feakins) v. Secretary of State for the Environment, Food and Rural Affairs*,<sup>39</sup> the UK Court of Appeal reviewed the law on standing. Lord Justice Dyson held that if a claimant can demonstrate that a genuine public interest will be furthered if he is granted standing, he would be regarded as having a sufficient interest to proceed. As Professor Purdue points out, ‘the Court of Appeal is accepting that such persons are in an analogous position to environmental pressure groups such as Greenpeace, who are routinely permitted to make public law challenges’.<sup>40</sup>

*The interpretation of sufficient interest of associations in equality and anti-discrimination cases – United Kingdom*

Case brought by the Amicus trade union: *R (on the application of Amicus and others) v Secretary of State for Trade and Industry* (High Court, 2004).<sup>41</sup>

- Amicus and six other leading UK trade unions applied for the annulment of certain provisions of the Employment Equality (Sexual Orientation) Regulations 2003. The unions challenged certain regulations as incompatible with the Employment Framework Directive and incompatible with the European Convention on Human Rights.
- The High Court held that ‘[t]he claimants are trade unions with a very large total membership covering a wide range of occupational sectors. They have a very significant number of gay, lesbian or bisexual members who are potentially affected by the provisions in issue. It is not in dispute that they have a sufficient interest to bring these claims.’

In quite a few countries, the way the objectives and purposes of an association are laid down in the statutes is the element assessed to determine an interest. In these cases, there must be a connection between the law governing the subject matter of the dispute and the field of activity of the specific association. The fulfilment of this condition can be sufficient to be granted *locus standi* for instance in Cyprus, the Czech Republic, Germany, Latvia, Poland, Norway, Spain and Sweden. It is also one of the conditions in Romania.

Some countries grant legal standing to certain types of associations without them having to prove an interest. This has two main purposes:

- Limiting access to courts and/or equality bodies to organisations that have an adequate background in the field of discrimination;
- Facilitating the identification of organisations to which victims can turn if they want an association to bring a case on their behalf, or in collective actions.

<sup>39</sup> [2003] EWCA Civ 1546.

<sup>40</sup> Journal of Planning and Environmental Law, July 2004 p. 861 at p. 862.

<sup>41</sup> [2004] EWHC 860 (Admin), [www.bailii.org/ew/cases/EWHC/Admin/2004/860.html](http://www.bailii.org/ew/cases/EWHC/Admin/2004/860.html)



With regard to the first purpose, some Member States' laws provide specific criteria that must be satisfied in order for organisations to be granted legal standing, as summarised in the table below:

	Belgium	France	Luxembourg <sup>42</sup>
Scope	Employment	Criminal proceedings Before the equality body	Employment
Years	3 years existence	Registration for 5 years	5 years legal personality
Objectives	Ensuring respect of human rights and combating discrimination	Combating racism or assisting victims of discrimination	Combating discrimination
Others	Violation of the substantial objectives of the association (legal speciality)	Nationally recognised associations	Nationally recognised non profit organisations Accreditation by the Ministry of Justice

With regard to the second purpose, in some Member States and EFTA/EEA countries, the national law lists exhaustively the associations that have legal standing. For instance, in Liechtenstein, two main associations are entitled to bring a class action on behalf of their members in the field of employment (INFRA - Information and Contact Point for Women) and on the ground of disability (Liechtenstein Association for Disabled Persons). In Austria, the Austrian Labour Association can file a class action claim to represent several victims that are part of the association. In Italy, only associations included in a list approved by the Ministry of Employment and Social Affairs and by the Ministry of Equal Opportunities can bring a case to court in case of discrimination on the ground of race or ethnic origin. Even though such a system is more transparent, it may also be problematic, because the list of associations is rarely updated.<sup>43</sup>

The possibility for associations to initiate procedures is often restricted to certain types of actions.<sup>44</sup> In some countries, legal standing of associations is limited to proceedings before equality bodies. This is the case in Estonia, where associations with a legitimate interest have access to the Gender Equality and Equal Treatment Commissioner. In Finland, trade unions can initiate cases only before the Equality Board and the Labour Court. Stakeholders see these limitations as obstacles to an effective access to justice.

In certain Member States, the legal standing of associations is most relevant in the context of collective actions where the action will be brought by the association either in order to protect several or all of its members, in cases of public interest (*actio popularis*) or when no individual victims could be identified. The right to collective action is usually rather limited. This is for instance the case in Austria, where legal standing for associations only applies to the Austrian Rehabilitation Commission, which can bring a collective action solely on the basis of the Disabled Equal Treatment Act. In the Czech Republic, this proposition made during preparatory works was not accepted in the final version of the national anti-discrimination law. With respect to the EFTA/EEA countries, Norwegian law allows for collective action or action on behalf of the victim and Icelandic law provides only for action on behalf of the victim.

Several EU Member States, including Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Luxembourg, Malta, Poland, Portugal, Spain and Sweden grant legal standing to associations and organisations on behalf of a victim. In Bulgaria, Germany, Italy, Latvia, Lithuania, Romania and Slovakia associations and organisations have legal standing both in a collective action and on behalf of a victim whereas in Austria this is limited to collective actions.

<sup>42</sup> Three NGOs are recognised as having legal standing under the criteria set by Luxembourg to represent victims of discrimination: ASTI asbl (Association for the Support of Immigrant Workers), Info-handicap asbl (National Council for Disabled Persons and National Information Centre for Disabled Persons), Chiens guides d'aveugles asbl (Guide dogs for the visually impaired).

<sup>43</sup> The Ministry of Employment and Social Affairs and the Ministry of Equal Opportunities updated the list in August 2010, for the first time in five years.

<sup>44</sup> For more details, please see Annex IB of the Report.

In most Member States and EFTA/EEA countries, legal standing for associations and other organisations is rather limited and so is actual practice. Stakeholder consultations have confirmed this. In Bulgaria, associations consulted for the purposes of this study did not have significant experience in bringing a case to court, even though they were entitled to do so. In Cyprus and Iceland, very few, if any, complaints have so far been brought to courts or the equality body by an NGO representing victims. In Luxembourg, the few associations that are entitled to initiate judicial cases do not always have the financial means to support victims of discrimination before the courts.

In Malta, the recent enactment of the Voluntary Organisations Act means that NGOs now have legal status. However, it remains to be seen whether the relevant NGOs will use this to represent victims of discrimination in lawsuits.

### *Support by associations and organisations in proceedings*

It is particularly important that associations and organisations can encourage and assist alleged victims in bringing a claim, and the lack of adequate assistance has been identified as a major issue in some Member States (e.g. Finland, Italy, Poland, Slovenia and the UK).

The following tables summarise the types of associations entitled to participate in proceedings, and the type of intervention they provide (a) in the EU Member States and (b) in the EFTA/EEA countries:

(a) in the EU Member States:

	<i>Representation<sup>45</sup> and intervention</i>
Austria	<ul style="list-style-type: none"> <li>- Only the complaints association (<i>Klagsverband</i>) is entitled to intervene</li> <li>- Other associations can represent victims where representation by a lawyer is not compulsory and the claim is below 5,000 EUR.</li> <li>- The Austrian Labour Association for Rehabilitation can join proceedings</li> </ul>
Belgium	- Organisations can assist the victim initiating proceedings
Bulgaria	- Trade unions and non-profit entities can join as interested parties in a pending legal action
Cyprus	<ul style="list-style-type: none"> <li>- Employee organizations and gender equality NGOs can file a complaint to the chief inspector</li> <li>- Workers' organisations, other organisations and associations can represent or support individuals before the competent court, administrative authority, extra-judicial mechanisms, invoking direct or indirect discrimination due to gender.</li> </ul>
Cz. Rep.	- Trade unions can represent their members
Denmark	- Associations, trade unions or other institutions may act as an agent for the victim or intervene as a third party
Estonia	- Associations, trade unions and other institutions can help the victim with representation
Finland	N/A- No regulation on the engagement of associations in discrimination proceedings in courts
France	Associations and trade unions can assist the victim
Germany	<ul style="list-style-type: none"> <li>- <i>General Act on Equal Treatment</i>, anti-discrimination organisations (at least 75 members) and associations (comprising at least 7 organisations) can act as legal advisor to disadvantaged persons in court hearings.</li> <li>- <i>Law promoting the Equality of Disabled</i>, associations promoting the interests of disabled people can represent their members before social courts, admin. courts of 1st instance and higher admin. Courts</li> <li>- Trade unions and employers associations can represent the victim before the Court</li> </ul>
Greece	<ul style="list-style-type: none"> <li>- <i>Five ground of discrimination and Gender in access to goods and services</i>: Legal entities with a legal interest can represent the injured party</li> <li>- <i>Gender in employment</i>: Trade unions and associations can intervene for the defence of the injured party</li> </ul>
Hungary	- Organisations can provide legal assistance by individual lawyers contracted by the organisation
Ireland	<ul style="list-style-type: none"> <li>- Associations can represent individuals in bringing cases in tribunals but not in courts</li> <li>- Associations can assist individuals at court by providing funding</li> </ul>
Italy	<ul style="list-style-type: none"> <li>- National or regional equality advisors can act in their own name in cases of collective discrimination or represent the victim or intervene in a case initiated by the victim.</li> <li>- Trade unions can represent victims in employment cases.</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>- Trade unions can represent their members before State institutions in certain cases</li> <li>- NGOs can represent victims in court</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>- In employment issues, the trade unions can represent their members with their consent.</li> <li>- Associations having in their statutes this competence can represent victims with their consent.</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>- Associations, prof. associations and trade unions can assist victims in civil and administrative proceedings</li> <li>- Legal representation and intervention by trade unions for settlement of a dispute brought by an individual, where</li> </ul>

<sup>45</sup> In this context, representation should be understood as acting as a legal representative of the victim.

	the dispute would serve the collective interest of its members, with the individual's consent
Malta	- Associations, organisations and other legal entities having a legitimate interest can support complainants in employment disputes on any ground, and in disputes on gender in access to goods and services
Netherlands	- Trade unions and organisations fighting discrimination can assist victims in court
Poland	- NGOs can present their views to the court
Portugal	- Trade unions can assist the victim in legal proceedings - For race and disability, associations defending non-discrimination on these grounds can intervene to represent or support the interested party with his/her approval
Romania	- For equal opportunities and treatment between men and women, and other discrimination: agencies, trade unions, NGOs specialised in human rights and other legal persons having a legitimate interest can assist a victim during administrative proceedings and in the courts of law
Slovakia	- Trade unions can represent their members in cases regarding labour relationships - Entities protecting public interest rights can participate in the proceedings as interveners
Slovenia	- NGOs and trade unions can engage individuals to represent the victims in proceedings - NGOs with a legal interest recognized by the court can intervene in the court's discussions
Spain	- Associations with legal standing
Sweden	- Employees' organisations and NGOs can represent an individual
UK	- NGOs, trade unions and employers' associations can represent the victim i.e. provide advice, legal assistance in case preparation or financial assistance to secure external lawyers' services - Courts and tribunals may at their discretion permit associations with relevant expertise to make a 'third-party intervention' in a complex discrimination claim - Associations with sufficient interest in a matter may bring judicial review actions under administrative law against public authorities, even if they have not themselves been the victims of a wrongful act

(b) in the EFTA/EEA countries:

	<i>Representation<sup>46</sup> and intervention</i>
Iceland	- Associations can represent their members if the interests at stake form part of the association's mandate
Liechtenstein	- Any organisation representing the interests of disabled persons (as listed by the government) incorporated for more than 5 years can directly represent the victim before the courts and authorities.
Norway	- Associations, trade unions or other institutions can represent individuals before authorities and courts, with the claimant's power of attorney. They can also intervene as a third party.

The legal experts and stakeholders in a few countries identified the limited legal role of associations, even in assisting victims, as a problem. In Estonia, the fact that the possibility for associations to defend rights under the Equal Treatment Act is limited to assisting victims is considered as a significant issue. In Germany, the fact that anti-discrimination organisations and associations must meet certain criteria (i.e. they must have at least 75 members or be an association comprising at least seven organisations) jeopardises the effectiveness of the work of small anti-discrimination organisations and associations excluded from the rights granted by the General Act on Equal Treatment.

The UK courts and tribunals may at their discretion permit associations with relevant expertise to make a 'third-party intervention' in a case, to present legal arguments on a point of law that is at issue in the proceedings (as distinct from presenting arguments directly in favour of the claimant). Such 'third party interventions' are often permitted in complex discrimination lawsuits.

In practice, in the Czech Republic, only three to four NGOs active in the field provide representation of victims. In Lithuania, representation by NGOs in civil courts has not taken place in practice. In Spain, associations with legal standing usually support victims' claims but in practice do not initiate procedures. In Latvia, there is no known practice of proceedings initiated by trade unions in discrimination cases, but at least two NGOs have represented victims of discrimination in employment in courts (the Latvian Centre for Human Rights in two cases and the Latvian Human Rights Committee in one case on sexual orientation). In Austria, only the Complaint Association can intervene in proceedings but cannot initiate them, and it has never made use of this right in its four years of existence.

<sup>46</sup> In this context, representation should be understood as acting as a legal representative of the victim.

In Iceland, the Centre for Gender Equality assists victims to some extent to bring cases to the Gender Equality Complaints Committee. Trade unions sometimes also bring cases on behalf of their members. The Icelandic Confederation of Labour provides trade unions with legal advice but does not provide direct legal aid to workers on behalf of the trade unions. However, it brings cases concerning collective agreements before the Labour Court. In addition, NGOs such as the Women's Counselling Service and the Icelandic Human Rights Centre, the Attorneys Association and law student associations provide limited legal assistance, mostly in the form of general legal advice.

Some experts have also highlighted the efficiency and involvement of associations in their countries. In Romania for instance, a high degree of NGO involvement is recognised by stakeholders, noting that some NGOs provide assistance and support to victims of discrimination not only before national courts, but also in lodging applications to the European Court of Human Rights for alleged acts of discrimination.

#### *Illustration of the role of NGOs – Hungary*

An emerging actor in public interest litigation is the Public Interest Law Institute (PILI),<sup>47</sup> which is an international NGO promoting anti-discrimination and human rights. In order to increase access to legal resources for disadvantaged groups, PILI promotes and provides technical assistance for organised pro bono help. The most renowned public interest lawsuit assisted by PILI was a successful anti-segregation case in education, involving Roma pupils in Miskolc.<sup>48</sup>

### *(b) National equality bodies*

#### *Role of the equality bodies in the initiation of the procedures*

The role of equality bodies differs significantly from one country to another. In some countries, they have legal standing and can bring a case to court; in other cases, they can only provide assistance to the claimant, or provide observations to the court. In a few countries, equality bodies can initiate their own proceedings, for example: the Commission on Protection against Discrimination (Bulgaria), the Equal Opportunities and Anti-Discrimination Commission (France), and the Equality Commission for Northern Ireland and Equality and Human Rights Commission for England, Wales and Scotland (UK). Some can also start proceedings before another equality body. In Finland, the Ombudsman for Equality can initiate a case before the Equality Board, while the Ombudsman for Minorities can bring a claim to the Discrimination Tribunal. In Iceland, the Centre for Gender Equality can initiate a procedure before the Gender Equality Complaints Committee. In Ireland, the Equality Authority can bring some specific cases to the Equality Tribunal.

None of the equality bodies in the EFTA/EEA countries are empowered to bring claims before a court. The same situation applies in almost half of the EU Member States (Austria, Cyprus, Czech Republic, Estonia, Germany, Greece, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania and Slovenia).

<sup>47</sup> <http://www.pili.org>. PILI implemented a comprehensive report on the issue of „access to justice” (in general, not just indiscriminate cases) in the region. Concerning Hungary see Kádár, András Kristóf, Márta Pardavi and Zsolt Zádori, ‘Chapter on Hungary’, in: *Access to Justice in Central and Eastern Europe*, Budapest, Public Interest Law Initiative–Bulgarian Helsinki Committee–Polish Helsinki Foundation for Human Rights–INTERIGHTS, 2003.

<sup>48</sup> ‘A Magyar Köztársaság Legfelsőbb Bírósága kártérítést ítél az elkülönített roma gyerekeknek’ (The Supreme Court of Hungary ordered compensation for the segregated Roma pupils), *MTI (Hungarian Press Agency)*, 2010, June 7, <http://bpstart.hu/politika/2010-06-07-os-a-magyar-koztarsasag-legfelsobb-birosaga-karteritest-itel-az-elkulonitett-roma-gyerekeknek>

The equality bodies entitled to initiate judicial proceedings and the conditions of application of this right are summarised in the table below:

	<i>Equality body</i>	<i>Modalities</i>
Belgium	Institute for Equality between Women and Men Centre for Equality of Chances and Fight against Racism	In case of unsuccessful negotiations
Bulgaria	Commission on Protection against Discrimination	- Appeal against the administrative acts - Claims before the court
Denmark	Board of Equal Treatment	In its own name or on behalf of a victim, if its decision is not complied with
Finland	Ombudsman for Minorities	Before the Discrimination tribunal
France	Equal Opportunities and Anti-Discrimination Commission (HALDE)	Referral to Public Prosecutor to initiate criminal proceedings
Hungary	Equal Treatment Authority	In all cases of discrimination affecting defined persons or groups of persons; and in cases of public interest claims in the fields of personal law and employment law.
Ireland	Equality Authority	- Before the Equality Tribunal, in cases of systemic discrimination, where a person has not made a claim and it is reasonable to expect that they will not do so, and cases concerning advertising, vehicle equipment, station equipment and kerb ramps -Injunction before Circuit Court or High Court
Italy	Equality Advisors	Before Labour Tribunal and Regional Administrative Tribunal: geographic competence, on behalf of a victim or in collective action
Latvia	Ombudsman	- In civil proceedings - In the Constitutional Court
Malta	1) National Commission for the Promotion of Equality 2) National Commission Persons with Disability	1) Before the civil court or industrial tribunal 2) Before the civil court after conciliation has failed
Slovakia	Slovak National Centre of Human Rights	- Can represent the party in the proceedings in matters regarding violation of the principle of equal treatment. (Act 308/1993) - if infringement of the rights of a large or undetermined number of persons or for public interest (Act 365/2004)
Spain	Women's Institute	Only for cessation action against discriminatory advertisement on the ground of sex (case-law)
Sweden	Equality Ombudsman	Subsidiary right of action (after employees' organisations and NGOs)
UK	- Equality and Human Rights Commission - Equality Commission for Northern Ireland	- If relevant to their functions - Against discriminatory advertisement, instructions to discriminate and pressure to discriminate

The ability of equality bodies to initiate a judicial procedure, where it exists, is usually quite limited. Among the conditions typically imposed, is the requirement that the discrimination challenged is within the area of competence of the equality body, and that it acts on behalf of victims and with their consent. In Belgium, Denmark and Malta, equality bodies can bring a case before the judiciary if other non-judicial proceedings have failed, and if others have not taken action, for instance the victim in Ireland or employees' organisations and NGOs in Sweden. In Finland, the fact that the equality bodies only have a role in very limited cases has been criticized by stakeholders, and it has been suggested that the power of the Ombudsman and the Discrimination Tribunal be extended to all cases of equal treatment.

Due to these many conditions, equality bodies seldom bring claims to court. For instance, in Latvia, the Ombudsman has never applied to court in civil cases. In the Estonian legal framework it is unclear whether the Gender Equality and Equal Treatment Commissioner have legal standing. In any case, this opportunity has not been used so far. In Norway, although there is nothing in the legal mandate that prohibits them from initiating a case, both the Ombudsman and the Tribunal have interpreted their

mandate as excluding this right, since they see their mandate as one of monitoring and control of implementation. However, the Ombudsman has provided co-counsel in court.

On the other hand, the situation has recently improved in Spain, where recent developments in case-law have resulted in the equality bodies now being able to initiate a case on the ground of sex discrimination, when the violation of fundamental rights is a consequence of an advertisement promoting stereotypical images of women or resulting in discrimination. Also in Belgium, stakeholders indicated that the two equality bodies have developed such expertise in bringing cases that most associations will resort to them in case of judicial proceedings, even though the associations also have legal standing under the law. In Italy, the role of the Equality Advisors is considered to be particularly important in assisting victims bringing a claim before the court. However, it has been observed that the funding of the Advisors by the State has recently decreased, thus impairing their efficiency. The lack of awareness by the public of the possibility for the equality bodies to bring a claim to court on their behalf has been identified as a problem in Italy and Latvia.

### *Participation in the procedures*

As with the power to initiate a claim, the ability of equality bodies to intervene in the judicial procedure and the importance of their role varies from country to country. They can be a party to the proceedings alongside the victim (Bulgaria); provide assistance to victims (Gender Equality and Equal Treatment Commissioner in Estonia, National Office against Racial Discrimination in Italy; National Commission for the Promotion of Equality in Malta; Equality and Human Rights Commission and the Equality Commission for Northern Ireland in the UK) or represent them in court (Romania, Slovakia, UK). Their findings can be used as evidence in the procedure (Austria and Norway); or they can intervene therein, including by providing an expert opinion (Denmark, France, Italy, Lithuania, the Netherlands, Norway, Slovenia, Spain, the UK). They can also act as *amicus curiae* as is the case in Ireland and the UK. Such a role was considered by stakeholders as absent from the competences of the National Equality Body in Denmark.

In Norway, it was highlighted that most NGOs working on discrimination are organisations that depend heavily on State subsidies. This is not so for trade unions, which primarily finance their legal advisor positions through the membership fees of the organisation. In practice, the court cases indicate a need for associations to take a more active role as co-counsel, in presenting discrimination cases before courts. This is not an issue of legal standing, but of the costs of litigation. This is particularly true in relation to access to Norway's Supreme Court, as the two most recent discrimination cases brought before the Supreme Court were supported – and paid for – by trade unions.<sup>49</sup> The importance of co-counsel can also be seen in key cases brought to the Court of Appeal, such as the first case on disability brought before the Eidsivating Appellate Court in 2006, in which the Norwegian Association of the Blind acted as co-counsel.<sup>50</sup>

It may be concluded that overall, the role of equality bodies, NGOs and other entities in initiating claims or assisting victims of discrimination is rather limited. A more active involvement of such bodies could have a positive outcome in ensuring specialised assistance to victims especially when considering that each ground of discrimination is accompanied by its own ground-specific issues. This was a key point raised by EU level stakeholders. For instance, persons suffering from age discrimination often consider that theirs is an isolated case for which no action can be taken. Disabled persons encounter an additional set of obstacles going beyond the typical issues such as the cost and length of proceedings. The European Disability Forum highlighted that for disabled persons there could be a problem of physical accessibility to the courts or interpretation of court proceedings (e.g. requirements for sign language or braille might not be taken into account). As regards discrimination

<sup>49</sup> See Supreme Court judgment of 18 February 2010 on age discrimination paid for by the Fellesforbundet for Sjøfolk (Norwegian Association of Sailors) Rt 2010 s 202, (HR-2010-00303-A) (*Kystlink*), and Rt 2003-1657 on gender and pensions in which the Norwegian Confederation of Vocational Unions (YS) declared co-counsel and also paid the costs of litigation.

<sup>50</sup> Eidsivating Appellate Court, court of second instance, judgment of 6 July 2007 (Case LE-2006-189239), called the “music teacher judgment”.

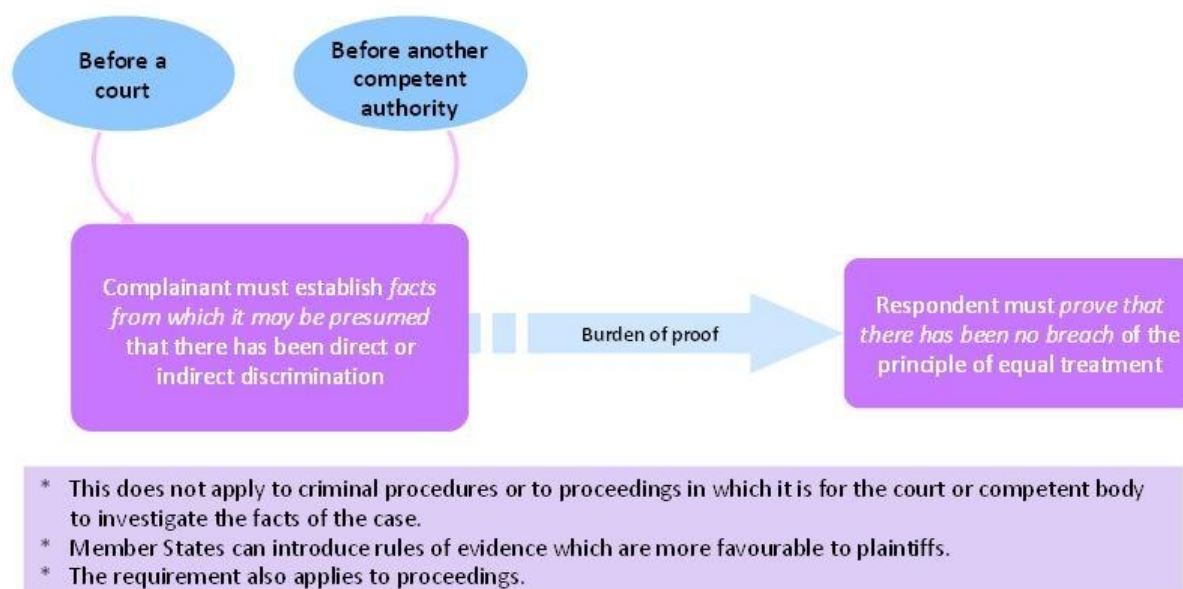


on the grounds of sexual orientation, one of the key issues for LGBT people is considered to be the fact that in order to lodge a complaint the victim must ‘come out’ in what may be a homophobic environment or a highly specialized professional environment.

### 3.2. Burden of proof and evidence

Overall, the 27 EU Member States have introduced requirements conforming to the burden of proof provisions of the relevant Directives. Very few inconsistencies were found, the most noteworthy being that of Austrian law which only requires the defendant to prove a probability of non-discriminatory reasons for a decision (this alleviates considerably the burden on the defendant).

The reversal of the burden of proof is the key factor setting apart discrimination cases from others. This shift occurs in almost all countries and is reported as a significant asset in assisting victims of discrimination. This different treatment for discrimination cases is not specific to a certain field, e.g. employment, but usually operates in most areas. In this sense, the way discrimination is treated differs when compared to regular cases in the same field.



As stated in Recital 30 to Directive 2006/54/EC, the adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. The Court of Justice has held that provision should be made to ensure that the burden of proof shifts to the respondent when there is a *prima facie* case of discrimination, except in relation to proceedings in which it is for the court or other competent national body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

However, despite an accurate transposition of the requirement in most Member States, what constitutes *prima facie* evidence or what amounts to ‘facts from which it may be presumed that there has been direct or indirect discrimination’ is not always clear and lends itself to a variety of interpretations and modes of application in the different countries. The Court of Justice case-law sheds

light on the issue.<sup>51</sup> For example, in the *Feryn* case, it was stated that in order for the employer to repel an allegation of discrimination in recruitment, the employer would have to show ‘that the undertaking’s actual recruitment practice does not correspond to those statements [that he would not hire persons of ethnic minority background]’.<sup>52</sup>

Stakeholders have expressed conflicting opinions as to whether or not the burden of proof remains an obstacle for alleged victims of discrimination seeking justice. This is evidenced by the Swedish report, where one stakeholder considered the reversed burden of proof under Swedish law as a factor facilitating access to justice in discrimination cases when compared to other cases, and two stakeholders mentioned the burden of proof as the most significant obstacle to bringing a case of discrimination to court.

### *Difficulty in proving discrimination*

Despite the departure from the general rule enshrined in national legal systems that the burden of proof lies on the party alleging a fact, many reports - for example, those for Finland, Romania and Slovakia - conclude that the difficulty in proving discrimination remains one of the most significant barriers to an effective access to justice. In practice, the plaintiff must still establish a number of facts before the burden is shifted.

Several stakeholders in Belgium and France voiced criticism against the provisions related to the burden of proof. Some indicated that it remains a delicate issue, at least in employment matters where employers are in possession of all, or at least most of, the relevant evidence and information concerning their enterprise. Moreover, it is often the case that the intention to discriminate will only account for one element in a differential treatment.

Stakeholders interviewed for the Norwegian report, especially those working on issues of ethnicity, race and sexual orientation, pointed to the burden of proof as a major obstacle to access to justice. In follow up discussions it was clarified that the issue of evidence of the occurrence of discrimination is really the problem. A lot of evidence is oral evidence, without witnesses. Discriminatory conduct is not formulated on paper, neither is it necessarily expressed orally, and is also sometimes disguised as other behaviour. There are examples of court cases in which discrimination is claimed as just one of several elements of a claim. In a number of cases, the issue of discrimination is not addressed, and not mentioned in the reasoning used in the judgment.

It is pertinent to note that the non-discrimination Directives allow Member States to introduce rules of evidence which are more favourable to plaintiffs. However, most of the countries under review apply the general rules of evidence to discrimination cases. With specific applicability to discrimination cases the Czech and Hungarian reports mention the admissibility of evidence based on situational testing. A Lithuanian court accepted situational testing as proof of direct discrimination in a Roma discrimination case (2007).

The Czech report also notes that where victims lack support from a professional NGO, the evidence is not usually prepared in a professional manner and even if the burden of proof has been shifted onto the defendant this may not necessarily be enough for a successful result.

### *Reversing the burden in practice*

Once a *prima facie* case is made, the burden of proof is meant to shift to the defendant to prove that discrimination had not occurred. However, often there is no clear demarcation between the two steps

<sup>51</sup> Case C-109/88 *Danfoss* [1989] ECR 3199; Case C-127/92 *Enderby v Frenchay Health Authority* [1993] ECR; Case C-170/84 *Bilka-Kaufhaus* [1986] ECR 1697; Case C-381/99 *Susanna Brunnhöfer v Bank der österreichischen Postsparkasse AG* [2001].

<sup>52</sup> Case C-54/07 *Centrum voor gelijkheid van kansen en racismebestrijding v Firma Feryn NV* [2008].



of the process. The decision maker's opinion or judgment usually addresses both steps together, and findings on the *prima facie* case and the final decision are often presented together. This effectively places the burden on the applicant to prove the case in total rather than simply *prima facie*.

Irish stakeholders noted a difficulty with the burden of proof in this area. A review of the decisions of the Equality Tribunal shows that the Tribunal nearly always refers to the shifting of the burden of proof. Nevertheless, the mere fact that the Tribunal appears to be applying the burden of proof principle does not necessarily remove the concern.

Some Danish stakeholders also see the burden of proof as the overall obstacle to achieving effective access to justice. According to one stakeholder, the trade unions report that they often lose cases because of their inability to shift the burden of proof. They are often seen to provide sufficient proof to establish a *prima facie* case, but either the court does not find the evidence provided sufficient to shift the burden, or the employers are acknowledged a wide margin of discretion in regard to their right as managers to run the workplace, for example, as regards whom to recruit or promote.

In Portugal, the effectiveness of the shift introduced is viewed with caution, particularly in the area of labour issues. In fact, later in the process the victim is again required to establish a *prima facie* case and is therefore put at a disadvantage. Similarly, Swedish stakeholders argue that the simplicity with which employers can free themselves from allegations of discriminatory conduct nullifies the application of the rule intended to make access to justice more favourable to plaintiffs in discrimination cases.

Reference may also be made to Spain, where, although the burden of proof is reversed, the courts are more likely to ask the claimant to provide reasonable evidence of the violation – thus, a mere allegation of a violation of the right is not generally considered enough to produce the reversal of the *onus probandi*.

As regards the EFTA/EEA countries, the same types of issues have been observed. In Iceland, even though the Gender Equality Act stipulates that, in cases alleging discrimination concerning employment, the burden of proof rests with the respondent, stakeholders still consider the burden of proof as an obstacle to access to justice and note that the reversal of the burden of proof does not apply to criminal cases.

In Liechtenstein, in cases regarding equal treatment in employment contracts, the court must establish the facts of the case *ex officio*. Discrimination is presumed once the claimant provides *prima facie* evidence, i.e. convinces the court of a probability of discrimination. Nevertheless, there is no strict legal term defining '*prima facie* evidence'. In the Equal Treatment of Disabled Persons Act, the defendant may show the mere *probability* of the existence of different reasons or facts relevant to the different treatment, after the facts have been established by the claimant. In practice, this amounts to a lowering of the burden of proof for the defendant.

In Norwegian discrimination cases, if there are circumstances that give 'reason to believe' that there has been direct or indirect discrimination, the discrimination is assumed to have taken place unless the person responsible proves on a balance of probabilities that the differential treatment did not in fact take place. What is meant by 'reason to believe' is interpreted by the Equality Tribunal to mean that the allegation must be 'supported by the chain of events and the external circumstances of the case which necessitates an assessment of the specifics of the case'.<sup>53</sup>

From the above selection of practical difficulties in applying the shift, it is safe to conclude that statements at law may not suffice in guaranteeing this key advantage to victims of discrimination. It is

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<sup>53</sup> See the Equality Tribunal case 26/2006, in which the said quote was used by the dissenting member of the Tribunal. Although the rest of the Tribunal in this particular case did not agree with the dissenting member, the said quote was referred to by the Tribunal in a number of subsequent cases.

a departure from the general procedural rules and does not coexist easily with them; it is thus often overlooked or misapplied. This conflict between general procedural rules and anti-discrimination legislation gives rise to significant practical difficulties in reversing the burden of proof. Despite a requirement to reverse the burden of proof in national anti-discrimination legislation, the civil procedural laws do not expressly provide for this departure. By way of example, the Latvian and Lithuanian reports point towards a conflict of norms between civil procedures and norms establishing a shift in the burden of proof in the anti-discrimination legislation that could impede the reversal of the burden of proof. The Lithuanian report refers to a case of sexual harassment in employment where the Supreme Administrative Court rejected the argument of the Equal Opportunities Ombudsman Office that it had to shift the burden of proof onto the defendant and take a decision on the basis of the information provided.

The information provided in the national reports also indicates that difficulties with reversing the burden of proof in practice result from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application. Both the Italian and French reports raise these issues. In the case of Greece, although the national legislation fully transposes the EU requirements on the burden of proof, the 2010 report of the National Commission for Human Rights cites the Greek legislator's failure to integrate the relevant provisions in the Code of Civil Procedure and Code of Administrative Procedure as meaning that courts and other competent authorities - and also lawyers, employees and their associations - have no direct knowledge of these provisions and therefore the shifted burden is not actually applied in practice. The Greek report also states that civil courts adjudicating labour disputes never reverse the burden of proof on the ground that the relevant legislation is deemed contrary to the Constitution.

Bearing in mind the recognised difficulty in proving discrimination, it is essential to work towards mitigating these difficulties through systems that ensure that the mechanisms provided by law are not negated by practical obstacles. Ensuring that the reversed burden of proof is applied by general courts dealing with cases of discrimination and formalising a minimum understanding of what constitutes *prima facie* evidence would go a long way towards promoting and facilitating access to justice by alleged victims of discrimination.

### 3.3. Time limits for initiating a procedure

National rules relating to time limits to initiate a claim are permitted provided that they are not less favourable than time limits for similar actions of a domestic nature and that they do not render the exercise of rights impossible in practice.<sup>54</sup> In the *Pontin* case, for example, the Court of Justice considered that a 15-day limitation period, such as that laid down in the Luxembourg Labour Code, would not appear to meet the requirements of effective judicial protection since it would be very difficult for the claimant, a female worker dismissed during her pregnancy, to obtain proper advice and, if appropriate, prepare and bring an action within that time limit.<sup>55</sup>

Tables providing an overview of the time limits and length of proceedings in the EU Member States and the EFTA/EEA countries are found in Annex IC to this report.

In civil proceedings before the general courts time limits for initiating a case are longer than those in place for proceedings before employment tribunals or equality bodies. In fact, time limits to initiate a claim, especially before the equality bodies, can be very short. In Austria, time limits applicable to discrimination claims are shorter than those provided in the general rules, notably with regards to when the time limit starts to run. The 14-day time limit for contesting a discriminatory termination of

<sup>54</sup> See e.g. Case C-410/92 *Elsie Rita Johnson v Chief Adjudication Officer*; Case C-246/96 *Mary Teresa Magorrian and Irene Patricia Cunningham v Eastern Health and Social Services Board and Department of Health and Social Services*; Case C-208/90 *Theresa Emmott v Minister for Social Welfare and Attorney General*.

<sup>55</sup> Case C-63/08, *Virginie Pontin v T-Comalux SA*.

an employment contract or a discriminatory notice of termination is seen as particularly problematic as claimants are seldom aware of the discrimination at the beginning of the time period, when they need to seek legal advice and establish the facts of the case in order to decide whether a lawsuit is worth pursuing.

In the employment context, time limits can also be very short. In labour law disputes in Germany for example, complainants have only two months to assert their claim in writing, except for cases where a collective bargaining agreement states otherwise. If the claim is asserted within these two months, the complainant has three months to take legal proceedings to court.<sup>56</sup>

On the other hand, time limits for initiating proceedings before the general courts are typically longer. For example, a claim for compensation before the Bulgarian courts is subject to a five year prescription period. Similarly, in Greece the time limit in civil matters is five years from the time the injured party became aware of the damage and of the perpetrator's identity or twenty years from the date of the commission of the unlawful act.

In France, Law 2008-561 of 17 June 2008 decreased the prescription period for civil proceedings from 30 to five years. The process of adoption of this provision was quite difficult, and associations and trade unions intervened to ensure that compensation would cover the full period through which the discrimination lasted, and that the five years would be a time limit to bring an action, not a time limit resulting in the extinction of the action, i.e. from the day the facts are 'revealed' to the victim, and not from the day they occurred. The term 'revelation' is not common in French law, and has been defined in preparatory works as 'the moment when the employee has at his/her disposal the elements of comparison showing the discrimination. As long as the employee does not have elements of proof, the discrimination cannot be considered as revealed'.

The observance of time limits to initiate a procedure is preliminary to an effective access to justice. Bearing in mind that individuals are not always immediately aware of the fact that they may have been discriminated against, if the time limit starts to run from the date on which the discriminatory act occurred rather than from the date on which the victim became aware of the discrimination this could have severe consequences. Where time limits are very short, the right to take action and seek redress could be extinguished before the victim has even recognized that s/he has been discriminated against.<sup>57</sup>

### 3.4. Length of the procedure

The length taken to resolve anti-discrimination claims is identified as a major obstacle to access to justice in quite a few countries (e.g. Estonia, Finland, Germany, Greece, Poland, Slovenia, Spain, and the United Kingdom).

The tables on the next pages provide an overview of the length of proceedings in (a) the EU Member States and (b) the EFTA/EEA countries as provided by the national experts. It reflects: specific time limits set by law for judges or public bodies to issue decisions; the average length based on available statistics and the average length based on discrimination case-law.

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<sup>56</sup> The regional labour court of Hamburg, the majority of national legal scholars and the European Commission have deemed the provisions incompatible with unwritten EU law principles relating to effectiveness and. The regional labour court in Hamburg referred this issue to the Court of Justice using the preliminary ruling procedure, and the Court held that the two-month time limit was compatible with these principles (C-246/09 *Bulicke*).

<sup>57</sup> Case C-326/96 *Levez*; Case C-185/97 *Coote*.

(a) In the EU Member States:

	Length of the procedure
Austria	<ul style="list-style-type: none"> <li>- On average (in second instance or at the Supreme Court): 1 to 3 years</li> <li>- Equal Treatment Commissions: 1 year or more</li> <li>- Procedure incl. prior attempt to settle before National Equal Treatment Body: 1 to 4 years</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>- The judge has 1 month to decide (civil and criminal)</li> <li>- In administrative courts: 6 months - not compulsory</li> <li>- Average in practice 1.5 to 2 years</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>- Commission on Protection against Discrimination: within 14 days</li> <li>- Civil proceedings: approx. 1 year, and within one month from the last hearing.</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>- All proceedings can take 2 to 3 years.</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>- 2 to 3 years in most common discrimination cases (always one appeal). Some cases lasted 6 to 7 years.</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>- Before District Court: 5 to 21 months (most 12 months)</li> <li>- High Court: 1 to 34 months (most 18 months)</li> <li>- Supreme Court: 11 to 33 months (most 18 months in first and in second instance)</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>- Criminal cases: 15 months</li> <li>- Administrative cases: 5 months</li> <li>- Civil cases around 8 months, first and second instances combined</li> </ul>
Finland	<ul style="list-style-type: none"> <li>- Discrimination tribunals: 1 to 6 months</li> <li>- Administrative court: may take years</li> </ul>
France	<ul style="list-style-type: none"> <li>- Labour Court, with an appeal: 3 to 8 years</li> <li>- Criminal Court, with an appeal: in a region may take 2 years, but much longer in Paris</li> </ul>
Germany	<ul style="list-style-type: none"> <li>- Labour Court of First Instance: on average 3 months, in 2008</li> <li>- Average civil court procedures before courts of first instance for local courts, 4.5 months and for regional courts 8.1 months, in 2008</li> <li>- Average length of procedure before administrative courts of first instance: 11.3 months, in 2009</li> <li>- For the social courts of first instance: on average 14 months, in 2009</li> </ul>
Greece	<ul style="list-style-type: none"> <li>- Claim for damages in the first instance: 2 to 4 years from filing the suit</li> <li>- A court decision on appeal: 1 to 2 years</li> <li>- Decision for provisional remedy: 2 months</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>- Equal Treatment Authority: 75 days to take a decision and 45 days if the complainant is a minor or if the procedure was initiated by an Ombudsman.</li> <li>- Independent Law Enforcement Complaint Body: issue a statement within 90 days from the receipt of the complaint. In practice, most cases lasted no more than 3 months in 2009</li> <li>- Approximately 88% of civil lawsuits in local courts took no more than 1 year</li> <li>- Appeal at county-level courts: approx. 96% of employment related cases completed within 1 year</li> <li>- Lawsuits started in county-level courts: almost 70% less than 1 year.</li> <li>- Civil cases in appellate courts: 98% less than 1 year</li> <li>- Employment related cases in local courts: approx. 85% less than 1 year,</li> <li>- In appeal courts, approximately 97% of employment related cases within 1 year</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>- Equality Tribunal: average 3 years and in non-employment cases, 1 year, without appeal</li> <li>- District Court: usually within 1 year</li> </ul>
Italy	<ul style="list-style-type: none"> <li>- Criminal: judge must decide within a time frame equivalent to the duration of the imprisonment</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>- Civil proceedings: average 3 to 6 months (Appeal courts from 2 to 8 months)</li> <li>- Supreme Court Senate: average 3 months</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>- Labour disputes must be concluded within 30 days from the first stage of examination.</li> <li>- In general, discrimination cases last for 6 to 24 months</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>- Can range from 3 weeks to 42 months</li> </ul>
Malta	<ul style="list-style-type: none"> <li>- On average, at least 3 to 6 years without appeal</li> <li>- Criminal proceedings: even up to 7 years</li> <li>- Industrial Tribunal: procedures are much faster and should be concluded within a much shorter time frame</li> </ul>
Netherlands	Data not available
Poland	Data not available
Portugal	Data not available
Romania	<ul style="list-style-type: none"> <li>- Usually procedure before the court will last more than one year</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>- In 2008, criminal cases for the district courts: 5.69 months and regional court: 65.91 months.</li> <li>- Civil procedure: 14.07 months; labour: 36.96 months; claims for damages: 28.30 months</li> </ul>
Slovenia	On average 1 to 3 years
Spain	<ul style="list-style-type: none"> <li>- Labour and Social Security Court: 4 to 6 months</li> <li>- Appeal before superior court: 8 months to one year</li> <li>- Civil proceedings: 1 to 3 years</li> <li>- Criminal proceedings: 1.5 to 2 years</li> </ul>

	Length of the procedure
Sweden	- Average time in general courts: 27 months - Labour Court: 13 months
United Kingdom	- In Northern Ireland, proceedings in employment discrimination: 2 to 3 years - County court: a claim for less than 5,000 GBP up to 6 months.

The national laws of the Member States do not generally provide for a time limit for the judge or public body to decide on a case. This results *de facto* in very long proceedings. Bulgaria is the only exception noted where decisions in civil proceedings in discrimination cases must be awarded within one month from the last court hearing and in administrative courts, the first hearing must take place within two months and a decision must be taken within one month from the last hearing.

In some countries however, certain parameters are set. In Belgium, for example, administrative cases should be decided upon within six months. However, this time limit is not compulsory and seldom respected in practice. In Austria, prior attempts to settle disputes before the National Equal Treatment Body are a pre-condition for labour associations to support victims in court, thus resulting in even longer proceedings for victims seeking assistance by trade unions. At times the national law requires that there should be no unreasonable delay in the proceedings (e.g. the Netherlands). With respect to the EFTA/EEA countries, some limitations are set in the Icelandic and Norwegian systems.

(b) In the EFTA/EEA countries:

	Length of the procedure
Iceland	- Judge has to deliver the ruling within 4 weeks - Proceedings in the district court in criminal: average 2 months - Civil cases: average 9 months - Gender Equality Complaint Committee: has to decide within 3 months, but not always respected
Liechtenstein	The only anti-discrimination law suit reported so far lasted 4 years.
Norway	- Aim of the Resolution of Disputes Act: 6 months; current average: 5,4 months for court of first instance and 7,2 months for court of second instance. - Ombudsperson and the Tribunal: up to 1 year

Some Member States and EFTA/EEA countries have set limits for extra-judicial bodies. E.g. the Commission on Protection against Discrimination in Bulgaria must decide on a matter no later than 14 days after open hearings. The Equal Treatment Authority in Hungary has 75 days to take a decision and 45 days if the complainant is a minor or if the Ombudsman initiated the procedure. The Independent Law Enforcement Complaint Body has to issue a statement within 90 days from the receipt of the complaint.

The Gender Equality Complaint Committee in Iceland has to decide within three months, but this time limit is not always respected in practice. In Norway, although no time limits are set in the law, the aim of the Resolution of Disputes Act of 2008 is that all cases should be decided within six months.

The national reports noted that even where a time limit within which the dispute must be decided upon is provided, it is very often not possible to abide by the deadlines in practice. This is usually explained by the workload of the courts and public bodies and the scarcity of resources in the case of equality bodies.

A few countries have been condemned, in some cases repeatedly, by the European Court of Human Rights for lengthy procedures (Czech Republic, Finland, Greece, Malta, Poland, Portugal, Romania and Slovenia). Some States have tried to address this issue by adopting legislation on compensation in case of lengthy proceedings. In the Czech Republic, the Law on Courts and Judges enables a party to the proceedings to propose the stipulation of a period of time within which the case must be decided. The amendment of 1 July 2009 requires the court experiencing delay to remedy the situation within 30 days or else it must submit the case to a superior court to decide on the party's proposal concerning the proceedings. This procedural mechanism is considered to be an effective remedy by the European Court of Human Rights. In Finland, at the beginning of 2010, a new law entered into force on



compensation paid if court proceedings are unduly delayed,<sup>58</sup> and a new chapter was included in the Act on Judicial Procedure allowing a district court to proclaim cases urgent upon request by a party to the proceedings.<sup>59</sup> In Poland, a law introducing the right of complaint against undue court delays was adopted in 2004.<sup>60</sup>

In Norway, the introduction of the Resolution of Disputes Act in 2008, stating that civil cases should be handled within six months, has led to increased efficiency in court proceedings. In Germany, the Federal Ministry of Justice prepared a draft bill, to grant compensation in cases of prolonged legal proceedings.<sup>61</sup>

The introduction of mechanisms designed to reduce court delays within the national legal frameworks could have fruitful results in guaranteeing a swifter justice and encouraging alleged victims to bring their cases forward. Mechanisms such as the introduction of time limits for the decision to be taken would have to be accompanied by measures to ensure compliance therewith. An increased use of emergency proceedings could also be a feasible solution to lengthy proceedings. For instance, in Belgium, the *action en cessation* procedure allows for a final decision in just a few months.

### 3.5. Costs of the procedure

The costs of a lawsuit based on a discrimination claim will vary from one case to another depending on a number of factors including the factual complexity of the case, the extent and level of legal advice and representation required and the competent court. It is important to estimate what the costs of pursuing a discrimination claim would amount to as this will typically be highly influential in a victim's decision whether or not to take legal action.

Tables summarising the data on costs - including the court fees, legal representation fees and the 'loser pays' principle - can be found in Annex ID of the report.

#### 3.5.1. Costs of the judicial proceedings

The costs of judicial proceedings arising from claims of discrimination will very much depend on the type of procedure involved and the complexity of the case. These costs consist of fees levied by the adjudicating authority as well as the expenses arising from legal representation. Together they could constitute a barrier to access to justice. For example, Austria's high legal fees, Belgium's procedural fees and costs and the effect of long procedures on costs of a case in France are possible obstacles to bringing a claim before the court. The Latvian report also cites high legal costs as preventing victims of discrimination from seeking recourse in courts and indicates that there are few specialists in Latvia with competence in discrimination cases who can provide free legal assistance in such cases.

##### *Procedural fees*

As with disputes in other areas, the court fees applicable in discrimination cases usually depend on the value of the claim (e.g. in Belgium, Cyprus, Germany, Hungary, Italy, Latvia, Liechtenstein, Malta, Poland, Portugal, Slovenia), and can range from 17 EUR (Cyprus) to almost 17,000 EUR (Slovakia) depending on the case.

<sup>58</sup> Laki oikeudenkäynnin viivästymisen hyvittämisestä 362/2009

<sup>59</sup> Government Bill HE 233/2008 vp.

<sup>60</sup> The Act of 17 June 2004 on a Complaint for Infringement of the Right to Hearing a Case in Court Proceedings without Undue Delay, Dz. U. 2004 No. 179 item 1843.

<sup>61</sup> Draft bill of the Ministry of justice of 15 March 2010,

[http://www.bmj.de/files/3a028648c98b0a0dabcbe703990b53d4/4467/RefE\\_Rechtsschutz\\_ueberlange\\_verfahren.pdf](http://www.bmj.de/files/3a028648c98b0a0dabcbe703990b53d4/4467/RefE_Rechtsschutz_ueberlange_verfahren.pdf)

In Portugal, a new regulation on the costs of legal proceedings is being discussed and drafted, causing some concern, particularly on the part of judges. Reform that will make it possible to pay the costs of legal proceedings in phases is highly likely. Currently citizens pay in advance for a justice that is increasingly delayed. For example, to ask the court to initiate the instruction phase, the applicant must pay immediately an amount that can go up to 300 EUR, which s/he will only recover in the future, possibly after many months or years. The legislation on costs is constantly changing, making it very difficult for judges to address this issue properly, as the courts are working with three different legal instruments, depending on the date of entry of the processes in court, or of the preliminary issues.

Exemptions exist in certain cases, such as for employment matters. The procedure is free of charge in a few countries (Bulgaria, France, Italy, Latvia, Lithuania, Malta, Poland, UK, and to a certain extent Liechtenstein, Slovakia, Slovenia) as well as in criminal proceedings (Bulgaria, the Netherlands). A few countries provide for exemptions specifically in cases of discrimination. Thus, discrimination claims are free of charge in Romania and Sweden. In Slovenia, claims relating to the rights of persons with disabilities in employment are free of charge. In Spain, natural persons, NGOs, public interest associations and small associations are exempted from court fees when acting for the protection of fundamental rights. In Ireland and Finland, there are no court fees for the Equality Tribunals and Discrimination Tribunals.

In a few countries exemptions are also granted on the basis of the claimant's income. In Hungary, the threshold under which claimants are exempted from court fees is almost 1,500 EUR gross salary per month, which is approximately double the average Hungarian salary. This means the overwhelming majority of alleged employment discrimination claimants are exempt from paying court fees.

### *Lawyers' fees*

In many countries, it is not compulsory to be represented by a lawyer before all or some courts. Legal representation is not compulsory in first instance cases in Austria and Slovenia or in civil procedures in discrimination cases in Italy. Legal representation is however required in administrative judicial proceedings in Greece and Slovakia, in criminal proceedings in Estonia and France and in cassation procedures in Belgium, France, Lithuania and Slovakia. Claimants must be represented by a lawyer in all judicial proceedings in Luxembourg and the Netherlands (in the latter case, except before sub-district courts). This requirement, while ensuring that the claimant's rights are defended properly by a professional, can also constitute a barrier for victims of discrimination in terms of the costs of a lawyer. However, even where legal representation is not compulsory, a person who is not represented by a lawyer in court is less likely to obtain an effective remedy.

The tables below provide an overview of the costs of legal representation in selected Member States and in EFTA/EEA countries. The rates shown are only indicative and are the result of estimates by the national experts, bearing in mind that as a general rule lawyers' fees are freely negotiated with the client and will vary according to the complexity and duration of the case.

Indications in relation to lawyers' fees are set by statute in only a few countries e.g. Bulgaria, Italy, Portugal, Malta and Slovakia. Moreover, even where the law does provide indications, it is possible for the lawyer and the client to depart from these and to negotiate an agreement on the fees.

In other countries, such as Estonia, lawyers' fees are not set by law at all and will have to be agreed upon by the lawyer and the client. Likewise, in Romania, the amounts of the legal fees are based on a legal assistance agreement and in the Czech Republic, legal representation costs are determined either on the basis of an agreement or on the basis of fees set in accordance with law.

A number of factors will influence the costs of legal representation. These factors could be the complexity of the claim, the amount of compensation sought, the court in which the claim is submitted, the number of court instances and the duration of the case.

Estimated average cost of a lawyer for a discrimination case	
Bulgaria	From 75-100 EUR for claims with a value from 500-2,500 EUR + 6% for the surplus value above 500 EUR
Cyprus	Specified by law and depend on amount in litigation: minimum for proceedings in District Courts is from approx. 500 EUR (for litigation not exceeding 500 EUR), to approx. 2,500 EUR (50,000-100,000 EUR).
Czech Rep.	Depends on the number of court instances, between 1,000 and 3,000 EUR
Greece	Depends on amount in litigation and degree of jurisdiction. Fees usually are from approx. 200 EUR for filing a civil claim before the Single-Member Court of First Instance, submission of pleadings and hearing of the case regarding an amount up to 12,000 EUR to approx. 1,700 EUR for filing a petition for the cassation of a court decision, submission of pleadings and hearing before the <i>Areios Pagos</i>
Hungary	Depends on value of claim, complexity of case, quantity of documents and anticipated length of case, from 20-120 EUR per hour. A case involving discrimination in employment would cost approximately 200-400 EUR in total.
Ireland	Costs of a discrimination case would be on average 1,500 EUR
Italy	The costs of a lawyer in an anti-discrimination action range approximately from a minimum of 2,000 EUR to a maximum of 3,000 EUR
Latvia	Fixed State fees are approx. 19 EUR/hour for consultation, approx. 28 EUR/hour for representation in court, fees ranging from 15-42 EUR for drawing up different procedural documents. Fees agreed directly with the client are usually much higher.
Lithuania	On average 100 EUR per hour, meaning from 290-870 EUR for a discrimination case
Malta	Each note filed in court ranges from 46.59-232.94 EUR. Fees for each definitive judgment in a cause for a remedy under the Constitutional provisions on fundamental rights - from 46.45 to 698.91 EUR. In actions related to human rights, payment of wages or claims for unjust dismissals from employment, fees are rebated by 50%. A case would at the very least cost 1,000 EUR.
Poland	The minimum levels of fees are set by law and shall not be more than six times higher than the minimum rate nor exceed the value of the subject matter. In civil labour and social insurance cases, the minimum for a case of 125 EUR is costs of 15 EUR. For 375 EUR it is more than 45 EUR.
Portugal	Law gives indicative values of the min. amounts applicable to all relevant acts performed by lawyers ranging from 26 EUR for legal advice to 3,276 EUR for a declaratory action in civil proceedings
Slovakia	On average 2,000 EUR, depending on the legal acts or services provided and on the value of the case.
Slovenia	Depends on services provided by the lawyer; e.g. preparation of a lawsuit on dismissal is calculated on the basis of average gross salary of the employee of the last 6 months. If that salary is 1,500 EUR, the lawyer's fee is 89.70 EUR; if the salary is 2,000 EUR, the fee is 113.10 EUR.
United Kingdom	For a case settled before hearing, the average cost is around 4,255 EUR. Before the County Court or Tribunal: 3,647 or 7,295 EUR respectively, and significantly more in the higher courts.

The following costs were provided for the EFTA/EEA countries:

Estimated average cost of a lawyer for a discrimination case	
Iceland	Hourly fees are approximately 100-155 EUR + 24.5% VAT. A simple case may cost about 8,700 EUR.
Liechtenstein	For compensation claim of 10,000-15,000 EUR, minimum fee of 185-220 EUR/hour. In case of a loss, or if a claimant does not have the necessary means to pay the bill (and is not entitled to legal aid), lawyers tend to reduce their fees by 10-25%. Without agreement on fees, official court tariffs apply: for a claim of 15,000 EUR, a cost of 714 EUR (including all expenses) for one written statement in court.
Norway	Private lawyer's consultation on average: 200 EUR/hour. Full court proceedings in the court of first instance: from 10,000 to 30,000 EUR

Proceedings entailing high costs constitute a major obstacle to access to justice, with many consequences for the behaviour of the victim of discrimination. If confronted with the risk of paying high fees when seeking justice, victims may settle more quickly, may reduce damage claims to the very minimum, or be reluctant to appeal first instance decisions.

The report from Greece notes that victims of discrimination are usually persons of low income, who may face difficulties in paying even the lowest lawyers' fees. A political analyst pointed out that in criminal cases related to racist behaviour, especially when the prosecution is brought against public servants (usually police officers), the majority of lawyers refuse to represent victims of discrimination, because they believe or know that victims who are members of vulnerable groups are unable to pay lawyers' fees.



As illustrated in the table above, the costs of justice in the EFTA/EEA countries are particularly high. In Iceland, stakeholders referred to lawyers' fees as a significant obstacle to access to justice. High fees, and the fact that the applicant risks having to pay the costs of the defendant, combined with the feeling on the basis of past experience that a positive outcome is unlikely, may deter people from bringing cases to court. In Norway, NGOs interviewed referred to the costs of court proceedings as the main reason for their failure to engage in court proceedings on behalf of their members. Instead, they advise their members to take their case to the Ombudsperson since it is considered to be an efficient mechanism and is free of charge, despite the fact that it cannot award compensation.

The high costs of litigation put people who are potentially discriminated against in a marginalised position as regards access to justice, as these barriers to initiate litigation are more pronounced for people with limited financial means, and who have weaker networks and less general knowledge about the legal system. Preparing a case for litigation in case of discrimination may require more resources for a lawyer. For example, a case involving persons who are victims of racial discrimination may take more time, because it involves language barriers, cultural differences and it requires a thorough understanding of the issue of discrimination on the part of the institution and persons offering aid. Similarly, a case that involves persons with disabilities might give rise to the issue of technical assistance in courts.

Nevertheless, as a positive example, in the Czech Republic, the costs of legal representation are not considered a significant obstacle to accessing justice. The reason is that if a case of discrimination is properly reported or documented, the NGOs specialising in discrimination can take a case to court with the help of a specialised lawyer for free or at reduced cost. However, taking a case to court with a lawyer that is not specialised in discrimination is regarded as a needless risk which could be costly.

### *Losing party pays principle*

In almost all countries, national law contains the principle according to which the losing party to proceedings has to pay all the costs incurred in the proceedings, including the other party's expenditure. As explained by the Court of Justice in the *Clean Car* case, 'national rules which [...] provide that the successful party in proceedings before a national court is entitled to recover certain of the costs incurred [...] do not appear to be of such a kind as to render virtually impossible or excessively difficult the exercise of rights conferred by Community law'.<sup>62</sup> Nevertheless, the application of the principle could in practice create difficulties in accessing justice, making victims hesitant to seek redress before the courts because they fear incurring further costs should they be unsuccessful. However, the application of the principle could also act as an incentive to alleged victims in that where they have a clear case with a high probability of obtaining a judgment in their favour, they may feel encouraged by the fact that they will recover the costs incurred in pursuing their case.

The extent of the loser pays principle varies across the different countries. In some countries, this principle applies only to court fees whereas in others it also applies to the costs of the lawyer of the winning party. The application of the loser pays principle is usually limited e.g. in Greece it is limited to the necessary costs including witnesses' expenses, experts, remuneration, travel expenses of the parties and moderate attorney fees. On the other hand, in Sweden the general rule is that the claimant pays all the legal costs and expenses of the defendant when the court decides in favour of the defendant; in discrimination cases however, the claimant does not have to pay any expense where an association or the Equality Ombudsman has decided to bring the case to court. Moreover, in cases falling within the Discrimination Act but outside the field of employment, the court may decide that the costs shall be divided between the two parties when the losing party had reasonable cause to bring the action to court.

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<sup>62</sup> Case C-472/99, *Clean Car Autoservice GmbH v Stadt Wien, Republik Österreich*, paragraph 29.

In some countries, the principle is applied at the discretion of the judge (e.g. Ireland, the Netherlands, Portugal, France and Denmark). The judge can also decide to share costs between the parties based on the circumstances of the case (e.g. Cyprus, Italy, Lithuania, Norway, Sweden) or the conduct of the parties (e.g. in Spain in administrative judicial procedures). In the German Labour Court of first instance, each party bears its own costs.

In the UK, the loser pays principle usually does not apply in claims before employment tribunals, industrial tribunals and fair employment tribunals. Also, in employment tribunals, the court does not award costs, except in certain cases, where the conduct of the parties so requires. The Equality Commission of Northern Ireland expressed concern that costs are an obstacle to access to justice, *inter alia* because even the fact that each side bears their own costs in tribunals can be very significant for people without access to legal aid. Also the tribunals are increasingly more willing to award 'wasted costs' which can be particularly risky for individuals with no legal representation. In 'goods, facilities and services' cases in the UK County Courts, the costs follow the cause and there is a risk of having to pay the opponent's costs.

In some countries, it is noted that even if a victim is entitled to legal aid, the loser pays principle applies. In Austria for instance legal aid does not cover the fees of the defendant and s/he will have to pay the court fees and legal fees. Similarly, in Bulgaria, when a person receiving legal aid loses a case, s/he has to pay the costs of the defendant. This makes the potential costs of bringing a case to court a real deterrent for victims of discrimination. On the contrary, in Hungary, when a plaintiff benefiting from legal aid loses the case, the costs are borne by the State.

The loser pays principle becomes an increased problem when court fees (and thus also the procedural risks) are particularly high, as can be demonstrated by a recent case before a Norwegian court:

Norway - Judgment of 15 July 2009 by Asker og Bærum municipal court

In a recent case of age discrimination, the losing party claimants were ordered to pay the lawyers engaged by their employer. The costs amounted to NOK 899,802 (approximately 108,400 EUR).<sup>63</sup> The court considered the fee acceptable, even though high.

Also in Poland, claimants bear the financial risk of the legal costs of defendants if they lose the case.

In light of the above, it may be argued that the costs of proceedings constitute a determining factor for victims in deciding whether or not to take their case to court. Should it appear that in all probability the costs of seeking judicial recourse outweigh the value of the remedy they may obtain; victims might consider that suffering the damages caused as a result of the discriminatory act is a less risky option than exposing themselves to a potentially higher financial burden.

<sup>63</sup> The judgment (case no 08-195258TVI-AHER/2) concerned 10 pilots who joined together. The parties belonged to different trade unions, all whom are involved to a certain extent. The judgment is appealed, and the case is scheduled before the Appellate Court in June 2010.

### 3.5.2. Legal Aid schemes

In all countries under study, a system of legal aid has been adopted to provide financial support to the most vulnerable citizens seeking access to justice. Legal aid schemes vary significantly from one country to another both in terms of the eligibility criteria and with respect to the benefits provided.

The table below summarises the eligibility to be granted legal aid and the scope of coverage in the EU Member States. Where these vary for different types of legal proceedings, this is noted in the table:

	Eligibility	Scope
Austria	Any natural person whose income, assets, or debts do not allow them to engage in proceedings without basic maintenance being covered	Court and lawyers' fees when legal representation is compulsory
Belgium	1. Legal aid: low income (max 860EUR/person) and individual situation (asylum seekers and minors)	Legal representation
	2. Judicial assistance scheme: same conditions, for claims which have a serious chance of succeeding.	
Bulgaria	(1) fulfilling the conditions for receiving social aid, (2) living in specialised institutions providing social support, or (3) foster families, relatives or close persons where a child is placed	Consultation aimed at achieving an agreement before initiation of court proceedings or filing a case; preparation of documents for filing a case; litigation; pre-trial proceedings in case of detention
Cyprus	(1) income, needs and obligations of the applicant and his/her family, and (2) must be in the interest of justice to grant free legal aid.	All costs
Czech Republic	1. Appointment by the Courts: Information on income and expenditure, including assets	Court fees
	2. Legal assistance by the Czech Attorneys' Chamber: (1) inability to access legal services, (2) exhaustion of all other options for obtaining legal services, i.e. having sought two lawyers and applied for court-appointed legal representation	Legal entitlement to attorney appointed by the Czech Attorneys' Chamber. The Chamber also provides aid on a <i>pro bono</i> basis and certain free legal aid services
Denmark	Annual income < 3,7162 EUR, for a couple < 4,7297 EUR, raised by 6,486 EUR for each child	Costs of proceedings and lawyers' fees
Estonia	Financial situation	All costs
Finland	Lack of means	- In court, public legal aid attorneys or private lawyers (with a cap for expenses) - For other proceedings, only public legal aid attorneys' costs in full or in part
France	Low income	Costs of proceedings and lawyers' fees
Germany	1. For court proceedings: (1) the person must be in need taking into account his/her personal, social and financial situation (2) potential success of legal action.	Preliminary fees and the party's lawyers' statutory cost (no coverage of the opponent's lawyers' costs in case of losing the case). To be paid back within 48 months if the financial situation allows it.
	2. For legal advice in non judicial proceedings: similar conditions	Costs for advice by the local court and, if necessary, advice and representation by a lawyer
Greece	Legal aid (poverty benefit in administrative law cases): (1) family income < 2/3 of lowest annual individual income, (2) the case must not be considered to be 'apparently unjust or unprofitable'.	Costs of proceedings and lawyers' fees (total or partial)
Hungary	Persons in need (e.g. homeless and those on low income).	
	People's advocate: economically disadvantaged persons	Free legal counselling and aid for reasonable fees
	Legal Aid Point Network: Employment cases	Free counselling and legal aid services at 151 locations
	Roma anti-discrimination customer service network	Free legal counselling, support and legal aid for those who suffer from discrimination because of their Roma ethnicity
Ireland	Civil aid scheme: used mostly in family law cases and asylum matters.	Costs of the litigation (court fees and lawyers' fees) The claimant has to make a contribution depending on his/her means, from 10 to 50 EUR

	Eligibility	Scope
Italy	a) (1) very low or no income: 10,628 EUR/year, including all members of the household + (2) case not evidently groundless in administrative and civil proceedings b) Victims of harassment or underage in sexual abuse	Court fees and legal costs
Latvia	(1) personal and financial situation + (2) monthly income below half the minimum salary (approximately 130 EUR in May 2010 and with no income from property).	In civil cases, up to 3 hours consultation, preparation of 3 procedural documents and representation in court not exceeding 40 hours. In administrative cases, legal representation in administrative matters that are complicated for the applicant.
Lithuania	Primary and secondary legal aid: all EU citizens or legal residents in Lithuania, or in another EU Member State under a certain income threshold; special needs in addition for secondary legal aid	Primary legal aid: costs and advice out of court Secondary legal aid: costs incurred in court
Luxembourg	Low income, action should be reasonable and likely to succeed, and the subject matter has to be proportionate to the costs involved	Legal representation costs and court fees
Malta	(1) Reasonable grounds, (2) Possess property the net value of which < 6988.12 EUR, (3) yearly income not more than the national minimum wage	All fees
Netherlands	Income of the client (depending on their income, clients pay a contribution)	Only for specific proceeding (e.g. first instance). Reimbursement (full or partial) of the expenses made for a lawyer (or mediator).
Poland	Financial situation or deemed necessary by the court	Court and attorney's fees
Portugal	Very low income	
Romania	Cannot bear the costs of proceedings or of a lawyer without jeopardising the means of existence for him/herself or his/her family	Legal fees (and court fees); help with legal fees from 40-500 EUR depending on complexity of the case
Slovakia	(1) Material need, (2) likely success, and (3) volume of the litigation exceeds the legal minimum salary.	Lawyers' fees if the lawyer is designated by the court or from the Legal Aid Centre; for cases pursuant to a) Civil Code: 200 EUR, b) Family Code: 130 EUR, c) Labour Code: 150 EUR, d) Commercial Code: 200 EUR
Slovenia	Limited financial means (monthly income not exceeding double the amount of the minimum monthly income (450 EUR))	Legal counselling and legal representation in the court's procedure or in a friendly settlement
Spain	(a) For natural persons: annual income per family < 15976,8 EUR (double of minimum wage per year); (b) For public interest legal persons: annual turnover < 23 965,2 EUR (triple minimum wage per year)	Lawyer/solicitors before and during judicial procedure, deposits for initiation of procedure, experts' fees
Sweden	For individual claimants (1) income level, as well as (2) in situations where it is reasonable for the State to contribute to the costs Subsidiary to legal protection insurance	Covers 2 hours legal advice and representation in court. Legal assistance for maximum 100 hours paid by the government.
UK	(1) No legal aid funding for employment tribunals available in England, Wales or Northern Ireland, and limited legal aid in Scotland (2) Eligibility in Scotland: low income; probable cause (i.e. chance of success in the claim)	In Scotland: legal costs, subject to a possible contribution from the claimant towards the legal fees

Similar eligibility criteria and scope apply in the EFTA/EEA countries:

	Eligibility	Scope
Iceland	Monthly income < 830 EUR	Lawyer's fees and other costs
Liechtenstein	If the claimant is unable to pay, based on family income and living expenses, and if the claim does not prove to be obviously futile or brought in bad faith	Court fees and legal costs
Norway	Very low income	Free legal advice, free conduct of the court case and exemption from court fees (total or partial)

With regard to the criteria, the financial situation of the applicant is typically one of the elements that determine the entitlement to legal aid. Other elements include the likelihood of a claim being successful. The criteria seem to be very restrictive. For instance, in Iceland, only the very poor qualify for free legal proceedings. This is also the case in Portugal: Portuguese justice is costly, but the majority of citizens find it difficult to access legal aid since the eligibility criteria, including economic insufficiency, require an individual to be almost indigent. The very low thresholds were also mentioned as a significant obstacle in France.

With regard to the scope covered by legal aid, in some countries, coverage of lawyer's fees by legal aid also implies that the beneficiary of legal aid cannot be represented by a lawyer of his/her own choosing. In Greece, for instance, victims of discrimination receiving legal aid cannot be represented by lawyers of their own choosing but by a 'duty lawyer' appointed by the Bar Association or the court. To this end, each Greek Bar Association draws up a monthly list of lawyers who are on duty and can be called on to represent people receiving legal aid.<sup>64</sup> A negative effect on judicial recourse of the victim may result from the fact that the lawyers included in that list are usually inexperienced and are paid the lowest fees by the State.

In France, the lawyer has to accept being paid at legal aid rates, which does not happen very often in practice, as these rates are very low. Thus, the lawyers who accept legal aid are generally inexperienced or spend only little time on the files. Latvian stakeholders also highlighted limited and insufficient legal aid for victims of discrimination, and mentioned that legal aid providers usually lack experience with claims seeking non-material damages.

In Bulgaria, the combined effect of the costs of legal action and the absence of easily accessible legal aid make the financial issue one of the major obstacles for effective proceedings. Some NGOs offer legal aid by engaging lawyers and monitoring cases but they estimate that more information and help regarding costs are needed. In many cases claimants are not assisted by a lawyer,<sup>65</sup> indicating that more information about legal aid is necessary, not only to help victims financially but also to offer them professional legal defence.

In the UK, the Equality Commission of Northern Ireland expressed concerns that the lack of availability of legal aid acts as a real deterrent to bringing a case to court. In the Czech Republic, the lack of free legal aid is seen by NGOs as a troublesome feature of the national legal system. Free legal aid is not available outside of judicial proceedings. The provisions on State-sponsored legal aid are described both by practicing and by NGO lawyers as too vague, leading to an overwhelming discretion in the hands of the judge to decide eligibility for free legal aid. Moreover, the legislation is 'scattered within several acts, making it very difficult for laymen and especially for socially disadvantaged laymen to understand it'.<sup>66</sup> There is no specific budget for free legal aid to be allocated by the Ministry of Justice or other body. There have been attempts to promote a law on free legal aid, but only a concept paper has been submitted at the level of the Ministry of Justice in cooperation with NGOs; no draft or proposed law or wording was included.

Some positive elements in relation to legal aid schemes have also been noted. In Belgium, for example, in addition to the classical legal aid scheme, an entitlement programme has been put in place whereby people who do not qualify for the legal aid scheme because they exceed the financial thresholds but whose financial situation remains delicate are granted help to purchase an insurance policy in matters of legal dispute.

<sup>64</sup> Law 3226/2004 on Legal Aid (O.J. A 24)

<sup>65</sup> Annual report 2009 of the Supreme Administrative court: <http://www.sac.government.bg/home.nsf/vPagesLookup/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%202009~bg?OpenDocument>

<sup>66</sup> Kristková, V., *On Lack of Pro Bono Legal Services in the Czech Republic*, in Kopal, J. (ed.), *Legal Services: Pro Bono and State Guaranteed Aid*, League of Human Rights, Brno, 2008, p. 30.

#### 4. Requirement for an effective, proportionate and dissuasive remedy

The non-discrimination Directives require sanctions applicable to infringements of the national transposing provisions, which may comprise the payment of compensation to the victim, to be effective, proportionate and dissuasive.<sup>67</sup> In the EU Member States and EFTA/EEA countries, there are varied approaches to such sanctions and remedies, including criminal penalties, pecuniary or non-pecuniary damages, punitive damages, reinstatement to employment, the exclusion from State benefits or ancillary administrative remedies.

The tables in Annex IE illustrate the main types of sanctions that exist for breaches of anti-discrimination legislation in the EU Member States and in the EFTA/EEA countries. These have been divided into criminal and non-criminal (civil or administrative) sanctions. Compensation is dealt with in separate tables in Annex IF.

##### *Types and levels of remedies*

Breaches of anti-discrimination legislation attract a variety of sanctions and the remedies available to alleged victims may be civil, administrative or criminal depending on the legal instrument on which a case is based and the type of liability which discrimination attracts in the given legal system. The typical criminal sanctions are imprisonment and fines. Administrative sanctions range from the annulment of the relevant discriminatory administrative act to the imposition of administrative fines. Civil sanctions may consist of a mere apology or compensation aimed at making good the material and non-pecuniary damage caused by the discrimination.

Examples of other civil or administrative remedies include:

- orders for the termination of the discriminatory treatment (e.g. Belgium, Italy, Slovakia);
- publication of the decision (e.g. Belgium, Portugal, Slovenia);
- exclusion from public funding (e.g. Austria, Italy, Portugal);
- reinstatement to employment in the case of unfair dismissal (e.g. Cyprus, Ireland, Latvia, Romania, Slovakia, Slovenia, Spain);
- revocation or annulment of an administrative act or decision or of a clause in a contract (e.g. Bulgaria, Malta, Spain);
- administrative fines (e.g. Czech Republic, Lithuania, Romania);
- specific performance of obligations (e.g. Ireland);
- binding recommendations that the defendant take action to obviate or reduce the adverse effects of the discrimination (e.g. the United Kingdom);
- suspension of authorizations, licences or permits (e.g. Portugal).

These remedies may often interact so that a court may order e.g. the payment of compensation and the publication of the judgment. As stated by the Court of Justice ‘[i]f it appears appropriate to the situation at issue in the main proceedings, those sanctions may, where necessary, include a finding of discrimination by the court or the competent administrative authority in conjunction with an adequate level of publicity, the cost of which is to be borne by the defendant.’<sup>68</sup>

The table on next page provides a few illustrations of the remedies awarded in selected Member States.

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<sup>67</sup> Directive 2000/43/EC, Article 15; Directive 2000/78/EC, Article 17; Directive 2006/54/EC, Article 25, Directive 2004/113/EC, Article 14; Proposal for a Directive COM(2008)246 final, Article 14.

<sup>68</sup> Case C-54/07 *Centrum voor gelijkheid van kansen en racismebestrijding v Firma Feryn NV*, paragraph 39.



*Compensation and sanctions awarded by national courts in some EU Member States*

*Austria:*

- Compensation of 800 EUR after a two-year lawsuit arising from the refusal of access to a shop to a woman, including physical assault and slander based on ethnic origin. The victim had claimed 4,000 EUR - for the amount of 3,200 EUR not awarded, she was obliged to pay court fees and legal fees, which would have exceeded 800 EUR;
- 400 EUR for the refusal to transport a disabled person in a wheelchair on a public bus; 1,500 EUR for the refusal to conclude a travel insurance contract with a disabled person; 4,500 EUR following non-employment of a physician wearing a headscarf for religious reasons and harassment (multiple discrimination).

*Czech Republic:*

- In a test case of racial discrimination in housing concerning a Roma woman the district court awarded the victim 400 EUR. After the defendant's appeal, the second instance court lowered the amount to 200 EUR.
- In two significant court cases based on ethnic origin in housing and in employment, the courts awarded an apology and 2,000 EUR as compensation for non-pecuniary damage.

*Denmark:*

- The average size of fines issued in cases on hate speech from 2006-2009 amounts to 388 EUR and may have some effect, whereas a fine of as little as 133 EUR cannot be expected to have a punitive or a preventive effect.

*Latvia:*

- The amounts awarded as non-pecuniary compensation have ranged from around 1,140 EUR to 7,140 EUR. In three cases moral compensation was awarded as a result of a conciliation agreement: 1, 140 EUR (gender/age); 3,900 EUR (disability); 7,140 EUR (gender). In two cases courts also awarded damages for loss of earnings.
- The State Labour Inspectorate has reviewed a small number of discrimination cases related to employment. It has twice issued a warning, and twice imposed fines in the amount of 115 EUR and 285 EUR.

*Malta:*

- In a complaint related to work of equal value, the Industrial Tribunal ordered compensation of 18,000 EUR (the amount is equivalent to the additional amount of wages the plaintiff would have earned had he not been discriminated against).
- In a number of sexual harassment cases, the Industrial Tribunal ordered around 2,500 EUR in compensation, which is considered low for legal persons.
- In a case of incitement to racial hatred, the punishment awarded was two years imprisonment and a fine (*multa*) of 500 EUR.

*Sweden:*

- In a case concerning sexual orientation discrimination the Supreme Court ordered compensation of approximately 1500 EUR and in a case regarding access to higher education (ethnic grounds) it decided on a compensation of approximately 7500 EUR.
- In the Labour Court, in two cases of sex discrimination regarding pay the amounts awarded were 4000 EUR and 2000 EUR. In a case of sex discrimination related to pregnancy the compensation awarded amounted to approximately 5000 EUR.

*United Kingdom:*

- Median compensation awards by ground: 8,518 EUR (sex); 6,293 EUR (race); 8,793 EUR (disability); 5,221 EUR (religion or belief); 18,681 EUR (sexual orientation); 3,650 EUR (age).

The table below provides the same type of information for EEA/EFTA countries.

*Compensation and sanctions awarded by national courts in the EFTA/EEA countries*

*Liechtenstein:*

- The only reported court case regarding discrimination and equal payment resulted in the payment of the difference in the salary to a civil servant of four years.

*Norway:*

- In a Supreme Court case on discrimination due to political affiliation approximately 12,000 EUR was awarded for economic loss.
- Non-pecuniary compensation for discrimination was set above approximately 12,000 EUR in three recent cases.
- In a case of hate crime the Supreme Court sentenced the defendant to 45 days in prison.

### *Effectiveness, proportionality and dissuasiveness*

The fact that remedies must be effective, proportionate and dissuasive is not disputed and is firmly established by the relevant Directives and case-law. At the same time, there does not seem to be a tangible understanding as to what type and level of sanctions would fulfil these criteria as evidenced by the considerable discrepancies in the sanctions awarded in the cases selected above. In the *von Colson* case, the Court of Justice held that although there is no requirement for a specific form of sanction for unlawful discrimination, the sanction must be such as to ‘guarantee real and effective judicial protection. Moreover it must also have a real deterrent effect [...]. It follows that where a Member State chooses to penalize the breach of the prohibition of discrimination by the award of compensation, that compensation must in any event be adequate in relation to the damage sustained.’<sup>69</sup>

The vast majority of the national reports conclude that the systems of sanctions in place for violations of anti-discrimination legislation cannot be considered as effective, proportionate and dissuasive. These assessments were made on the basis of the experts’ knowledge of the national context, e.g. by comparing a fine or amount of damages awarded with the average national salary, as well as direct communication with stakeholders active in the field of discrimination. In particular, it was possible to make such evaluations by considering the various elements involved in bringing a case to court. Very often it was concluded that in light of the length and costs of the proceedings as well as the emotional efforts involved in litigation the remedies typically awarded would discourage alleged victims from seeking justice.

In some EU Member States it has proved rather difficult to assess the practical application of sanctions and remedies due to the absence of statistical data or the relative novelty of the national legislation which has not yet been applied in court cases. For example, the Estonian expert is aware of only one case concerning discrimination in recent years and therefore considered it complicated to measure the impact of national regulation, although she noted that the Estonian provisions regarding damages in gender equality and equal treatment legislation have been criticised for their vague nature and that Estonian courts are generally unwilling to award non-pecuniary damages. The Polish expert reported that there is no broad and reliable information on the average amount of compensation available to victims. In Malta, the absence of a significant amount of case-law on the legislation transposing the non-discrimination Directives makes it difficult to assess whether the requirements of effectiveness, proportionality and dissuasiveness are fulfilled in practice.

In the EFTA/EEA countries similar obstacles to assessing the effectiveness of remedies are noted. The Norwegian report states that current legislation contains sanctions that are seldom used. This makes sanctions in practice less effective than their legislative potential is. In Iceland and Liechtenstein, the effectiveness of sanctions remains to be seen due to the scarcity of case-law to date.

Despite the aforementioned issues, some observations may nevertheless be made with respect to the compensatory and dissuasive functions fulfilled by sanctions.

#### *Compensatory element*

In order to satisfy the requirements of effectiveness and proportionality, remedies awarded by a particular tribunal or court must be tailored to the requirements of the particular case. Compensation is an important remedy for victims of discrimination. Its aim is to bring about reparation for the loss or damage suffered. Compensation for the damages caused by discriminatory acts or omissions will generally constitute an adequate remedy if it covers the material disadvantage suffered by victims and puts them in the situation they would have been in had the discrimination not taken place.

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<sup>69</sup> Case C-14/83 *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*, paragraph 23.



Fixing a prior upper limit for compensation may preclude the availability of an effective and proportionate remedy.<sup>70</sup> Most of the countries have not fixed an upper limit. However, such upper limits are in place in some Member States including:

- Belgium where there is a fixed lump sum of 650 EUR or 13,000 EUR for damages for non-economic loss outside the area of employment and three to six months' gross salary in employment; and
- Malta, with specific reference to damages for injury to feelings in disability discrimination, where the maximum amount is 465.87 EUR.

Some Member States stipulate an upper limit on compensation in cases of discriminatory refusal to recruit a job applicant where there was no prospect of being recruited even in the absence of discrimination e.g. Austria (maximum 500 EUR), Finland (maximum of 16,210 EUR), Germany (limited to 3 months' salary).<sup>71</sup>

The box below highlights a few examples of sanctions applied in some Member States. These types of sanctions aim at ensuring that victims obtain redress tailored to the discriminatory act they suffered. This contributes to the effectiveness of sanctions.

Belgium: Publicity was used in two recent cases, involving the *Tribunal de première instance de Bruxelles* and the *Cour du travail de Bruxelles*. Both ordered termination of the discrimination and publication of the decision.

Ireland: In a complaint against a night club that provided free admission to females but required males to pay, the Equality Tribunal ordered the club to pay £10 compensation and to provide free admission to the claimant on seven nights of his choosing.

Slovakia: In a case regarding a Roma man who was refused service in a local pub, the District Court ordered the defendant to issue a written apology to be sent to the man and to be posted at the entrance to his pub for 30 days. In addition the court awarded the victim non-pecuniary damages in the amount of 663.87 EUR.

According to the Belgian report, although publicity is seen as an effective sanction, judges will nonetheless only resort to publicity when they sense that it will contribute to compliance with the decision. Stakeholder responses confirmed that it is a good means to make sure judgments are enforced. The Portuguese report also makes particular reference to publicity and its effectiveness as an additional sanction, especially in the area of administrative labour offences.

Some reports highlight the fact that whereas in certain areas, adequate compensation exists, this is not so for all cases. Stakeholders in Denmark share the view that in general, the compensation awarded, especially in cases concerning discrimination in the labour market, is satisfactory. However, the level of compensation in discrimination cases varies from area to area. In gender discrimination cases, higher amounts of compensation are awarded while compensation in cases of race discrimination and religion seems somewhat lower.

In Greece, compensation does not seem to be awarded either by civil or criminal courts in cases of discrimination. The only exception found was a case of sexual harassment where the criminal court awarded compensation of 6,000 EUR. Taking into account the annual per capita income in Greece (11,342 EUR in 2008) such an amount of compensation is considered to be very low. Fulfilling its role of monitoring implementation of the principle of equal treatment in the workplace, in 2009 the Labour Inspectorate imposed fines ranging from 3,000 to 10,000 EUR. These are considered to be extremely low. The fine imposed by the National Council for Radio and Television (100,000 EUR) on a TV channel which had an annual turnover of 8 million EUR is characteristic of the low level of fines imposed by Greek authorities in discrimination cases.

<sup>70</sup> C-271/91 *Marshall* paragraph 30, 32.

<sup>71</sup> According to C-180/95, *Nils Draehmpaehl v. Urania Immobilienservice OHG* [1997] this is acceptable.

In Poland, the only sanctions specially designed for anti-discrimination cases are contained in the Labour Code and only cover the area of employment and occupation. Although there is no upper limit for compensation in these cases, in accordance with EU law in practice the rates of compensation are quite low, so this system does not contain a sanctioning element.

Where the costs of proceedings exceed or are equivalent to the compensation that may be granted the remedy cannot be said to be effective. For instance, according to the Austrian report, the sanctions imposed to date are inadequate when considered alongside the length of the proceedings and the procedural costs or risks for the claimants. The inadequacy of the remedy becomes even more serious when the sanctioning system in place falls short of having a dissuasive element sufficient to constitute a deterrent to perpetrators of discriminatory acts.

### *Dissuasive element*

Sanctions of the same level imposed on both natural and legal persons are unlikely to be sufficiently dissuasive for the latter. Romanian legislation, for example, does not differentiate between fines for natural persons and fines for legal persons. Nevertheless, Romanian law sets out a range of fines – from a minimum to a maximum – which can be imposed for each contravention, such that the authority applying the fine can individualise it accordingly. On the other hand, in Poland, the levels of the fines are seen as insignificant for large companies, since examples of compensation awarded in employment discrimination cases (approximately 1000 to 2000 EUR) and in civil claims (approximately 2500 EUR) are not considered to be severe or dissuasive for a perpetrator which is likely to be a large company.

It is noted that in accordance with Court of Justice case-law, the principle of equivalence would make it possible to award specific damages, such as exemplary or punitive damages. However, national courts must ensure that the protection of the rights guaranteed by EU law does not entail the unjust enrichment of those who enjoy them.<sup>72</sup>

In Belgium, several stakeholders argue that the main civil sanctioning system has shown limitations, especially in terms of deterrence. A lump sum may be accorded to victims as compensation, which also works as a sanction. However, even if the amount awarded is adequate for the purpose of compensating the victim, there is no guarantee that this will be effective for the purpose of punishing the perpetrator. One stakeholder described the existence of situations where large corporations are willing to take the risk of terminating someone's employment for discriminatory reasons, despite the knowledge that they may become liable to paying the lump sum. On the other hand, other stakeholders confirmed that a deterrent effect exists in the quasi-automatic nature of the sanction. It was reported that several employers explore more in detail the legality of their decision before dismissing an employee. In Denmark, the average size of compensation amounts to approximately 14,864 EUR which is equivalent to six months' pay and presumably has some degree of deterrent effect.

In Ireland, it is considered that, even though the legal framework allows for effective, dissuasive and proportionate sanctions, the availability of unlimited sanctions in the context of gender employment claims must be effective and dissuasive in that context, and it could be argued that the financial limits in other employment and non-employment contexts should be higher. However, even the maximum limit of 6,350 EUR in the non-employment context could be a significant sum for a business. In addition, this must be assessed in the context of non-compensatory sanctions, including the power to order a person to take any specified course of action. This is a real remedy for any litigant and probably satisfies the requirement that remedies be effective and dissuasive.

In Liechtenstein, the upper limit on compensation for discrimination outside the employment context

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<sup>72</sup> Joined Cases C-295/04 to C-298/04, *Vincenzo Manfredi (C-295/04) v Lloyd Adriatico Assicurazioni SpA, Antonio Cannito (C-296/04) v Fondiaria Sai SpA, and Nicolò Tricarico (C-297/04), Pasqualina Murgolo (C-298/04) v Assitalia SpA*; see also Joined Cases C-46/93 and C-48/93 *Brasserie du pêcheur and Factortame*.

undermines the deterrent or punitive effect of the sanction, especially as the upper limit can apply to a group of claimants, and thus reduce each individual's compensation to a trivial sum.

In Lithuania, the low value of administrative fines established under the Administrative Code of Violations that start at approximately 29 EUR makes it questionable whether administrative fines provided under the law have a deterrent effect.

In Slovenia, sanctions provided for in the criminal, civil and administrative law are satisfactory to address problems of discrimination. For instance, an administrative fine imposed on a natural person in breach of the prohibition of discrimination ranges from 250 to 1,200 EUR, which amounts to 25 % or 120 % of the average monthly net salary in Slovenia, while the sanctions imposed on legal persons are proportionately higher (from 2,500 to 40,000 EUR). Case-law shows that compensation awarded in disputes in which plaintiffs are successful is sufficiently high to consider sanctions dissuasive from the perspective of an individual (3,000 EUR is equal to three average monthly net salaries in Slovenia). However, in view of the fact that compensation is usually not paid by a natural person but by a legal person, it is not high enough to be considered dissuasive.

The levels of compensation in Sweden are traditionally low and can hardly be described as dissuasive. A new system of 'compensation for discrimination' was enacted in the 2008 Discrimination Act in order to comply with the EU Directives. There are no upper limits on compensation. The purpose of the new compensation system is to enable the courts to depart from the ordinary levels of compensation and to enable them to award higher amounts. Whether this will be achieved remains to be seen. One of the stakeholders argues that the abolition of upper limits for compensation may lead the new 'compensation for discrimination' system to result in the award of unjustifiably high levels of compensation.

#### *Practical implementation of sanctions*

Although judges may have a wide range of sanctions to apply, this is rarely fully exploited, either because the legal tradition of the country makes it difficult to impose strong sanctions in discrimination cases, or because they do not consider the full range of possibilities provided by law in discrimination cases.

As regards administrative sanctions in Austria, several cases of discriminatory or racist job advertisements in the Länder have been reported but not dealt with using the available sanctions. There is no criminal or administrative sanction provided for discriminatory housing or apartment advertisements. Out of 112 complaints filed between January 2005 and September 2006, 103 were dismissed by the administrative authorities, and only seven were examined at second instance. In January 2005, an anti-racism NGO brought 100 discriminatory housing or job advertisements ('Austrians only'; 'no foreigners') to the authorities' attention but had no legal standing to bring a claim and no right to be informed on actions taken by authorities in this matter. Very similar cases are reported in Vorarlberg and Vienna. The Federal Ombudsman examined these administrative procedures and discovered that only a few complaints resulted in fines and that these fines were only marginal. The reasons are that these offences are regarded as trivial by the police and society at large and also because victims of administrative offences have neither legal standing in these proceedings nor a right to appeal, or to be informed of the outcome of the proceedings.

In Cyprus, relevant case-law is still sparse. But, in one judicial decision, the trial court awarded damages of 1,500 EUR. In eight out of nine criminal decisions concerning racist behaviour, the conviction led to imprisonment of two years with suspension. No fine was imposed in any of these cases. The conviction of persons for racist behaviour during the last years is a progress which may have an exemplary effect, as is noted by the European Committee against Racism and Intolerance of the Council of Europe.

With respect to Italy, it is reported that although judges recognise discrimination, they often award a remedy to the victim that is arguably unsatisfactory. There is extensive case-law showing that judges do not award proper compensation for the non-pecuniary damage suffered by the victim. Moreover, when the discrimination lies in the refusal to hire the victim or in the exclusion of a category of persons from a public competition for State employment, judges are often reluctant to apply sanctions such as compelling the employer to hire the victim or to award the victim compensation high enough to meet the requirements of proportionality, effectiveness and dissuasiveness. For example, a judge awarded 2,000 EUR to a migrant victim of discrimination, who was not hired as a consequence of his nationality. The judge did not order the removal of the effects of the discrimination, because he considered that the obligation to hire does not exist in the Italian legal order, although the legislation does in fact permit an order to hire in such a case. Only one judgment ordered the employment of a person who was discriminated against in a job selection on the basis of nationality. At the same time, the judge ordered compensation equivalent to the income for the period from the discriminatory selection to the final process of hiring. The remedy can be considered effective, proportionate and dissuasive in the latter case. Administrative remedies are not used by judges in Italy because of the lack of clarity of the legislation and because of the administrative workload. However the possibilities offered for sanctioning under these acts could have a dissuasive effect.

Some Polish associations noted that judges and law enforcement authorities generally considered discrimination issues as a problem of little significance; therefore sanctions for perpetrators are not sufficiently severe or dissuasive. The levels of compensation for victims of discrimination were described as symbolic: the NGO respondents gave examples of compensation awarded in cases of discrimination in the employment area which seem to not be severe or dissuasive for a perpetrator, especially if the perpetrator is a large company.

The UK report comments that despite the removal of the compensation cap, the level of compensation traditionally awarded in discrimination cases has not been high. In the years following the removal of the compensation cap, a small number of high profile sex and race discrimination cases were heavily reported in the media – for example, involving very highly paid employees in investment banks, or service women dismissed for pregnancy – in cases where projected loss of earnings and pensions led to high compensation awards. However, these high profile cases do not reflect the reality of awards in discrimination cases. Whilst there is no minimum level for compensation awards, courts and tribunals will in most successful cases make an award for what is known as ‘injury to feelings’ in recognition of the (psychological) harm caused by discrimination. Although an award for injury to feelings is not automatic, substantial damages may be awarded under this head. The Court of Appeal has identified three broad bands of compensation: 18,232-30,386 EUR for ‘the most serious cases’; 6,077-18,232 EUR for ‘serious cases’; and 607-6,077 EUR for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

## **5. A summary of issues by country**

### *Austria*

Austria’s main anti-discrimination provisions are found in: the Equal Treatment Act, the Federal-Equal Treatment Act, the Equal Treatment Commission and Equal Treatment Office Act, the Employment of People with Disabilities Act, the Federal Disability Equality Act, and the Labour Relations Act. There are specialised, non-judicial equal treatment bodies, the federal Equal Treatment Ombudsman (GBA) and the Complaint Association, which seem effective and competent in providing fast and uncomplicated legal assistance; but victims may also access civil courts (attorney required) and labour courts.

Legal capacity is required to initiate court proceedings. Equality bodies may not represent claimants or take part in judicial proceedings. Besides the possibility of collective actions by the Austrian Labour Association upon the proof of a legal interest, only one NGO (Klagsverband: Complaint Association) can intervene in proceedings but cannot initiate them, and it has never made use of this right in its four

years of existence. The Klagsverband gathers 18 anti-discrimination NGOs. The law shifts the burden of proof in discrimination cases, requiring the defendant to ‘prove a probability’ that s/he had non-discriminatory reasons for the action in question. Short time limits apply for bringing discrimination claims to court, and plaintiffs face expensive litigation costs.

Compensation is available for material & immaterial damages, and/or victims can seek a court order for the discrimination to cease. Administrative and criminal sanctions are available yet infrequently used. The 500 EUR limit for compensation in discriminatory non-employment cases is not considered effective, proportionate or dissuasive. Equally, the 360 EUR limit for discriminatory job advertisements and the exclusion of any sanction for any employer who is a first time offender is inadequate.

### *Belgium*

Belgium’s three anti-discrimination laws are: the Equality Act, the Gender Discrimination Act, and the Anti-Racism Act). Each prohibits discrimination widely across Belgium society: in employment, social security, and access to and supply of goods and services. Civil mechanisms are the principal means for tackling discrimination; no administrative sanctions exist, and the number of criminal offences is limited. The special procedure for discrimination cases *action en cessation* enables victims to obtain faster decisions. Two non-judicial equality bodies are empowered to receive complaints by victims of discrimination, promoting and aiding negotiation, and 13 Flemish contact points perform mediation.

To access the courts, plaintiffs must establish the interest in and quality of a case of discrimination. Associations have legal standing, but they mostly refer cases to the equality bodies, which also have legal standing, in order to benefit from their expertise. The burden of proof shifts in all but criminal procedures. Although lengthy proceedings are infrequent, the costs are a significant barrier to victims of discrimination accessing justice.

Lump sums are sometimes used to adequately compensate for economic and/or non-economic loss. Ordering the removal of discriminatory clauses is another possible remedy. The lack of deterrent sanctions is, however, noted as a concern.

### *Bulgaria*

Bulgaria’s main anti-discrimination laws include: the Law on Protection against Discrimination, the Law on Protection against Domestic Violence (LPaD), and the Law on Countering Trafficking in Human Beings. Bulgaria has a non-judicial body called the Commission on Protection against Discrimination (CPaD), which deals with anti-discrimination, although the civil, administrative and criminal courts are also involved.

Natural/legal persons, the State and local self-government bodies or the CPaD can bring proceedings under the LPaD. Prosecutors initiate criminal proceedings and affected persons can participate. The LPaD shifts the burden of proof in discrimination cases, except in criminal cases. Cases should be completed within 30 days under the LPaD. Cases related to unlawful dismissal are fast-tracked, however, in civil, criminal and administrative cases the general rules apply, and no advantage is granted to victims. Proceedings are generally cost-free.

Compulsory advice and recommendations to terminate and prevent discrimination as well as the revocation of discriminatory administrative acts are proportionate and effective for combating discrimination. Compensation is provided in LPaD with no maximum. The average amount is 3,000BGN/1,500EUR – 4,000BGN/2,000EUR. Material and immaterial damages can be compensated. The level of fines is considered high enough to be dissuasive.

## *Cyprus*

The main Cypriot anti-discrimination legislation includes: Laws 205(I)/2002 and 18(I)/2008 (gender equality), 58(I)/2004 and 59(I)/2004 (racial/ethnic origin, age, religion/other beliefs and sexual orientation), 127(I)/2000 (disability), and Law No. 42(I)/2004 (establishing the powers of the Cypriot Equality Body). District Courts try criminal offences related to discrimination. As regards civil proceedings, District Courts or Employment Tribunals are competent to hear civil claims. The Cypriot Ombudsman is competent in respect of extrajudicial dispute settlement and also conducts campaigns to inform the public.

Organisations or other legal entities may, if it is relevant to their activities and with the victim's consent, represent and act on behalf of persons before the national courts. The burden of proof is shifted in all but criminal proceedings. Proceedings generally take 2-3 years, and as a rule the losing party is ordered to pay costs, although it is at the court's discretion. There is little case-law, however sanctions and compensation provided by legislation are considered to be *a priori* effective, proportionate and dissuasive.

## *Czech Republic*

The Czech Republic's key anti-discrimination and gender equality laws include: the Anti-Discrimination Law, the Civil Procedure Code, the Civil Code, and the Charter of Fundamental Rights and Freedoms. The competent courts in discrimination cases and alternative mechanisms include the district courts (civil and criminal), regional courts (civil, including administrative senates and criminal), the Supreme Court, the Supreme Administrative Court, and the Constitutional Court. Administrative bodies include the labour offices, labour inspectorates, and the Czech Trade Inspectorate.

Associations that defend discrimination victims (on the grounds of gender, racial or ethnic origin, religion, belief, disability, age or sexual orientation) may initiate proceedings for victims to bring their cases to court. Czech law also shifts the burden of proof. The length of proceedings is a general problem of the Czech judiciary. The costs of the proceedings including the loser pays principle are seen as an obstacle to bringing discrimination cases to court.

Criminal law sanctions for the most serious racial crimes are seen as effective, proportionate and dissuasive. Although sanctions should carry a deterrent financial effect, in practice sanctions are not generally considered to be effective, proportionate and dissuasive. Civil court compensation awards in the few successfully litigated discrimination cases are seen as merely symbolic.

## *Denmark*

Denmark's main anti-discrimination laws are: the Constitution of Denmark, the Criminal Code, the Prohibition Against Differential Treatment Act, the Equality Between Men and Women Act, the Equal Treatment for Men and Women as regards Access to Employment Act, the Equal Pay for Men and Women Act, the Prohibition Against Differential Treatment in the Labour Market Act, and the Ethnic Equal Treatment Act.

Victims of discrimination can access the courts free of charge. This includes access to an administrative procedure with the Board of Equal Treatment, direct access to District courts, or a procedure within the quasi-judicial system of labour arbitration. In cases of maladministration in public authorities, or misleading marketing, the Parliamentary Ombudsman is the competent body. The Board of Equal Treatment has legal standing to represent complainants as well as to file suits with the ordinary courts on behalf of the complainant in order to enforce its decision. Although the burden of proof is reversed in discrimination cases, the principle is not always applied in practice.

The compensation awarded in employment cases is satisfactory in the area of gender discrimination. A less convincing picture is found in respect of discrimination on all other grounds within the labour market where access to justice is less effective, and the compensation awarded is inconsistent.

Sanctions issued in criminal proceedings in relation to discrimination in access to public places, goods and services, are consistent and aligned with the principle of proportionality. Fines imposed under criminal law are, however, rarely seen to have a deterrent effect and compensation is not awarded.

### *Estonia*

Estonian anti-discrimination legislation and the related framework governing access to justice consist of the Equal Treatment Act, the Gender Equality Act, and the Penal Code. If an alleged victim wants to seek redress through the courts, s/he must normally apply to the lowest general court: the county court. Alternative mechanisms include the Gender Equality and Equal Treatment Commissioner, the Chancellor of Justice and labour dispute committees.

Legal standing is mostly limited to direct victims, and civil society organisations have limited opportunity to act in support. Whilst Estonian law shifts the burden of proof in civil cases, it does not for criminal or administrative cases. In cases under the Equal Treatment Act and Gender Equality Act, compensation claims must be filed within one year of the date when the injured party becomes aware or should have become aware of the damage caused.

Sanctions include ordering an end to the discrimination and compensation for damage suffered. The victim may also request compensation of non-pecuniary (or moral) damage caused by the violation. Under the Penal Code, sanctions for incitement of hatred or violation of the equality principle include fines, detention or imprisonment. The provisions of the Equal Treatment Act and Gender Equality Act on damages seem too 'vague and subjective' and are not considered 'effective, proportionate and dissuasive'. Estonian courts are also reluctant to award non-pecuniary damages.

### *Finland*

Aside from the Constitution, Finland's main anti-discrimination laws include: the Equality between Women and Men Act (gender), and the Non-Discrimination Act (other grounds). Victims can claim compensation/damages and/or initiate criminal proceedings before the general district courts on a variety of grounds. The Ombudsman for Minorities, the Discrimination Tribunal, the Ombudsman for Equality, and the Equality Board lower the threshold for access to justice in cases of discrimination based on ethnicity or gender, in comparison to access to justice on other grounds.

Both the Non-Discrimination Act and the Equality Act reverse the burden of proof, but not in criminal cases. Proceedings are free and the parties are liable for only the legal costs they incur.

The court may prohibit the continuation or repetition of the discriminatory conduct as well as impose fines or imprisonment for a maximum of six months. The Equality Act does not set an upper limit for compensation, except in cases where discrimination was not the sole reason for the employer's decision. The most common sanction seems to be 25-30 day-fines for crimes of discrimination or workplace discrimination. In civil disputes, compensation has on average been around 5,000 to 9,000 EUR.

### *France*

In addition to the Constitution, the legislation applicable in case of discrimination can be found mainly in codified law (in particular the Labour Code and the Criminal Code). A few Acts are also particularly relevant, such as Law no 2008-496 adapting French law to EU law in the area of discrimination, Law no 2004-1486 creating the High Authority against Discrimination and for Equality (HALDE), Law no. 2001-1066 regarding the fight against discrimination and the Law on the Press of 1881. In the sector of employment, employees or contractual agents who have been discriminated against by a private party can bring a case before the Labour Court, whatever the ground for discrimination is, in order to rescind the discriminatory decision and claim compensation for damages. In other sectors, recourse must be brought before the Court of Instance or the Court of Great Instance. Criminal Courts have the power to impose sanctions on an offender. Litigations opposing individuals within the public sector must be brought before administrative courts which can correct the

discriminatory situation and/or award damages. The HALDE is an independent administrative authority, competent on all forms of discrimination prohibited by law, which can undertake mediation, transaction, or legal action.

The French legal framework gives quite an important role to associations in the procedures before the courts by granting them legal standing as a civil party and/or as a third party in many procedures. The law provides for a shifting of the burden of proof, but it is considered by stakeholders as lacking clarity and as being not necessarily well applied in courts. The costs of the procedure, especially if related to lengthy procedures, were also identified as a problem, in particular since legal aid is very difficult to obtain.

With regard to sanctions, the framework provided by French law is complete and dissuasive, as discrimination is considered a criminal offence that can be punished with a fine up to 75,000 EUR and five years imprisonment. Moreover, complementary sanctions, such as the advertisement of the judgment may have a deterrent role as well. In addition, the obligation of compensation of the full damage is provided for by law, and the compensation of pecuniary damage is applied in practice if the information provided by the victim to the judge is complete enough. However, without assistance, a victim can only calculate the damage with great difficulties, and moral damages are not provided a clear frame, and are left very much to the appreciation of the judge.

### *Germany*

Key legislation on anti-discrimination includes the General Act on Equal Treatment (AGG) and Article 3 of the Federal Constitution. The AGG regulates anti-discrimination claims within employment relationships and vocational training and in parts of the civil law. Discrimination cases mainly relate to the jurisdiction of the labour, civil, administrative and social courts. However, they can fall under the jurisdiction of any court if the basic right contained in Article 3 of the Federal Constitution has been violated. The Federal Anti-Discrimination Agency is mandated by law to negotiate out-of-court settlements.

Trade unions can represent their members in court. At the federal level organisations and associations that promote the interests of people with disabilities under the Law on the Equal Treatment of Disabled People can bring a victim's case to court and lodge collective actions (Verbandsklagen). The regulations on the shifting of the burden of proof, time limits to lodge proceedings and on compensation mostly align with EU law. However, the AGG only grants compensation for material loss in cases of fault-based liability and explicitly excludes dismissals in employment from its scope. The length of the procedure varies between courts. Before the labour courts of first instance regular procedures lasted on average three months in 2008.

The AGG and the Equal Treatment of Soldiers Law permit alleged victims to demand an end to certain discriminatory conduct, to pursue an injunctive remedy and to claim compensation for material loss in case of wilful and negligent discrimination and non-material loss on a strict liability basis. The sanctions provided by national legislation are only partly satisfactory to address the problems of discrimination and are not always effective, proportionate and dissuasive.

### *Greece*

Greek anti-discrimination legislation mainly consists of: Laws No. 3488/2006 and 3769/2009 concerning gender discrimination; Law No. 3304/2005 prohibiting discrimination on the grounds of racial/ethnic origin, age, religion and other beliefs, disability and sexual orientation; and Law No. 927/79 prohibiting other aspects of racial/ethnic discrimination. No competent court exists to specifically address discrimination cases; victims may only claim through criminal, civil and administrative courts, or otherwise through extrajudicial mediation procedures.

Legal entities having a legal interest may represent a victim with their written consent. The anti-discrimination statutes reverse the burden of proof in all discrimination cases. Civil and criminal



proceedings are time-consuming and each party must pay the procedural costs in advance. The court allocates costs in the judgment according to the loser pays principle.

The various anti-discrimination sanctions (criminal, administrative, against employers) are generally considered effective, proportionate and dissuasive. Compensation for material and/or non-pecuniary damages may be awarded in gender discrimination cases.

### *Hungary*

The key Hungarian anti-discrimination law is the Equal Treatment Act 2003. This framework Act omits multiple or intersectional discrimination. Various judicial and alternative dispute resolution bodies, as well as types of procedures and remedies exist. Claims may be brought before civil courts, labour courts, the National Labour Inspectorate, the National Office for Education, the National Consumer Protection Authority and public notaries. Alternative dispute resolution bodies are the Equal Treatment Authority and the Parliamentary Commissioner.

No specific rules apply for costs. Although no statistical data is available, an employment discrimination case would probably cost between 100,000-200,000 Ft (200-400 EUR). No rules exist in relation to the length of the proceedings in discrimination cases. According to data in cases in and outside the field of employment, most cases in 2009 lasted less than three months.

Sanctions applied in discrimination cases do not differ from sanctions applied for other disputes in the same field. Sanctions may include an order to stop the discrimination, measures to avoid the continuation of the unlawful conduct, publishing judgments which hold that discrimination has occurred, and/or issuing additional fines. Apart from fines, such sanctions are considered ineffective and far from dissuasive.

### *Iceland*

Iceland is not bound to transpose the requirements of Directives 2000/43/EC and 2000/78/EC. Icelandic equality legislation only covers the ground of gender in employment and education. The key laws are: the Act incorporating the European Convention of Human Rights into domestic law; the Gender Equality Act; the Judiciary Act; the Civil Procedure Code; the Criminal Procedure Code; the Constitution; and, the General Penal Code. District courts act as courts of first instance with jurisdiction in criminal, civil and administrative cases and the Supreme Court reviews appeals against district court judgments. The Gender Equality Complaints Committee decides complaints concerning breaches of the Gender Equality Act. The Parliamentary Ombudsman safeguards the rights of citizens *vis-à-vis* administrative authorities.

Individuals, associations and institutions bearing rights or duties under national law can participate in proceedings if they have a personal 'legally protected interest'. The Gender Equality Act shifts the burden of proof in gender discrimination cases, except in criminal cases. The length of proceedings is not considered an obstacle to access to justice. However, lawyers' fees are seen as a significant obstacle and only the very poor qualify for legal aid.

Punitive damages are not available. Ordinary damages apply in discrimination cases and compensation for non-pecuniary loss may be awarded if appropriate. Gender Equality Act violations are punishable by fines unless heavier penalties are prescribed in other statutes. There is no upper limit on the amount of damages. Effective, proportionate and dissuasive sanctions are not considered to be in place as regards discrimination based on race, disability, religion or belief, sexual orientation and age.

### *Ireland*

Ireland's anti-discrimination laws consist of the Employment Equality Act 1998 and the Equal Status Act 2000: each amended by the Equality Act 2004. The Equality Tribunal is the Tribunal of first instance, with a right of appeal to the Labour Court for employment and the Circuit Court for non-employment cases. The Circuit Court may also hear gender employment cases. The District Court is

competent in cases concerning access to licensed premises. The Equality Tribunal can appoint Mediation Equality Officers and the Labour Court can refer cases for mediation.

Any person has standing to bring a claim on their own behalf. The Equality Authority has jurisdiction to institute claims in the case of systemic discrimination or where it is unlikely that a specifically aggrieved claimant will come forward. In principle, civil legal aid is available for equality cases although it has never been granted. The Equality Act reverses the burden of proof; however there is concern over whether it has any real application outside the equal pay context. Costs and length of proceedings are regarded as a significant impediment to accessing justice.

On balance, it is considered that the non-compensatory remedies are in principle proportionate and dissuasive. The compensatory remedies in the gender discrimination employment context are proportionate and dissuasive, there being no upper limit. Outside that context, it is questionable whether the compensatory remedies are dissuasive. Overall, it is considered that the scheme of sanctions and remedies is not sufficiently dissuasive.

### *Italy*

The relevant provisions on discrimination can be found in the Constitution, in Legislative Decree 215/2003 (implementing Directive 2000/43/EC), in the Legislative Decree 216/2003 (implementing Directive 2000/78/EC), and Legislative Decree 198/2006 enacted the 'Equal Opportunities Code between Women and Men'. The Regional Administrative Tribunal (TAR) hears administrative proceedings (first instance); the Council of State for the second instance. Civil Tribunals hear civil proceedings (first instance). The Labour Tribunal (a section of the Civil Tribunal) hears employment discrimination cases. Criminal proceedings are tried by Criminal Tribunals, the Court of Assizes and the Justice of Peace (first instance); and the Court of Appeal for the second instance. Alternative mechanisms include a conciliation procedure between the victim and the perpetrator of the discrimination.

Victims of discrimination can initiate proceedings as well as associations; trade unions can do so in equal treatment cases in the work place. Associations and trade unions, as well as the Equality Advisors, can sue by delegation given by the victim. They may also take legal action in cases of collective discrimination if there are not directly identifiable persons harmed by the discrimination. A partial reversal of the burden of proof is provided for determining the existence of discrimination. The legal claims provided for in cases of discrimination are characterised by a simplified and quick procedure. However, practical implementation is not always satisfactory. The cost of litigation for victims of discrimination is a problem.

With regard to sanctions, judges can order any discriminatory conduct to stop. Public or private acts that are deemed discriminatory shall be null and void. Judges can also order a programme to end the discrimination. Some relevant administrative remedies and criminal sanctions also exist. However, the legislation does not provide forms of dissuasive, effective and proportionate sanctions. The judge can order compensatory pecuniary/non-pecuniary damages. However, such compensation is not seen as adequate and has little deterrent effect on perpetrators of discrimination.

### *Latvia*

There is no comprehensive Latvian anti-discrimination law. The anti-discrimination Directives were transposed through numerous amendments to laws such as: the Labour Law; the Social Security Law; the National Human Rights Office Law; the Criminal Law; and the Education Law. The administrative or civil courts both hear discrimination cases. The Ombudsman is the designated equality body and can act as a facilitator in conciliation procedures.

The legal provisions allow NGOs, the Ombudsman and trade unions to bring actions to court on behalf of an individual in discrimination cases, however in practice this rarely occurs. Several enactments explicitly reverse the burden of proof. The length of proceedings in discrimination cases before

administrative courts remains a concern. As regards costs, although the national legislation provides for state support in granting legal aid in civil and criminal cases for persons with low income or in need, there is no official information available as to whether any victim of discrimination has ever benefited from such support.

The State Labour Inspectorate can levy fines for violation of anti-discrimination provisions in the area of employment. In the known discrimination cases, mostly civil sanctions have been applied. Judges use their discretion to calculate compensation for non-pecuniary loss, and there is no uniform approach. Amounts awarded to discrimination victims remain low and there remains a lack of follow-up concerning the execution of judgments. Court judgments are not widely published, which limits any potential dissuasive effect. Non-pecuniary sanctions are a new development.

### *Liechtenstein*

Liechtenstein is not bound to transpose the requirements of Directives 2000/43/EC and 2000/78/EC. Liechtenstein discrimination laws include: the Constitution; the Criminal Code; the Foreigners Act; the Equal Treatment Act 1999; the Equal Treatment of People with Disabilities Act 2006; and the Civil Code. The administrative, civil and criminal courts hear discrimination cases. Before launching civil litigation, a party must request a specially designated civil mediator to initiate civil mediation, which aims to settle the dispute amicably, by recognition or renunciation of the claim.

Only claimants with legal standing can initiate proceedings. Equality bodies may not represent claimants; however the Information and Contact Point for Women and the Liechtenstein Association for Disabled Persons can initiate proceedings on behalf of discrimination victims. Any organisation representing the interests of disabled persons can, if incorporated for more than five years in Liechtenstein, directly claim victims' interests before courts and authorities. Claimants have the burden of proof. There are no limits on the length of proceedings and parties must pay their own costs.

Discriminatory treatment outside the employment sphere and termination of an employment contract based on sex is punishable by three months' worth of salary. Compensation for material and moral damages and interests is available. In employment cases, compensation is explicitly provided for discrimination based on sex and for unlawful dismissal of employees based on discrimination. Furthermore, compensation must be paid for any discrimination based on disability in the public sphere outside of employment. However, in all cases, additional material and non-pecuniary damage caused by the discrimination or termination can be claimed based on the general rules on the compensation of damages provided by the Civil Code. The sanctions provided seem to be proportionate, effective and dissuasive.

### *Lithuania*

The Law on Equal Opportunities for Women and Men and the Law on Equal Treatment are Lithuania's key pieces of legislation. With respect to discrimination resulting from the adoption (or the failure to adopt) certain administrative acts or actions, a petition should be submitted to one of the Regional Administrative Courts. In labour disputes, the Employment Dispute Commission is competent to decide in a pre-judicial phase. Moreover, before an application to the court is made, in respect of any ground of discrimination, a person may submit a complaint to the Equal Opportunities Ombudsman Office, which has competence to apply informal mediation procedures.

A person must have a direct and legal interest to bring a case to court. In cases of discrimination in employment, trade unions may represent their members within judicial proceedings. NGOs and associations may engage in discrimination cases before courts if their statute of establishment provides competence to represent and defend victims of discrimination in judicial proceedings and they have obtained the applicant's consent. The Law on Equal Opportunities for Women and Men and the Law on Equal Treatment reverse the burden of proof except in criminal cases. No special time limits apply for bringing legal actions in respect of discrimination. A fee is payable for filing a complaint and other

costs related to the examination of the case in the court. In employment cases, plaintiffs are exempt from paying the procedural fee.

The Labour Code does not provide sanctions for discrimination in the work place. When an employment-related discrimination case is considered by the courts of general jurisdiction, the court may request the guilty party to accept or reinstate the plaintiff into the workplace. The upper administrative penalty is 4,000 Lt (1,159 EUR), which may not be a sufficient deterrent for a large private undertaking. Moreover, these administrative sanctions are rarely applied. Victims of discrimination can claim pecuniary and non-pecuniary damages under the civil procedure. No upper limits are set for the award of non-pecuniary damages; however case-law shows that the level of court-awarded non-pecuniary damages is rather low. Few criminal cases are brought to Court partly due to the difficulty of proving direct intent of the perpetrator.

### *Luxembourg*

The main provisions relating to non-discrimination and equal treatment in Luxembourg can be found in the Constitution of Luxembourg, the Laws of 28 and 29 November 2006 which introduce anti-discrimination provisions through modifications of the Civil and Criminal Code as well as with pieces of freestanding labour law, civil and private law. Discrimination cases can be brought through administrative, civil and criminal procedures, through the labour tribunal for employment cases, in the Justices of Peace or District Tribunals for civil or criminal cases. Besides the general courts, an Ombudsman may advise alleged victims of discrimination and make non-binding recommendations. The National Conciliation Service is competent to resolve collective disputes in the area of employment. A State Prosecutor may also undertake mediation.

Individuals have standing to bring a discrimination claim to court. Associations, professional associations and trade unions may assist victims in court or act on their behalf, in civil and administrative proceedings, as long as they obtained their legal personality at least five years prior to the facts of the discrimination case, and provided they have an accreditation from the Ministry of Justice. The burden of proof is shifted in discrimination cases in civil and administrative procedures. The length of procedure varies, depending on the facts and the complexity of the case, and can range from three weeks to 42 months. There are no time limits for the judge to decide on a case. There are no fees for administrative proceedings, and in civil proceedings the fees are usually paid at the end of the action, with the losing party liable for costs.

Luxembourg law provides for a system of civil and criminal sanctions. Criminal sanctions include fines and prison sentences. Civil sanctions include the annulment of the discriminatory act, annulling a dismissal and reinstating the employee in the job, imposing a penalty, publishing the judicial decision or awarding compensation payments. There is no upper limit on the amount of compensation that can be awarded. Due to the limited amount of case-law, it is difficult to assess whether the remedies are effective, proportionate and dissuasive.

### *Malta*

Malta's anti-discrimination legislation includes: the Constitution; the European Convention Act; the Equal Treatment of Persons Order; the Equal Treatment in Employment Regulations; the Access to Goods and Services and their Supply (Equal Treatment) Regulations. Alleged victims of discrimination may seek redress before the general courts; typically, the First Hall of the Civil Court, and in the field of employment may bring an action before the Industrial Tribunal. Criminal courts are competent with regard to discriminatory conduct constituting a criminal offence. Alleged victims of discrimination may also submit a complaint to the National Commission for the Promotion of Equality, the National Commission for Persons with Disability or the Ombudsman – or make use of alternative dispute resolution mechanisms such as mediation and arbitration.

A plaintiff must have a juridical, direct and personal interest to bring a case to court. The National Commission for the Promotion of Equality and the National Commission Persons with Disability have

a general power to investigate complaints and to assist discrimination victims in respect of the grounds falling within their competence. The burden of proof is reversed in discrimination cases but this shift does not apply to all fields or all grounds outside employment. The length and costs of proceedings are significant and could indeed constitute a barrier to access to justice.

Maltese law provides for a system of civil and criminal sanctions. Although there is no upper limit on the amount of compensation that can be awarded, on the basis of the limited case-law available, it would seem that the courts will use their discretion rather conservatively, awarding amounts that cannot generally be considered effective, proportionate and dissuasive. As regards criminal sanctions, these are imprisonment and/or a fine. In principle, the term of the prison sentence and the amount of the fine could be considered to have a deterrent effect. In practice, the effectiveness will depend on the level of sanction the court decides upon in the specific case.

### *The Netherlands*

The main provisions on anti-discrimination in the Netherlands can be found in the Constitution, the Equal Treatment Act, and in the Criminal Code. An alleged victim of discrimination may seek redress before the general courts, typically, the Sub-district Courts. This court also covers disputes on discrimination that arise from employment relationships. With respect to discriminatory conduct constituting a criminal offence under the Criminal Code, the courts of criminal jurisdiction are competent. An alternative mechanism is provided by the Equal Treatment Commission which can issue non binding decisions based on a limited number of equal treatment acts including in the context of equal treatment for men and women; working hours; temporary and permanent employees; disability or chronic illness; and age.

In discrimination cases, general requirements to bring a case to court apply. Individuals, legal persons and associations have the right to bring a case before the court if they have a 'legal interest'. The reversal of the burden of proof applies for discrimination procedures where victims seek an opinion from the Equal Treatment Commission and in cases where a claim of discrimination in an employment relationship is based on gender. The length and costs of proceedings are closely monitored by the Dutch judiciary and the Supreme Court of the Netherlands and there are no major issues related to costs and length of proceedings.

Under Dutch law, both civil and criminal proceedings provide for sanctions. In civil law cases there are no minimum or maximum amounts for sanctions as the compensation is calculated on the basis of actual damage. In criminal law, the sanctions are established for specific crimes. In addition, for discrimination considered as a criminal offence, the sanctions are increased by 25%.

### *Norway*

Norway is not bound to transpose the requirements of Directives 2000/43/EC and 2000/78/EC. Norway's anti-discrimination laws includes: the Gender Equality Act; the Anti-Discrimination Act; the Anti-discrimination and Accessibility Act; and the Working Environment Act. The civil courts are competent in civil discrimination cases. All administrative procedure claims of discrimination may be brought before the Equality and Anti-discrimination Ombudsman, with the Equality Tribunal hearing appeals. Cases involving discriminatory clauses in collective agreements may be taken to the Labour Court by one of the parties to the agreement. For criminal proceedings, a complaint has to be filed with the police, and it is then for the prosecution authority to decide whether or not to take the case to court.

Victims of discrimination must show a legal interest to bring a case to court. The rule of shared burden of proof applies for all grounds of discrimination. Public bodies charged with promoting specific interests may also bring an action or provide co-counsel in order to safeguard the interests that fall within the scope of their activities. Both possibilities also exist for associations, NGOs and organisations. The high cost of litigation before the ordinary courts, in conjunction with the current lack of legal aid for discrimination cases constitutes a barrier for victims of discrimination.

Sanctions enforced by the civil courts consist of liability for damages/compensation/redress awarded to the claimant. An order to stop ongoing discrimination can also be issued. According to the Anti-Discrimination Act, fines or imprisonment may be imposed on the perpetrators for a gross breach of the prohibition against discrimination that has been committed jointly by several persons. The effectiveness of Norway's remedies is questioned because of the low number of discrimination cases handled by the civil courts. Neither the Ombudsman nor the Equality Tribunal have the power to award damages or sanctions.

### *Poland*

Poland's anti-discrimination provisions include: the Constitution; the Labour Code; the Polish Civil Code; and the Polish Penal Code. Although most of the important provisions of the relevant EU Directives have been transposed into Polish legislation by the new Act on Equal Treatment there are still areas of concern. Moreover, the existing provisions do not always fulfil the requirements set in the Directives.

In the area of employment, the common courts (district or regional, depending on the sums of compensation involved) are competent. Outside the field of employment, claimants may bring a claim under civil procedures in the civil division of a common court (district or regional). Criminal courts hear criminal proceedings. The Human Rights Defender (Ombudsperson) has general competence to bring enforcement actions in the public interest, but cannot issue binding decisions.

Only victims of discrimination can initiate common court proceedings involving claims for compensation based on either the Labour or Civil Code. Non-profit organisations whose statutory tasks include the promotion of equality and action against discrimination may bring an action on behalf of the victims, provided the victim consents. The National Labour Inspectorate may also initiate proceedings against a discriminating employer. The cost and length of proceedings are a cause of concern for accessing justice. Moreover, legal aid for victims of discrimination is insufficient.

### *Portugal*

Portugal's anti-discrimination laws include: the Constitution; the Criminal Code; the Civil Code; the Code of Administrative Procedure; the Race Discrimination Act (Law 18/2004); the Sex Discrimination Act (Law n.º 14/2008); the Parity Law (Law 3/2006); and the Disability Discrimination Act (Law n.º 46/2006). Claims for compensation or damages based on non-discrimination legislation can be brought in civil, administrative and criminal courts. However, only civil or administrative courts are competent for claims for compensation or damages. The alternative means available for resolving disputes include conciliation, mediation, and arbitration.

Victims must prove sufficient interest in the merits of the claim to bring a case to court. Certain associations may represent or support a victim, with his/her approval. The legal framework for employment-related administrative offences allows trade unions to participate in lawsuits as assistants. The burden of proof is shifted in cases of discrimination, except in criminal cases. In labour law, however, later in the process the victim must provide counter-proof, and therefore is once again put at a disadvantage. Regarding the costs and length of the proceedings, the high costs and slow pace of proceedings that are noted in practice are significant obstacles.

The sanctions are considered to be effective. However, enforcement may be hampered by the general low-level of awareness of discrimination issues by both law-enforcers and society in general.

### *Romania*

Romania's main anti-discrimination laws include: Government Ordinance no. 137/2000 on the prevention and the sanctioning of all forms of discrimination, Law no. 202/2002 on the equality of opportunities and treatment between women and men and Ordinance no. 61/2008 on the implementation of the principle of equality of treatment between women and men in the access to

goods and services and the provision of goods and services. Anti-discrimination cases can be brought before civil, administrative and criminal courts. The National Council for Fighting against Discrimination has the competence to undertake mediation, to investigate discrimination cases and to apply administrative sanctions.

Associations are only in exceptional cases allowed to initiate proceedings on behalf of the alleged victim. Romanian law shifts the burden of proof. The costs in civil, administrative or criminal cases are insignificant. However, the length of proceedings remains a significant obstacle to accessing justice, as the final adjudication of a discrimination claim may take several years.

Most sanctions in discrimination cases are administrative (administrative fines for misdemeanours) or civil. The sanctions are generally effective. Victim compensation rules are considered satisfactory as no upper limits are provided and the courts in practice grant compensation.

### *Slovak Republic*

The main anti-discrimination laws include: the Constitution; the Anti-discrimination Act (2004); Act 311/2001 on Labour Law; Act 552/2003 on execution of work in public interest; Act 461/2003 on social insurance; Act 5/2004 on employment services; Act 634/1992 on consumer protection; and Act 308/1993 on establishment of the Slovak National Centre for Human Rights. Mediation is regulated by Act 420/2004. The district courts are competent in all discrimination cases. The Ombudsman is competent to monitor the respect for human rights and freedoms.

The Slovak National Centre for Human Rights or any legal person whose scope of activity includes the protection against the discrimination can represent plaintiffs – victims of discrimination. Such legal persons can also initiate claims in relation to so called petitions in the public interest or public petitions and they can participate in the proceedings as an intervener. The Anti-Discrimination Act reverses the burden of proof. On average, for criminal cases, the district courts take 6 months to decide cases while regional courts take 56 months

Victims of discrimination may seek a court order to stop a person violating the principle of equal treatment and, where possible, rectify the illegal situation or provide adequate reparation. The amount of non-pecuniary reparation is determined by the court, taking account of the extent of non-pecuniary damage and all underlying circumstances. Victims are also entitled to damages and other compensations. Compensation is at the court's discretion; however it is not regarded as satisfactory to address problems of discrimination in the Slovak Republic. In order to commence the procedure in cases connected with violation of the equal treatment principle, victims have to pay a court fee (of 66 EUR or 3 % of the amount of non-pecuniary damages claimed). However, there is no guarantee that the court will award compensation in the amount requested.

### *Slovenia*

The two Slovenian anti-discrimination laws are: the Implementation of the Principle of Equal Treatment Act; and the Equal Opportunities for Women and Men Act. Alleged victims of discrimination can initiate proceedings before civil courts (claiming material and immaterial damage arising from a violation of the principle of equal treatment), labour and social courts (discrimination on any ground in the field of employment or social services), criminal courts (crimes of violation of equality and of incitement to hatred, violence and intolerance) or the Constitutional Court. Discrimination can also be reported to inspectors competent for certain areas of social life and claims can be made before the Advocate of the Principle of Equality, the equality body competent to issue non-binding opinions.

Victims with a legal interest can apply to the courts. NGOs and associations may participate in court and administrative proceedings but cannot represent the alleged victim. Slovenian law reverses the burden of proof, except in criminal procedures. Proceedings take a long time, due to complicated legislation and court backlogs, which may dissuade victims from initiating court proceedings.

Sanctions include compensation and publication of the judgment (civil courts), imprisonment, suspended imprisonment and financial punishment (criminal courts), annulment, abolition or change of an administrative decision (Administrative Court), annulment or abolition of an act or law (Constitutional Court), and fines (inspectors). As for compensation, the victim has the right to material and immaterial damages and there are no upper limits on compensation. Given that compensation is often paid by employers, it is not considered sufficiently dissuasive.

### *Spain*

Spain's anti-discrimination law includes: Law 62/2003 on fiscal and administrative measures and social order; the Constitutional Act 3/2007 for effective equality between women and men; Act 1/2000 on Civil Law Proceedings; Act 29/1998 on contentious administrative jurisdiction; and Law 13/1982 for the social integration of disabled people. The Criminal Court hears all criminal offences related to discrimination. Various courts hear civil matters, depending on the sector. For example, employment claims go to the Social Court. Settlement procedures exist for civil and social issues and one can turn to the Work and Social Security Inspection Offices. Moreover, national and regional level Ombudsmen are competent to engage in mediation.

Alleged victims must have legal interest to bring a discrimination case. Associations have legal standing to initiate proceedings on behalf of alleged victims, although this does not occur regularly. The burden of proof is reversed in cases of discrimination, except in criminal proceedings and in administrative proceedings in cases of discrimination on the grounds of disability. The average length of proceedings is between one and three years.

In Spanish law, damages can be material or moral. Fines for serious infractions range from 10,001 to 100,000 EUR. There are no upper limits for compensation.

### *Sweden*

The most important legislation on anti-discrimination and gender equality in Sweden is the Discrimination Act. Other relevant laws include the Criminal Code and the Prohibition of Discrimination of Employees Working Part Time and Employees with Fixed-term Employment Act. Criminal cases are heard within the general court system. General courts also handle most discrimination claims under the Discrimination Act, except for employment matters where the Labour Court is competent. Many cases are settled by conciliation through the Equality Ombudsman. Dispute resolution is also undertaken by the Parliamentary Ombudsmen and the Chancellor of Justice, but they do not have any binding powers.

The burden of proof is reversed in discrimination cases. Despite this, the issue of the burden of proof is perceived to be an obstacle to success in discrimination cases. Individuals who considered themselves wronged by a discriminatory conduct have the same legal standing as in non-discrimination cases. Trade Unions, NGOs (meeting the conditions in the Discrimination Act) and the Equality Ombudsman may represent the alleged victim in court. The average time for the process is stated to be 27 months in the general courts and 13 months in the Labour Court.

Criminal sanctions are seldom used. The main remedy is compensation. There are no limits with regard to compensation, however the levels for compensation are traditionally low in Sweden and can hardly be described as dissuasive. To remedy this, a new system of 'discrimination compensation' has been introduced with the purpose of being dissuasive and effective (Prop. 2007/08:95 pp 386-393).

### *United Kingdom*

The main equality legislation in England, Wales and Scotland is the Equality Act 2006 and Equality Act 2010. In Northern Ireland, the main equality legislation is the Equal Pay Act (Northern Ireland (NI)) 1970; The Sex Discrimination (NI) Order 1976; the Sex discrimination (Indirect Discrimination & Burden of Proof) Regulations (NI) 2001 and the Employment Equality (Sex Discrimination) Regulations (NI) 2005; the Disability Discrimination Act 1995 (the DDA) as amended; The Race



Relations (NI) Order 1997; The Fair Employment and Treatment (NI) Order 1998; The Employment Equality (Age) Regulations (NI) 2006; the Equality Act (Sexual Orientation) Regulations (NI) 2006.

Claims of employment-related discrimination on all grounds (gender, disability, age, sexual orientation, racial or ethnic origin, religion or belief) are brought in the employment tribunal. Appeals are made to the Employment Appeal Tribunal, and from there to the Court of Appeal and the Supreme Court. In Northern Ireland only, complaints of discrimination in employment under the Fair Employment and Treatment Order are dealt with by the Fair Employment Tribunal. Claims of non-employment discrimination are brought in a county court (England, Wales, Northern Ireland or a sheriff court (in Scotland)).

There are no specific rules about legal standing in discrimination cases and no major obstacles to the initiation of a discrimination claim. With regard to the burden of proof, once the claimant has established sufficient facts, the burden of proof shifts onto the respondent. The key obstacles to bringing a case of discrimination to court or tribunal have been identified as being the cost of court proceedings and the lack of help for the victim in bringing the case to court. Other obstacles were the length of court proceedings and the stringent time limits. NGOs, trade unions, associations and the equality bodies can represent victims before courts and tribunals. Courts and tribunals may at their discretion permit associations with relevant expertise to make a ‘third-party intervention’ in complex discrimination claims. In addition, associations with sufficient interest in a matter may bring judicial review actions under administrative law against public authorities, even if they have not themselves been the victims of a wrongful act.

There are a variety of possible remedies following a finding of discrimination – a tribunal can make a declaration regarding the finding of discrimination; award compensation; or make an appropriate recommendation. However, an award of compensation is the most common remedy. There is no upper limit on compensation awards. The statistics indicate that the median/average amount for compensation (despite the removal of an upper limit on compensation awards) remains low for discrimination cases.

## 6. Best practices

Each of the national reports identifies relevant best practices. The types of best practices include incentives, initiatives or legal provisions that are considered to have a positive outcome on access to justice and the availability of effective remedies. Most of the best practices noted by the national experts and stakeholders relate to legal provisions which are favourable to alleged victims of discrimination and public information activities such as awareness-raising campaigns. Best practices of a more concrete nature have also emerged throughout the drafting of this comparative study. The following paragraphs highlight these practices under the relevant headings.

### *The role of equality bodies, NGOs and other associations*

Throughout the completion of the comparative study a number of good practices were identified with respect to the activities carried out by equality bodies, NGOs and other associations. These are highlighted below:

- Belgium: Equal Opportunities Flanders collaborates with municipalities, so as to enable them to provide guidance in matters of discrimination. Another important element of the Flemish framework consists of the 13 contact points dispersed all around the Flemish region that can undertake negotiation procedures.
- Denmark: The Danish Institute for Human Rights established a network of NGOs that provides additional support and advice on the legal framework. It provides, free of charge, courses on anti-discrimination law and means of redress, cooperates with NGOs in developing a comprehensive complaints guide and cooperates with municipal citizen advice centres and trade unions.
- Estonia: The Commissioner and the Chancellor of Justice have made the submission of an application as easy as possible. Both accept applications in informal format, by phone, electronic mail and, in the case of the Chancellor, even through the homepage. They both also accept applications from individuals wishing to remain anonymous.
- Hungary: The Equal Treatment Authority established a network of 20 anti-discrimination advisers offering services and receiving complaints in each county and in the capital city.
- United Kingdom: The Equality and Human Rights Commission and the Equality Commission for Northern Ireland (ECNI) use the media to highlight successful strategic cases that the Commissions funded. Promotions and campaigns are a central part of their remit. In addition, the ECNI refers to its work with and training of NGOs and stakeholder groups representing the equality grounds; and targeted work and training with employers (public and private) and service providers. Similarly, the Trade Union Congress (TUC) regularly provides a range of briefings, seminars, leaflets and publications to promote awareness of equality rights among workers, union officers and workplace union representatives, e.g. the Know Your Rights leaflets and WorkSmart website. The TUC recently trained hundreds of union equality representatives to raise awareness of rights in the workplace and is about to introduce a follow-on equality diploma course for workplace trade union representatives wishing to gain specialist knowledge.

A noteworthy best practice resulting from a legislative measure was identified in Norway whereby equality is treated as a pro-active legislative duty: an efficient tool for the Ombudsman to promote anti-discrimination legislation is the so-called ‘duty of activity’ enshrined in the anti-discrimination legislation. Both employers and public authorities have a duty to promote equality within their spheres of activity. This implies that employers or public authorities must fulfil their responsibility to promote equality, as they have a proactive duty to do so.

A similar best practice appears in the UK Equality Act 2006 which introduced a positive, proactive duty to be imposed on employers and public authorities to secure fair participation of under-represented groups in the workforce, fair access to education, training, goods, facilities and services, and a fair distribution of benefits.

### *Legal standing and participatory status*

Best practices identified in relation to the legal standing of individuals and the role of associations and organizations in bringing a case to court are as follows:

- With reference to the recognition of the legal capacity of disabled persons (a key element to their obtaining legal standing before a court) it is noteworthy that in Norway, mentally disabled persons have legal capacity in principle.
- In Romania, there is a high degree of NGO involvement: some NGOs provide assistance and support to victims of discrimination not only before national courts, but also in lodging applications to the European Court of Human Rights for alleged acts of discrimination.
- The Public Interest Law Institute (PILI) in Hungary is an international NGO promoting anti-discrimination and human rights. In order to increase access to legal resources for disadvantaged groups, PILI promotes and provides technical assistance for organised pro bono help.

### *Length of the procedure*

A notable good practice in counteracting the problem of court delays is the adoption of legislation aimed at limiting the length of proceedings or providing for compensation in case of lengthy proceedings:

- In the Czech Republic, the Law on Courts and Judges enables a party to the proceedings to propose the stipulation of a period of time within which the case must be decided. The amendment of 1 July 2009 requires the court experiencing delay to remedy the situation within 30 days or else it must submit the case to a superior court to decide on the party's proposal concerning the proceedings.
- In Finland, at the beginning of 2010, a new law entered into force on compensation paid if court proceedings are unduly delayed,<sup>73</sup> and a new chapter was included in the Act on Judicial Procedure allowing a district court to proclaim cases urgent upon request by a party to the proceedings.<sup>74</sup>
- In Germany, the Federal Ministry of Justice prepared a draft bill, to grant compensation in cases of prolonged legal proceedings.<sup>75</sup>
- In Poland, a law introducing the right of complaint against undue court delays was adopted in 2004.<sup>76</sup>

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<sup>73</sup> Laki oikeudenkäynnin viivästymisen hyvittämisestä 362/2009

<sup>74</sup> Government Bill HE 233/2008 vp.

<sup>75</sup> Draft bill of the Ministry of justice of 15 March 2010,

[http://www.bmj.de/files/3a028648c98b0a0dabcbe703990b53d4/4467/RefE\\_Rechtsschutz\\_ueberlange\\_verfahren.pdf](http://www.bmj.de/files/3a028648c98b0a0dabcbe703990b53d4/4467/RefE_Rechtsschutz_ueberlange_verfahren.pdf)

<sup>76</sup> The Act of 17 June 2004 on a Complaint for Infringement of the Right to Hearing a Case in Court Proceedings without Undue Delay, Dz. U. 2004 No. 179 item 1843.

A similar best practice was identified in Norway. The introduction of the Resolution of Disputes Act in 2008, stating that civil cases should be handled within six months, has led to increased efficiency in court proceedings.

Another best practice aimed at avoiding lengthy proceedings is the use of emergency proceedings. For instance, in Belgium, the *action en cessation* procedure allows for a final decision in just a few months.

### *Costs of the procedure*

Most of the best practices identified in relation to mitigating the effects of the costs arising from legal action relate to exemptions from certain procedural costs in given circumstances:

#### *Exemptions from procedural fees*

\*Exemptions from court fees in labour/employment courts or tribunals - Bulgaria, Italy, Latvia, Lithuania, Malta, Poland, UK

\*Exemptions from court fees in criminal proceedings - Bulgaria, the Netherlands

\*Exemptions specifically provided for in discrimination cases – discrimination claims are free of charge in Romania and Sweden. In Slovenia, claims relating to the rights of persons with disabilities in employment are free of charge. In Spain, natural persons, NGOs, public interest associations and small associations are exempted from court fees when acting for the protection of fundamental rights. In Ireland and Finland, there are no court fees for the Equality Tribunals and Discrimination Tribunals.

\*Exemptions on the basis of the claimant's income – in Hungary, the threshold under which claimants are exempted from court fees is almost 1,500 EUR gross salary per month, which is approximately double the average Hungarian salary. This means the overwhelming majority of alleged employment discrimination claimants are exempt from paying court fees.

As regards the cost of legal representation, the situation in the Czech Republic may be said to constitute a good practice: the costs of legal representation are not considered a significant obstacle to accessing justice because if the case of discrimination is properly reported or documented, the NGOs specialising in discrimination can take a case to court with the help of a specialised lawyer for free or at a reduced cost.

Another best practice relates to those cases where the costs incurred by a victim in pursuing a claim may be completely reimbursed. For example in Cyprus, as a rule, the losing party to a procedure will be ordered by the court to pay all the costs. These usually comprise the costs of the procedure, attorney's fees, the costs of the witnesses and any other charges and expenses.

As an alternative to recourse to court action, reference must be made to the fact that procedures before the equality bodies in some countries are free of charge, for example:

- In France, procedures before the High Authority against Discrimination and for Equality (HALDE) are free of charge.
- The complaint procedure before the Equal Treatment Authority in Hungary is free of charge and very rapid (45 to 75 days), taking into account the particular needs of clients. For example, travelling to the nearest city or the capital city would be challenging for those who are vulnerable or economically disadvantaged. Therefore, in such cases, hearings are held at the complainant's residence.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

Although difficulties were noted in ensuring that the sanctions adopted by Member States are effective, proportionate and dissuasive, examples of practices that contribute towards the fulfilment of these criteria have been found:

- The Belgian system provides for a lump sum payment by the perpetrator of discrimination which is quasi-automatic in nature. Stakeholders report that this has a deterrent effect because employers are more likely to explore in detail the legality of their decision before dismissing an employee.
- In Ireland, the availability of unlimited sanctions in the context of gender employment claims is considered to be a good practice in ensuring that sanctions are effective and dissuasive. Likewise, the availability of non-pecuniary measures, including the power to order a person to take a specified course of action constitutes a best practice as this could constitute a real remedy for the claimant.

A good example of a system of sanctions that helps ensure that the sanction awarded is effective and proportionate to the wrong that must be redressed, is that of Romania which allows adjustments.

#### *Sanctions system in Romania*

The sanctions provided can be considered as satisfactory, taking into account the types (criminal, administrative, civil, and disciplinary) as well as the level and the fact that there are no upper limits for compensation. In addition, in the case of multiple discrimination, the legislation explicitly provides that aggravated liability must be determined.

The level of sanctions should take into consideration extra-legal factors, such as economic factors, level of earnings and salaries in Romania. For example, in Romania, the minimum wage is below 200 EUR a month and in April 2010, the average gross monthly salary was about 470 EUR. Therefore, compared to the level of salaries, the level of the fines can be considered to be satisfactory. Moreover, administrative sanctions have to be compared with criminal sanctions (the criminal fines), due to the fact that, as a general principle, the level of administrative fines must be lower than the level of criminal fines. The principle has been observed in the case of administrative fines for acts of discrimination.

In terms of specific measures, one that is considered to be highly effective is the publicity of judgments, particularly in relation to ensuring that judgments are enforced. This is used in e.g. Belgium and Portugal.

#### *Other best practices*

Other noteworthy examples of practices that enhance access to justice and awareness and promotion of the protection against discrimination:

- Irish law applies the same principles and procedural rules to all grounds of discrimination. This facilitates the bringing of claims based on multiple discrimination – all cases are heard by the same court.
- In an attempt to ensure that all aspects of the public service and public sector are mainstreaming equality in the provision of goods and services, the Government of Malta issued a Circular requiring every department to identify legal, procedural and administrative policies and practices which may be discriminatory and also to propose solutions and amendments.

## **7. Conclusions, suggestions and recommendations for possible action at EU and national level**

### **7.1. Recommendations at national level**

In the conclusions to the national reports, the experts were asked to make recommendations for possible action at national level. Whilst some of these recommendations are specific to each individual national context several recommendations recur throughout the reports. The recommendations have therefore been compared and grouped together under the headings provided below:

#### *(i) Address the multiplicity of rules*

There is an unfortunate lack of consistency within Member States in the treatment of the various equality grounds covered by EU legislation. As the national reports show, in many Member States, anti-discrimination law is not unified and lacks a single model of judicial action applicable to all grounds and types of discrimination.

Many experts referred to the need for a consistent and uniform approach towards gender equality and anti-discrimination in both the substantive and procedural legal frameworks. The multiplicity of rules noted is seen to create confusion amongst potential claimants and amongst those representing them in choosing the appropriate legal basis for a claim.

The reports from Estonia, Latvia, Iceland, Portugal, Malta and Norway call for comprehensive anti-discrimination legislation that would complement or replace the scattered anti-discrimination clauses in various laws and abolish the hierarchy between the grounds of discrimination. The extension of the material scope of the anti-discrimination legislation is seen as a first step towards ensuring an equivalent level of protection across the board for all grounds of discrimination in all areas.

The adoption of comprehensive legislation would also help towards addressing commonly referred to gaps in the national legal frameworks. National provisions typically do not cover specific grounds such as gender identity at all. The Polish report recommends addressing these gaps through legal enactments. The Danish expert recommends legislative amendments to ensure that age, disability and sexual orientation discrimination are covered in all areas outside employment.

Many reports refer to the importance of providing effective protection against multiple discrimination. To this end, many experts suggested the adoption of a clause on multiple discrimination in new or existing legislation. Legal research should be initiated on how to address and process such cases. The Spanish report states that the problem of multiple discrimination must be taken into consideration to develop the proper judicial and administrative response and the Portuguese report highlighted that this should be viewed in particular through the lens of gender.

#### *(ii) Simplify the procedures*

The spectrum of fora available to claimants and their representatives is also viewed as a source of difficulty in choosing the appropriate channel through which to seek a remedy. This can also result in contradictory decisions by different adjudicating authorities. Therefore many reports (e.g. Austria, Bulgaria, Italy) recommended that anti-discrimination proceedings be unified and simplified and that the highly complex set of bodies and contact points be harmonised. A single model of judicial action common to all types of discrimination would allow for a better and faster protection and would make it possible to bring cases of multiple discrimination to one court. In the field of employment, the UK report recommends that all discrimination cases should commence in the more accessible and less costly employment tribunals, as opposed to the county courts or sheriff courts, with a power to transfer cases to the general courts where necessary.

The simplification of procedures for discrimination cases is seen as an important step in encouraging victims of discrimination to bring their cases forward. According to the Slovenian report, for example, the scarcity of case-law regarding discrimination is related to the features of the system that discourage victims from instituting proceedings: long-lasting trials due to complicated legislation and court backlogs; unpredictable costs of court procedures. Informal procedures offering the advantages of speed and lower costs and involving specialised adjudicators should be put in place.

*(iii) Provide financial and legal support to alleged victims*

Financial and legal support to alleged victims of discrimination would also go a long way towards encouraging them to seek justice. Such support could take the form of a limitation or waiver of procedural costs with respect to discrimination disputes along with a more extensive scope of legal aid to cover all necessary costs incurred by the alleged victim. Several reports refer to the necessity of better information on legal aid and specialized legal defence. The Estonian report singles out the State legal aid system as the element in the general access to justice framework that is most in need of review. The Bulgarian report recommends establishing a framework of anti-discrimination lawyers and the Czech report suggests the adoption of minor legislative changes aimed at establishing an effective framework for both free legal aid and mediation in discrimination cases, and for the ability to sue in the public interest (*actio popularis* in discrimination cases).

*(iv) Ensure effective, proportionate and dissuasive sanctions*

In most of the countries, the sanctions are not considered to have a sufficient deterrent effect. For example, in Greece, the low penalties imposed in criminal proceedings in relation to racist behaviour are not considered to have an exemplary function and according to the Austrian report, the system of compensations and fines in place is in practice far from being adequately effective or dissuasive. The Italian report recommends a regulatory change to make provision for a minimum lump sum for non-pecuniary damage in cases of discrimination: such a lump sum might have the advantage of being both satisfactory and dissuasive. Some reports also recommend a wider use of alternatives to compensation awards, such as: a court order for the discrimination to cease; revocation or annulment of the discriminatory act; reinstatement of an employee. Wider use of compensation remedies would include a greater use of the power of courts and tribunals to award punitive or aggravated damages which compensate the victim of a wrong for mental distress.

The adoption of effective remedies is also seen as crucial to encouraging victims to seek justice. According to the Maltese report, the effect of the cost and length of proceedings coupled with the low amount of compensation generally awarded could dissuade victims from bringing their cases forward.

*(v) Extend the powers and resources of NGOs, equality bodies and other mechanisms*

Most of the national reports recommend a more active role for NGOs in the prevention of discrimination and in bringing discrimination cases to justice. In some countries, e.g. in Greece, the written consent of victims is necessary in order for an NGO to represent them in court. Access to justice could be facilitated through granting organisations dedicated to combating discrimination a full right to bring cases in their own name and the necessary financial support and resources to do so.

Several experts noted problems in relation to the limited remit of the equality bodies, Ombudsman or other entities. The equality bodies are often not competent to cover all grounds and all areas of discrimination e.g. in Malta, the equality body only covers the grounds of gender and race. As a result, it only provides assistance and advice to victims of discrimination on the said grounds.

The powers and functions of the equality bodies are also limited. For example, in Slovenia, the Advocate of the Principle of Equality lacks investigative powers and powers to impose sanctions.

Moreover, human and financial resources are often scarce thus inhibiting the role of equality bodies further. E.g. the Irish report argues that greater funding is necessary for the Equality Tribunal to ensure that cases are dealt with more quickly and for the Equality Authority to ensure that it can perform its role of facilitating access to justice. The same recommendation was made for Estonia, Latvia and Italy.

The Greek and Polish reports recommend the establishment of independent bodies with broad competences in anti-discrimination with the ability to provide victims of discrimination with complex aid, including bringing cases to the court, giving opinions and recommendations.

Many experts noted a gap between the national legal framework and practical implementation. Sometimes, although the national legal framework is in full concordance with the EU requirements, the implementation of these requirements is insufficient. For example, according to the Greek report, although the national law requires social dialogue in relation to discrimination, this has never been carried out in Greece. Some experts recommend a reinforced role of equality bodies as one way of ensuring the effective implementation of legislation. The Portuguese report suggests that this could start by not only giving them the necessary procedural competences to play a more active role in the judicial procedures, e.g. *ius standi* to initiate a judicial process or an enforcement action, but also by improving the coordination between these bodies, particularly in terms of information.

*(vi) Train and inform*

One of the most frequent recommendations relates to training and education. This includes, training members of the legal profession on gender equality and anti-discrimination legislation. The Greek expert reported that judges are almost unaware of the specific legislation and prefer to apply the general provisions of the Constitution. The Latvian, Polish and Spanish experts also referred to the need for in-depth and targeted training of lawyers and judges. This could include, as recommended by the Irish report, official guidance documents on how to apply the shifted burden of proof. Besides training for lawyers and judges, the Italian expert proposed the organisation of dissemination campaigns and the Hungarian expert proposed awareness raising activities addressed both to the general public and to the competent professionals.

The Slovakian report points out that there is a notable lack of awareness of what discrimination is, which in turn has led to a lack of case-law in the field of discrimination. It therefore seems necessary to educate the public in this regard. There is additionally a lack of legal awareness; the victims often do not know who the competent authority is to combat the discrimination.

*(vii) Develop systems for the collection of statistical data*

Large discrepancies are noted with respect to the quantity and quality of statistical data collected in the Member States and EFTA/EEA countries. This has led a number of experts, e.g. Spain, to recommend the creation of instruments for gathering data on access to justice in discrimination cases, including information about the decisions, the types and amounts of compensation. The Romanian report recommends a better access to case-law including a publicly available database through which it is possible to search for cases dealing with discrimination issues. The Swedish report also recommends an improved collection and structuring of statistical data in order to enhance the scope to evaluate the systems in place.



## 7.2. Recommendations at EU level

### (i) *Harmonise the models of judicial action for discrimination claims*

At the national level, there often exists a hierarchy between the grounds of discrimination, and inconsistency between diffuse anti-discrimination provisions, spread across a number of legal provisions. This lack of consistency in the treatment of different grounds of anti-discrimination inevitably leads to variation in access to justice – for example, in terms of disparities with regard to the ease with which a claim can be brought, differences in costs of initiating and pursuing a claim, legal standing, burden of proof and remedies.

A partial solution may be achieved through the Commission's proposed Directive, on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426) based on Article 19(1) of the Treaty on the Functioning of the European Union, given that this Treaty provision obliges Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. It is important to clarify that, whilst there may be differences in the substantive legal provisions relating to different grounds of discrimination, Member States are nevertheless obliged to ensure equivalent procedural rules and standards consistently applied across all grounds.

### (ii) *Broaden the remit of equality bodies*

A fundamental principle is that access to justice should not be impaired by high legal costs. However, it is likely that budgets for State-funded legal assistance ('legal aid') will be vulnerable to being frozen or reduced in the context of the current economic climate. There are however, alternative routes to ensuring that individuals and groups who consider themselves to have been wronged, contrary to anti-discrimination law, are able to seek redress – principally, by means of an increased role for equality bodies. The national reports point to a wide variation in the ability of equality bodies to bring claims in their own name, or in support of individual victims of discrimination – in terms of both their legal standing to initiate legal action, and the funding of such bodies.

The national reports highlight two central areas of concern, which need to be addressed with a view to updating and recasting existing EU legislation:

#### (a) *Limited effectiveness of equality bodies*

First, it is clear from the national reports, and also from the European Commission's own analyses on the implementation of Directive 2000/43/EC (for example: *The Racial Equality Directive: Taking Stock*, 30 October 2006), that where equality bodies have been created (or where bodies have been designated as fulfilling the requirements of the Directives) they are often weak and inadequate to realise the full range of objectives outlined in the Directives. As evidenced by a report of the European Network of Legal Experts in the Non-discrimination Field, the mandate and scope (grounds of discrimination) of equality bodies varies greatly between Member States.<sup>77</sup>

#### (b) *Absence of equality bodies to combat discrimination on grounds of religion or belief, disability, age and sexual orientation*

The lack of consistency in the treatment of different anti-discrimination grounds referred to above inevitably leads to inconsistency in access to justice. This problem is greatly exacerbated by the failure to impose on Member States an obligation to establish or designate bodies for the promotion of equal treatment in the areas covered by Directive 2000/78/EC (religion or belief, disability, age and sexual orientation). This situation may, accordingly, be addressed by the Commission's proposed Directive, on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426).

<sup>77</sup> Rikki Holtmaat, *Catalysts for Change? Equality bodies according to Directive 2000/43/EC: Existence, independence and effectiveness*, Luxembourg: Office for Official Publications of the European Communities, 2007

The absence of a single model of judicial action common to all types of discrimination is an obstacle to access to justice, and can in part be remedied by recasting EU legislation on discrimination with which Member States are obliged to comply to require the creation or designation of equality bodies whose remit encompasses all grounds of discrimination prohibited under EU law. It should, nevertheless, be left to the discretion of Member States whether to designate multiple national institutions fulfilling the various roles of the equality body or a single equality body.

*(iii) Prioritise training, education and appointment of legal professionals*

Given the lack of awareness of anti-discrimination law within the legal systems of some countries, the Commission services should prioritise training of members of the legal profession, the judiciary and law enforcement officials in anti-discrimination law – in relation to both the legislative framework and the interpretation of the Directives in the case-law of the Court of Justice and by national courts. It is apparent from the national reports that, in some countries, judges are unaware of both substantive anti-discrimination law, and of procedural rules relating, for example, to the burden of proof.

The Commission services can perform an important role in coordinating information on, and disseminating examples of, best practices. In this, the Commission should draw together examples of best practice from those countries in which judicial office holders responsible for interpretation and application of anti-discrimination law are well informed not only of the substantive and procedural rules of anti-discrimination law emanating from the EU, but also of their role as judges and lawyers in having due regard to equality principles in their professional work and in their role as adjudicators. According to stakeholders consulted at EU level, this is already happening informally as an increased tendency is noted whereby judges in the different national jurisdictions make reference to judgments of national courts of other countries.<sup>78</sup> We consider this last point to be of particular importance: judicial office holders are not only responsible for applying the anti-discrimination law so as to ensure access to justice, but are also subject to anti-discrimination law, and are under a duty when engaged in civil (or criminal) procedure to have due regard to the principles of equality as well as of fairness.

Such dissemination and judicial training is to a great extent already coordinated by the Commission services: the Commission finances judicial training for judges, legal practitioners and academics under the Progress programme,<sup>79</sup> drawing on the experience and expertise of EU level bodies, in particular, the European Network of Legal Experts in the Non-discrimination Field and the European Judicial Network, as well as the European Judicial Training Network (the principal platform and promoter for the development, training and exchange of the EU judiciary).

*(iv) Design systems to collect statistical data*

Whilst requiring Member States to establish equality bodies for the promotion of equal treatment, to monitor workplace practices and discrimination more widely, Directive 2000/43/EC does not make it an express requirement that States should collect data on the racial and ethnic composition of their populations. Directive 2006/54/EC similarly requires Member States to engage in analysis and monitoring of equal treatment on grounds of sex, through the work of the equality bodies and also through the social dialogue process. Directive 2000/78/EC refers merely to the social dialogue process. None of the anti-discrimination Directives imposes an obligation on Member States to collect data on access to justice – for instance, anti-discrimination claims submitted disaggregated by ground of claim, identity of the claimant (by gender, ethnic origin, disability status, age, religion, sexual orientation) outcome, and remedy obtained.

<sup>78</sup> Mentioned by the Migration Policy Group, interviewed on 7 October 2010

<sup>79</sup> Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union, OJ C 299, 22.11.2008, p. 1–4.

There is an opportunity here, and arguably also a need, for the Commission services to re-visit the issue of duties imposed on Member States to engage in the collection of statistical data. Carefully designed systems of data collection indicate official recognition that discrimination does not consist solely of individual isolated acts of prejudice, but may have a structural and institutional character, that the situation of groups needs to be compared. By giving Member States a choice as to whether they institute a regime of data collection or allow statistics to be called in aid in proving discrimination, the EU legislative framework restricts the options available to complainants or victims of discrimination when pursuing discrimination claims in courts and tribunals, and also limits the ability of equality bodies to identify and seek to remedy structural or group discrimination or patterns of discrimination and disadvantage. The absence of statistical data also makes claims of multiple discrimination particularly difficult to pursue or to prove. With regard to the burden of proof, the impact of indirect discrimination will not necessarily be visible or easy for complainants to establish unless data exists which allows the differential impact of seemingly neutral provisions, criteria or practices to be established.



## **ANNEX I**



## Annex IA- Specific structures to seek justice in discrimination cases

*Table IA.1 – Specific structures in the EU Member States*

	Mechanism	Functions and limitations
Austria	Federal Ombudsman on Equal Treatment and Federal Equal Treatment Commission	<ul style="list-style-type: none"> <li>• Conciliation, mediation and settlement</li> <li>• Can bring an action for a declaratory judgment to court, but are not entitled to act or to represent a plaintiff</li> <li>• Role limited to assisting in procedures before going to court</li> </ul>
Belgium	Centre for Equal Opportunities and Fight against Racism and Institute for Equality of Women and Men	<ul style="list-style-type: none"> <li>• Can receive complaints by victims of discrimination</li> <li>• Endeavour to put an end to the discrimination through negotiation between the victim and perpetrator and if this fails, can bring the case before a court</li> </ul>
	Equal Opportunities Flanders	<ul style="list-style-type: none"> <li>• Special unit within the Flemish Ministry of Education, Youth and Equality of Chances</li> <li>• Financing of contact points whose mission is to find negotiated solutions in cases of discrimination</li> <li>• If mediation fails (at contact point level), the complaint is forwarded to one of the equality bodies that will eventually bring it to justice</li> <li>• No such mechanism has been set up at the level of the Walloon Region, the French Community, or the Region of Brussels Capital</li> </ul>
Bulgaria	National Ombudsman	<ul style="list-style-type: none"> <li>• Examines complaints on violation of rights and freedoms by actions or omissions of the State, municipal authorities and public officers</li> <li>• Can make proposals and recommendations for reinstatement of the violated rights before the respective authorities</li> <li>• Mediates between the administrative authorities and the persons concerned and makes proposals and recommendations</li> <li>• Can notify the Prosecution Office when data exists that a crime, prosecuted on indictment, has been committed</li> </ul>
	Local ombudsmen	<ul style="list-style-type: none"> <li>• In cases of unequal treatment or discrimination on the part of local administration, the affected persons may refer to the local mediator</li> </ul>
	Commission on Protection against Discrimination	<ul style="list-style-type: none"> <li>• Examines discrimination related complaints</li> <li>• Issues administrative sanctions to entities and persons which do not provide the information needed in a discrimination case</li> <li>• Monitors the application of anti-discrimination law</li> <li>• Drafts reports and gives advice and recommendations</li> <li>• Offers training on anti-discrimination issues</li> <li>• Decisions can be appealed before the Supreme Administrative Court</li> </ul>
Cyprus	Commissioner for Administration (Ombudsman)	<ul style="list-style-type: none"> <li>• Receives and investigates complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law</li> <li>• Can advise the victim to take the matter to court if the perpetrator does not comply with the recommendations</li> </ul>
Czech Republic	Independent mediators	<ul style="list-style-type: none"> <li>• Available in discrimination cases if agreed to by both parties</li> </ul>
	Labour Inspectorates	<ul style="list-style-type: none"> <li>• Investigation of misdemeanours and administrative offences</li> <li>• Punish discrimination in the area of employment and labour relations</li> </ul>

	Czech Trade Inspectorate	<ul style="list-style-type: none"> <li>Has authority in matters of access to goods and services to investigate and punish discrimination</li> </ul>
	The Public Defender of Rights (Ombudsman)	<ul style="list-style-type: none"> <li>Provides advice, assistance and support to victims of discrimination</li> <li>Does not have the power to provide conciliatory services such as mediation</li> </ul>
Denmark	Mediation in courts	<ul style="list-style-type: none"> <li>The mediator helps the parties in a civil case brought before the courts with identifying the core conflict, and agreeing on a lasting solution to the dispute</li> <li>The mediator cannot make any decision on the matter, and the mediation can be discontinued at any time without a solution if preferred by one of the parties. If that happens, the civil case will run its normal course before the courts</li> <li>Dependent on the parties' voluntary participation</li> </ul>
	Board of Equal Treatment	<ul style="list-style-type: none"> <li>Reviews individual complaints on discrimination</li> <li>If a decision by the Board is not followed by a party, the Board has an obligation to bring the case before the courts at the other party's request</li> <li>Can award compensation to victims</li> <li>In the area of employment it deals with complaints related to discrimination based on all grounds</li> <li>Outside employment, it deals with complaints related to discrimination based on race, ethnic origin and gender</li> </ul>
	Danish Institute for Human Rights	<ul style="list-style-type: none"> <li>Can initiate investigations related to discrimination on the grounds of race or ethnicity</li> <li>Can intervene in cases before the courts</li> </ul>
	Parliamentary Ombudsman	<ul style="list-style-type: none"> <li>Handles complaints on decisions made by the administrative authorities</li> <li>Can investigate cases on own initiative</li> </ul>
Estonia	Labour dispute committees	<ul style="list-style-type: none"> <li>Disputes in private employment relations</li> </ul>
	Chancellor of Justice	<ul style="list-style-type: none"> <li>Accepts applications from individuals claiming the infringement of any fundamental right or freedom, including the right to non-discrimination as provided for in the Constitution, concerning any public authority in regard to its activities</li> <li>Mediates disputes between private persons regarding discrimination on several grounds</li> <li>Agreements reached during mediation proceedings are legally binding on parties and their fulfilment can be required through the same executing mechanisms as those for court decisions</li> </ul>
	Gender Equality and Equal Treatment Commissioner	<ul style="list-style-type: none"> <li>Supervises the implementation of anti-discrimination legislation</li> <li>Competence limited to the field of employment, social rights and access to services only as regards the grounds of gender, racial or ethnic origin and colour; other grounds can be looked at only in regard to employment sector</li> <li>Not involved in dispute resolution but accepts applications from individuals within the scope of discrimination and provides opinions and recommendations on particular issues</li> </ul>
Finland	Ombudsman for Equality	<ul style="list-style-type: none"> <li>Provides advice and counselling in cases concerning the Equality Act</li> <li>Can assist a victim in cases concerning compensation or damages before the general courts</li> <li>Can place a matter related to gender equality before the Equality Board</li> </ul>
	Equality Board	<ul style="list-style-type: none"> <li>Can prohibit the continuation or repetition of the discriminatory practice and impose a fine</li> <li>Provides statements on interpretation and application of non-discrimination legislation if requested by the courts in a particular case</li> </ul>



	Ombudsman for Minorities	<ul style="list-style-type: none"> <li>• Offers guidance, advice and recommendations</li> <li>• Takes measures for reconciliation between the parties</li> <li>• Requests clarification from the party suspected of discrimination and imposes a penalty if this is not provided</li> <li>• Take the case to the Discrimination Tribunal</li> <li>• In exceptional cases, assist the victim before the courts</li> </ul>
	Discrimination Tribunal	<ul style="list-style-type: none"> <li>• Can confirm a conciliation settlement between the parties or prohibit the continuation or repetition of the conduct</li> <li>• May impose a conditional fine and order payment</li> <li>• Provides statements on interpretation and application of non-discrimination legislation if requested to do so</li> </ul>
France	Equal Opportunities and Anti-Discrimination Commission (HALDE)	<ul style="list-style-type: none"> <li>• Offers guidance and advice, recommendations</li> <li>• Takes measures for reconciliation between the parties</li> <li>• A mediation session can be arranged in order to reach an agreement, or when discrimination has been ascertained, the national prosecutor may be called upon for a decision</li> <li>• May secure compensation, suggest payment of damages to the party discriminated against and trigger proceedings if damages are refused (settlement with compensation)</li> <li>• Speak before the judge if the victim decides to go to court</li> <li>• Publicly disclose a discriminatory practice</li> </ul>
Germany	Certified conciliation authority	<ul style="list-style-type: none"> <li>• Section 15a EGZPO entitles states to adopt state legislation obliging parties seeking redress due to discrimination in the context of civil law relationships (as provided for by part three of the AGG) to attempt to reach a settlement in front of a certified conciliation authority, and before taking proceedings to the civil court of first instance</li> <li>• If a settlement is reached before the conciliation authority, this agreement authorises the parties to enforce their claims in accordance with the national foreclosure proceedings (§ 794(1) No.1 ZPO)</li> </ul>
	Federal Agency	<ul style="list-style-type: none"> <li>• Informs people that turn to the Agency for help about the legal situation (no legal advice)</li> <li>• It is also mandated to work towards an out-of-court settlement</li> <li>• It may request the parties involved to make submissions, insofar as the victim agrees to this</li> </ul>
	Anti-discrimination agencies of states and cities (established in Brandenburg, Berlin and Hamburg, and the cities Frankfurt (Main), Munich and Cologne)	<ul style="list-style-type: none"> <li>• Varying areas of responsibilities</li> <li>• Informs about the legal situation (no legal advice) and supports discrimination victims</li> <li>• Documentation of discrimination cases</li> </ul>
	Federal Government Commissioner for Matters relating to Disabled People	<ul style="list-style-type: none"> <li>• Established on the basis of the law on promoting the equality of the disabled</li> <li>• Informs about the legal situation, gives practical advice, indicates possibilities for integration of disabled people in society and employment</li> <li>• Is not authorised to give legal advice, to intervene in pending procedures or to issue directives to authorities</li> </ul>
	Commissioners of the states and municipalities for matters of disabled people	<ul style="list-style-type: none"> <li>• Established in the laws on promoting the equality of the disabled of the states</li> <li>• Varying areas of responsibilities</li> <li>• Support victims in case of discriminations by public bodies of the Länder and the municipalities</li> <li>• Inform about the legal situation (no legal advice)</li> <li>• Collection points for complaints from disabled people</li> <li>• If an authority infringes the rights of disabled people, the commissioners are authorised to submit complaints about this to the responsible authority</li> </ul>

		<ul style="list-style-type: none"> <li>• Not authorised to issue directives</li> </ul>
	Federal Government Commissioner for Migration, Refugees and Integration and commissioners for integration of the states and the municipalities	<ul style="list-style-type: none"> <li>• Varying areas of responsibilities</li> <li>• Mainly deal with resident rights</li> <li>• Inform about the legal situation (no legal advice) and practically support people discriminated against on the grounds of race, ethnic origin or faith</li> <li>• Collection points for complaints from people with a migration background</li> </ul>
Greece	Labour Inspectorate	<ul style="list-style-type: none"> <li>• Examines complaints based on gender in employment in private sector</li> <li>• Forwards its findings to the Ombudsman, while the latter in any case is entitled to investigate the matter personally and draw up the final findings report on the complaint</li> <li>• If a violation of the principle of equal treatment is found, the Ombudsman proceeds to mediation</li> </ul>
	Ombudsman, Consumer Ombudsman, Equal Treatment Committee	<ul style="list-style-type: none"> <li>• Examination of complaints related to violation of the principle of equal treatment on various grounds in the field of employment in the public sector</li> <li>• Its competence covers also complaints related to the service status of civil servants when these concern cases of discriminatory treatment</li> <li>• Examines complaints for violation of gender equality, e.g. in relation to access to employment, to vocational training and promotion, and terms and conditions of work in the public and private sector</li> </ul>
Hungary	Ombudsman for Civil Rights and Minority Rights Ombudsman	<ul style="list-style-type: none"> <li>• Receive and investigate complaints</li> <li>• Request information and reports from authorities for the purpose of an investigation</li> <li>• Request written explanation or position from authorities</li> <li>• Can turn to the Constitutional Court or seek action by the prosecutor</li> <li>• May initiate legislative changes</li> <li>• Can initiate disciplinary procedures against public officers</li> <li>• If there is a suspicion of criminal conduct, should start criminal proceedings</li> </ul>
	Equal Treatment Authority	<ul style="list-style-type: none"> <li>• Investigate discrimination cases upon individual request or <i>ex officio</i></li> <li>• Monitor and evaluate the Equal Opportunity Plans of employers upon request</li> <li>• File lawsuits representing victims of discrimination</li> <li>• Issue opinions about relevant legislative documents and governmental policy plans</li> <li>• Provide information and counselling to victims of discrimination</li> <li>• Reporting to the government</li> <li>• Offer mediation services within the public administration procedure system</li> <li>• Order the termination of the discriminatory conduct</li> <li>• Order to avoid the continuation of the unlawful conduct</li> <li>• Publish its decision regarding the establishment of violation of the principle of equal treatment</li> <li>• Can issue a fine</li> </ul>
	National Office for Education	<ul style="list-style-type: none"> <li>• Warns the concerned educational institution</li> <li>• Initiates procedures before different authorities</li> <li>• Can issue a fine</li> <li>• Initiates petty offence procedures and judicial procedures</li> </ul>

	Health Insurance Inspectorate	<ul style="list-style-type: none"> <li>• Order the termination of the discriminatory conduct</li> <li>• Order the avoidance of the continuation of the unlawful conduct</li> <li>• Fine the violators of the principle of equal treatment</li> </ul>
	Regional National Public Health and Medical Officer Service	<ul style="list-style-type: none"> <li>• Can issue a fine against violators of the principle of equal treatment</li> </ul>
	National Consumer Protection Authority	<ul style="list-style-type: none"> <li>• Order the termination of the discriminatory conduct</li> <li>• Order the avoidance of the continuation of the unlawful conduct</li> <li>• Ban the sales of goods or services</li> <li>• Issue a fine against the violator</li> </ul>
	Independent Law Enforcement Complaint Board	<ul style="list-style-type: none"> <li>• Offers free of charge procedures for victims of discrimination if the police or other law enforcement authority was involved in the violation of the principle of equal treatment</li> <li>• Issues recommendations</li> </ul>
	National Labour Inspectorate	<ul style="list-style-type: none"> <li>• Warn the employer to stop the unlawful conduct</li> <li>• Order the employer to avoid the continuation of the unlawful conduct</li> <li>• Can implement an offence procedure or recommend or issue sanctions</li> </ul>
Ireland	Equality Mediation Officers	<ul style="list-style-type: none"> <li>• Mediate cases referred by the Equality Tribunal and the Labour Court (they have a discretion to refer and only need refer those cases that they think could be resolved by mediation)</li> <li>• If parties object to mediation, the dispute will be determined in the normal way</li> <li>• At the end of the mediation, the Equality Mediation Officer either prepares terms of settlement or states that the case cannot be resolved by mediation</li> <li>• Either party can set aside the mediation decision within 28 days; if neither party does so, it becomes binding</li> </ul>
Italy	Equality Advisors (provincial and regional)	<ul style="list-style-type: none"> <li>• Receive complaints by victims of discrimination</li> <li>• Strive to end the discrimination through recourse to conciliation between the victim and the perpetrator</li> <li>• If conciliation fails, they can bring the case before a court</li> <li>• If conciliation leads to an agreement, the agreement can be enforced</li> </ul>
	Equality Advisors (regional and national)	<ul style="list-style-type: none"> <li>• If they discover any collective discrimination, they can ask the perpetrator to adopt a plan to remove the discriminatory conduct within a certain time limit</li> <li>• If they consider the plan able to remove the discrimination, they can strive to end the discrimination through recourse to conciliation</li> <li>• If conciliation fails, they can bring the case before a court</li> <li>• If conciliation leads to an agreement, the agreement can be enforced</li> </ul>
	Trade unions and associations provided by the law	<ul style="list-style-type: none"> <li>• Can represent the victim in the conciliation</li> <li>• If conciliation fails, they can bring the case before a court</li> <li>• If conciliation leads to an agreement, the agreement can be enforced</li> </ul>
Latvia	State Labour Inspectorate	<ul style="list-style-type: none"> <li>• Monitors compliance with employment legislation</li> <li>• Receives and investigates complaints concerning employment relations</li> <li>• Can issue warning and impose fines in discrimination cases and can issue instructions to the employer</li> </ul>
	Ombudsman	<ul style="list-style-type: none"> <li>• Broad human rights and good governance mandate</li> <li>• Receives complaints, petitions and proposals</li> <li>• Can engage in mediation</li> </ul>

		<ul style="list-style-type: none"> <li>• Can bring a case to court and represent an individual in civil cases concerning discrimination and in public interest cases in the administrative court</li> <li>• Cannot issue sanctions</li> </ul>
Lithuania	Equal Opportunities Ombudsman	<ul style="list-style-type: none"> <li>• Can apply informal mediation procedures</li> <li>• Can impose administrative fines</li> </ul>
Luxembourg	The mediator of the Grand Duchy of Luxembourg (Ombudsman)	<ul style="list-style-type: none"> <li>• Cannot intervene in ongoing judicial procedures or undermine a judicial decision which has been taken</li> <li>• In case of the non-respect of a judicial decision, it can require the body to which the decision applies to comply with this decision within a fixed deadline</li> </ul>
	The National Office for Conciliation (NOC)	<ul style="list-style-type: none"> <li>• The NOC is a Committee formed of representatives of employers' and trade-union organizations as well as representatives of employers and employees of the undertakings involved</li> <li>• It assesses industrial disputes in the private sector and votes on a decision</li> <li>• If the conciliation process is unsuccessful, the parties can refer the dispute to an arbitration panel (the decision of the panel is not binding, but if the parties agree to the decision, this is regarded as a binding collective agreement)</li> </ul>
Malta	Commissioner for Administrative Investigations (the Ombudsman)	<ul style="list-style-type: none"> <li>• Investigates actions taken by or on behalf of the public administration</li> <li>• Conducts investigations on own initiative or on the written complaint of any interested person</li> <li>• Cannot investigate complaints on the subject-matter of which proceedings are pending in a court or other tribunal</li> <li>• Issues recommendations</li> <li>• If within a reasonable time, no remedial action is taken, the Ombudsman may send a copy of the relevant report to the Prime Minister and thereafter to the House of Representatives</li> </ul>
	National Commission for the Promotion of Equality	<ul style="list-style-type: none"> <li>• Receives complaints from alleged victims of gender, race or ethnic origin discrimination</li> <li>• Carries out general and independent investigations to determine compliance with the anti-discrimination provisions</li> <li>• Independently investigates complaints of a particular or individual character</li> <li>• Mediates with the aim of finding a solution acceptable to both parties</li> <li>• Provides independent assistance to persons suffering from discrimination in enforcing their rights</li> <li>• Reports offences to the Commissioner of Police for action</li> <li>• Can refer a matter to the competent civil court or Industrial Tribunal</li> </ul>
	National Commission Persons with Disability	<ul style="list-style-type: none"> <li>• Receives and investigates complaints lodged by aggrieved person, or parent, legal curator or family member of a person with a mental disability</li> <li>• Provides complainant with assistance to formulate the complaint orally and/or in writing if necessary</li> </ul>
Netherlands	Equal Treatment Commission	<ul style="list-style-type: none"> <li>• Conciliation, mediation and opinion after filing complaint</li> <li>• The CGB's opinion is important, but not legally enforceable (often followed in practice)</li> <li>• After opinion was sought, party can still take case to court; in court, a judge would need a reasoned decision to justify deviation from the Commission's opinion</li> </ul>
	National Ombudsman	<ul style="list-style-type: none"> <li>• Complaints regarding discrimination by government bodies</li> <li>• The findings of the Ombudsman are not binding</li> </ul>
Poland	Human Rights Defender (Ombudsperson)	<ul style="list-style-type: none"> <li>• General competence to bring enforcement actions in the public interest</li> <li>• Assists in protection of freedoms or rights infringed by organs of a public authority</li> <li>• Can provide legal advice pointing to possible legal means of a remedy but cannot act on behalf of the plaintiff</li> </ul>

		<ul style="list-style-type: none"> <li>• Competent to demand that proceedings be instituted in civil cases and to participate in ongoing proceedings, to demand that administrative proceedings be instituted, to lodge complaints to administrative courts to participate in such proceedings, and to apply for a penalty etc.</li> </ul>
Portugal	Commission for Equality in Labour and Employment	<ul style="list-style-type: none"> <li>• Receives complaints and communicates its opinions confirming or suggesting the existence of discriminatory labour practice to the competent service of the Ministry of Labour for inspection</li> </ul>
	Commission for Citizenship and Gender Equality	<ul style="list-style-type: none"> <li>• Follows the implementation of the law</li> <li>• Proposes measures and develops actions against all forms of gender violence and support to its victims</li> <li>• Ensures technical supervision of shelters and support structures dedicated to victims of violence, as well as the strategic coordination with the other public administration sectors involved in this support</li> <li>• Develops legal consultation and psychosocial support services, especially in the cases of discrimination and gender based violence</li> <li>• Receives complaints related to cases of discrimination or gender based violence and refers them, if it is the case, to the competent authorities or entities involved by issuing opinions or recommendations</li> <li>• Has legal standing and participatory status in the main and provisional administrative and judicial procedures, as well as regulatory entities, to defend the rights and interests within its mandate</li> </ul>
	Authority for the Labour Conditions	<ul style="list-style-type: none"> <li>• Promotes, controls and supervises compliance with laws, regulations or conventions, related to all the labour relations and working conditions</li> <li>• Ensures the administrative offences labour procedure and organizes their individual registration</li> </ul>
	Commission for Equality and Against Racial Discrimination	<ul style="list-style-type: none"> <li>• Collects information in relation to the practice of discriminatory acts</li> <li>• Issues opinions on sanctions applied by the High Commissioner for Immigration and Intercultural Dialogue in the framework of administrative offences procedures initiated following the practice of discriminatory acts</li> <li>• Makes public all cases of law violation</li> <li>• Recommends the adoption of legislative measures adequate to prevent discrimination</li> </ul>
	High Commissioner for Immigration and Intercultural Dialogue (ACIDI)	<ul style="list-style-type: none"> <li>• Combats discrimination based on race, colour, nationality, ethnic origin or religion, through positive actions of awareness, education and training, as well as through the processing of the administrative offences sanctions under the law</li> <li>• Responsible for imposing fines</li> </ul>
	National Institute for Rehabilitation, I.P.	<ul style="list-style-type: none"> <li>• Guarantees law enforcement</li> <li>• Receives and refers complaints to the competent administrative entities</li> <li>• Issues obligatory opinions on discriminatory conduct based on disability in access to employment, progress and training of workers, the decision of the employer or employment agencies to include physical, sensory or mental requisites in job offers, cessation of contracts or refusal to hire, as well as in the inquiries or disciplinary processes initiated by the Public Administration</li> </ul>
	Ombudsman	<ul style="list-style-type: none"> <li>• Defence and promotion of rights, freedoms, safeguards and lawful interests of citizens</li> <li>• Hears complaints against acts of the authorities</li> <li>• Makes recommendations of a general or specific nature</li> <li>• Can propose amendments to the law</li> </ul>
Romania	National Council for Combating Discrimination	<ul style="list-style-type: none"> <li>• Mediates in discrimination disputes</li> <li>• Investigates and sanctions discriminatory acts</li> <li>• Grants specialised assistance to victims of discrimination</li> </ul>

		<ul style="list-style-type: none"> <li>• Receives complaints from natural or legal persons or acts <i>ex officio</i></li> <li>• Shifts burden of proof in its procedures</li> <li>• Can order cessation of discriminatory conduct or restoration of <i>status quo ante</i></li> </ul>
	People's Advocate (Ombudsman)	<ul style="list-style-type: none"> <li>• Receives complaints against the public administration bodies</li> <li>• Follows up on legal settlement of complaints</li> <li>• Issues opinions at the request of the Constitutional Court</li> </ul>
	National Agency for Equality of Opportunities between Women and Men	<ul style="list-style-type: none"> <li>• Receives complaints regarding non-observance of the principle of equal opportunities and regarding acts of discrimination based on gender</li> <li>• Competence limited to sending such complaints to the competent institutions for proper review and solution.</li> </ul>
Slovakia	Public Defender of Rights (Ombudsman)	<ul style="list-style-type: none"> <li>• Competent to monitor respect of human rights and fundamental freedoms</li> <li>• Receives complaints regarding actions or omissions of public administration bodies</li> <li>• Can submit proposals for amendments to laws that violate fundamental rights and freedoms</li> </ul>
	Slovak National Centre for Human Rights	<ul style="list-style-type: none"> <li>• Representation of parties in proceedings concerning violation of the principle of equal treatment</li> <li>• Provision of assistance</li> </ul>
	Independent mediation centres	<ul style="list-style-type: none"> <li>• Available in discrimination cases if agreed to by both parties</li> <li>• The agreement reached as a result of the mediation may be enforced only if concluded in the form of a notarial deed or if approved by court or an arbitration authority; if not, it is binding, but only for the participating parties and it is not possible to enforce its execution</li> </ul>
Slovenia	Human Rights Ombudsman	<ul style="list-style-type: none"> <li>• Receives complaints from alleged victims of discrimination</li> <li>• Not competent to intervene in pending court cases but may issue an opinion on whether or not a violation of rights has occurred</li> </ul>
	Advocate for the Principle of Equality	<ul style="list-style-type: none"> <li>• Examines complaints of alleged discrimination on all grounds in the public and private sphere and issues recommendations</li> <li>• If the recommendations are not respected, the Advocate may refer the case to the competent inspectorate</li> <li>• Provides advice and support to victims of discrimination</li> </ul>
Spain	Work and Social Security Inspection Offices	<ul style="list-style-type: none"> <li>• Act <i>ex officio</i> or at the request of the party</li> <li>• Resolutions are notified to the employee and can be executed immediately</li> <li>• Can impose fines</li> </ul>
	Ombudsman	<ul style="list-style-type: none"> <li>• Receives complaints regarding discriminatory actions relating to the public administration</li> <li>• Investigations result in mediation, or, if mediation fails, a recommendation to the relevant administrative authority</li> <li>• Exist at national and autonomous levels</li> </ul>
Sweden	Ombudsman of Justice and Chancellor of Justice	<ul style="list-style-type: none"> <li>• Receive complaints regarding misconduct by official agencies</li> </ul>

United Kingdom	Equality Ombudsman	<ul style="list-style-type: none"> <li>• Registers and investigates complaints based on the prohibition of discrimination and harassment</li> <li>• Investigates complaints from employees on parental leave who feel they have been treated unfairly for having taken such leave</li> <li>• Can represent victims in court free of charge</li> <li>• Exercises supervision by monitoring how employers, higher education institutions and schools live up to the provisions of the Discrimination Act requiring active measures against discrimination</li> <li>• Can order a natural or legal person to fulfil his or her obligations in the Discrimination Act subject to a financial penalty; this order may be appealed to the Board against Discrimination.</li> </ul>
	Board against Discrimination	<ul style="list-style-type: none"> <li>• Examines applications for financial penalties</li> </ul>
	Advisory, Conciliation and Arbitration Service (ACAS)	<ul style="list-style-type: none"> <li>• The most well known alternative dispute resolution provider</li> <li>• Involved in conciliation in collective disputes: providing facilities for settling existing or anticipated trade disputes by conciliation</li> <li>• Also involved in conciliation in individual cases: when an individual submits a claim to an employment tribunal, the tribunal sends a copy of the claim and of the employer's response to ACAS, whose conciliation officers have a duty for most types of claim to attempt to promote a settlement between the parties without the need for a tribunal hearing. A significant proportion of cases are settled by ACAS conciliation or withdrawn. Settlements reached under the auspices of a conciliation officer may not then proceed to a tribunal hearing.</li> <li>• In Northern Ireland, the role and functions of ACAS are performed by the Labour Relations Agency</li> <li>• Mediation does not lead to legally binding agreements or settlements; conciliation can lead to legally binding agreements or settlements</li> </ul>
	'Compromise agreement'	<ul style="list-style-type: none"> <li>• Provided the applicant has received 'independent' advice from a qualified lawyer or independent adviser, the parties can agree on the terms and conditions reached when a contract of employment is to be terminated or a dispute is to be resolved</li> </ul>
	Equality and Human Rights Commission	<ul style="list-style-type: none"> <li>• Provides a conciliation service as an alternative route to court action</li> <li>• If the complaint is resolved during the conciliation, it can result in a binding settlement. If it is not resolved, the complainant still has the option of taking the claim to court.</li> </ul>

Table IA.2 – Specific structures in the EFTA/EEA countries

	Mechanism	Functions and limitations
Iceland	Parliamentary Ombudsman	<ul style="list-style-type: none"> <li>• Monitors the administrative functions of public and local authorities</li> <li>• Safeguards the rights of citizens <i>vis-à-vis</i> administrative authorities</li> <li>• Ensures that the principle of equality is observed and that administration is conducted in conformity with the law and good administrative practice</li> <li>• Investigates administrative cases based on complaints or on own initiative</li> <li>• Can examine whether laws are in conflict with the Constitution or are flawed in other respects</li> </ul>
	Gender Equality Complaints Committee	<ul style="list-style-type: none"> <li>• Addresses complaints alleging violations of the Gender Equality Act</li> </ul>
Liechtenstein	Mandatory, free of cost mediation body for discrimination cases	<ul style="list-style-type: none"> <li>• Appointed judge advises the parties and settles the dispute</li> <li>• If mediation proves unsuccessful, the discrimination claim must be filed with the civil court within three months</li> <li>• Legal assistance is provided by the Equal Opportunities Office, but does not extend to financial aid or representation in courts</li> </ul>
Norway	Equality and Anti-Discrimination Ombudsperson (Ombud) and Equality and Discrimination Tribunal	<ul style="list-style-type: none"> <li>• Ombud receives and investigates complaints from alleged victims of discrimination</li> <li>• Can also take up case on his/her own initiative, or on the basis of an application from other persons</li> <li>• A party not satisfied with the Ombud's statement may appeal to the Equality Tribunal</li> <li>• If one of the parties does not comply with the recommendations, the dispute may be referred to the Equality Tribunal by one of the parties or by the Ombud</li> <li>• Neither the Ombud nor the Tribunal has the right to award damages or financial compensation</li> </ul>
	Parliamentary Ombudsman	<ul style="list-style-type: none"> <li>• Receives complaints from citizens concerning any maladministration or injustice on the part of a public agency</li> <li>• Issues recommendations</li> <li>• May initiate a thorough investigation of administrative proceedings, decisions or other matters</li> <li>• Does not handle cases falling within the realm of the Equality and Discrimination Ombudsperson</li> </ul>



## Annex IB- Legal Standing

*Table IB.1 – Legal Standing in the EU Member States*

	Individuals	Equality bodies	Associations	Others
Austria	Legal capacity	<p><i>Right to bring action:</i> Cannot initiate a case</p> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- Declaratory action</li> <li>- Findings can be used in Court if not confidential</li> <li>- Provide evidence to establish a presumption of discrimination</li> </ul>	<p><i>Right to bring action:</i> No, except for the Austrian Labour Association for class action representing several victims that are part of an association</p> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- Reserved to one NGO: The complaints association (<i>Klagsverband</i>) is entitled to intervene in the proceedings</li> <li>- Other associations can represent victims where representation by a lawyer is not compulsory and the claim is below 5,000 EUR. They need to prove a specific legal interest.</li> <li>- The Austrian Labour Association for Rehabilitation can join proceedings and can take class action to Court.</li> </ul>	Federal Ombudsman: In case of discriminatory advertising, the Ombudsman can appeal a judgment.
Belgium	<ul style="list-style-type: none"> <li>- Interest: effective, legitimate, personal, direct, concrete and actual</li> <li>- Quality: claim must have a juridical basis</li> <li>- Specific to collective rights in anti-discrimination matters: individual part of the collective action qualifies him/herself for a complaint</li> </ul>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>-the Institute for Equality between women and men (IEFH) (gender) and the Centre for equality of chances and fight against racism (CECLR) (race) can bring the case before the Court, with the victim's consent</li> <li>- "Action en cessation" (injunction procedure)</li> </ul> <p><i>Representation and intervention:</i> assist the victim initiating proceedings, or initiate a case in their own name provided that they fulfil the requirement of interest.</p>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>-interest groups (trade unions and associations of employers), association possessing legal personality for at least 3 years and ensuring respect of human rights and combating discrimination according to their statutes + has to violate the substantial objectives of the association (principle of legal speciality)</li> <li>- other associations satisfying the requirement of interest</li> <li>- interest groups and other associations for 'action en cessation'</li> </ul> <p><i>Representation and intervention:</i> assist the victim initiating proceedings, or initiate a case in their own name provided that they fulfil the requirement of interest.</p>	
Bulgaria	- Legal interest	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- The Commission on Protection against Discrimination can initiate its own proceedings and can initiate case before the Court</li> </ul> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- The Commission on Protection against Discrimination can act as a concerned part in the proceedings before the Court</li> </ul>	<p><i>Right to bring action:</i></p> <p><i>Before the Commission on Protection against Discrimination:</i> can initiate a case upon a proposal from NGOs or trade unions</p> <p><i>Before the Civil Court:</i></p> <ul style="list-style-type: none"> <li>- for trade unions and non-profit entities carrying out activities beneficial to the public upon request from the victim</li> <li>- for trade unions and NGOs where the rights of many people have been violated</li> </ul> <p><i>Representation and intervention:</i></p>	

	Individuals	Equality bodies	Associations	Others
			- trade unions and non-profit entities as interested party in a pending legal action	
Cyprus	<p><i>Against an administrative decision:</i></p> <ul style="list-style-type: none"> <li>- legal interest: the person must be directly affected by the decision</li> </ul> <p><i>Before the Court:</i></p> <ul style="list-style-type: none"> <li>- legal capacity</li> <li>- legitimate interest</li> </ul>	No legal standing or intervention	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- Organisations or other legal entities having the protection of human rights or promotion of gender equality in their statutes, with the victim's consent</li> <li>- Workers' organisations with a legitimate interest</li> </ul> <p><i>Representation and intervention:</i> organisations, with the victim's consent</p>	
Czech Rep.	- Legal capacity	No legal standing or intervention	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- Associations defending victims of discrimination and having protection against discrimination as part of their activities</li> </ul> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- Trade unions can represent their members</li> </ul> <p>In practice 3-4 NGOs active in the field provide representation of the victims.</p>	
Denmark	-Direct interest	<p><i>Right to bring action:</i> the Board of Equal Treatment can file a complaint, also on behalf of complainants, and if it finds that discrimination has taken place is not complied with.</p> <p><i>Representation and intervention:</i> the Danish Institute for Human Rights (race and ethnic origin) can intervene</p>	<p><i>Representation and intervention:</i></p> <p>An association, trade union or other institution may act as agent for the victim or intervene as a third party with independent standing</p>	Legal interest for third party interveners
Estonia	<p><i>Before the Court:</i> Only the direct victim can turn to the Court</p> <p><i>Before the Gender Equality and Equal Treatment Commissioner:</i> Rightful interest for persons who are not direct victims</p>	<p><i>Right to bring action:</i> No legal standing.</p> <p><i>Representation and intervention:</i> The Gender Equality and Equal Treatment Commissioner can provide consultation and assistance to the victim</p>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- <i>Before the Gender Equality and Equal Treatment Commissioner</i></li> </ul> <p>Legitimate interest in monitoring compliance with the equal treatment requirements</p> <ul style="list-style-type: none"> <li>- <i>Before the Court:</i> No, unless a direct victims itself</li> </ul> <p><i>Representation and intervention:</i> Associations, trade unions and other institutions can support the victim through help with representation</p>	
Finland	<p><i>Before the Discrimination Tribunal:</i> by the victim or parties to a conciliation settlement</p> <p><i>Before general courts:</i> Proceedings based on either the</p>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- <i>Before the Discrimination Tribunal:</i> by the Ombudsman for Minorities.</li> <li>- <i>Before the Equality Board:</i> by the Ombudsman for Equality.</li> </ul>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- <i>Before the Equality Board:</i> by the central organizations of employers' associations or of trade unions</li> <li>- <i>Before the Labour Court:</i> by trade unions</li> </ul>	

	Individuals	Equality bodies	Associations	Others
	Equality Act or the Non-Discrimination Act may be initiated only by the persons subject to discrimination.			
France	<p><i>Before the HALDE (The French Equal Opportunities and Anti-Discrimination Commission):</i> Any person who believes he or she has been a victim of discrimination</p> <p><i>Before the Court:</i></p> <ul style="list-style-type: none"> <li>- Legal capacity</li> <li>- Legal interest: direct, personal, legitimate, effective, actual.</li> </ul>	<p><i>Right to bring an action:</i></p> <ul style="list-style-type: none"> <li>- The HALDE can initiate its own proceedings and can make a referral to the Public prosecutor to initiate criminal proceedings.</li> </ul> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- The HALDE can make observations to the court or</li> </ul>	<p><i>Right to bring action:</i></p> <p><i>Before the HALDE and in criminal proceedings:</i> Any association lawfully registered for at least 5 years, with statutes to combat racism or to assist the victims of discrimination grounded on their national, ethnic, racial or religious origin, or to combat discrimination based on gender or sexual morals may exercise the rights granted to the civil party (for criminal proceedings) and the purpose of which is to fight discrimination or help victims to bring an action (for the HALDE). However, where the offence has been committed against a person as an individual, the association's action will only be admissible upon the person's consent.</p>	
Germany	Legitimate interest, i.e., the plaintiff must provide to the court the facts that lead him/her to think that his/her rights might have been infringed.	No legal standing to bring cases to the court or to assist in litigation.	<p><i>Right to bring action: Under the Law promoting the Equality of Disabled,</i> acknowledged associations that promote the interests of disabled people can initiate legal actions before the administrative and social courts, with the consent of the victim. These associations are also entitled to lodge a collective action, if the statutory tasks of the association are concerned and the case is of general interest.</p> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- <i>Under the General Act on Equal Treatment,</i> anti-discrimination organisations and associations can act as legal advisor to and act on behalf of disadvantaged persons in court hearings. Except for the courts of first instance, the additional representation by a lawyer is obligatory.</li> <li>- <i>Under the Law promoting the Equality of Disabled,</i> acknowledged associations that promote the interests of disabled people can represent their members before the social courts and before the administrative courts of first instance and the higher administrative courts</li> <li>- Trade unions and associations of employers are entitled to represent their members as proxies before the labour courts, social courts, administrative courts (restricted entitlement), and before the fiscal court.</li> </ul>	
Greece	Direct legal interest (concerns an already instituted legal relationship)	<p><i>Right to bring action:</i> Cannot initiate a case or be a party</p> <p><i>Representation and intervention:</i></p>	<p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- Associations with a legal interest in ensuring compliance with the principle of equal treatment, with the consent of the</li> </ul>	

	Individuals	Equality bodies	Associations	Others
		It reports its findings to relevant authorities (administration for admin. procedure, public prosecutor for crim. procedure)	victim - Civil /Labour cases: recognised employees' and employers' associations, chambers or other associations possessing legal personality can exercise the right of their members emanating from the protection of a collective agreement as long as the member on behalf of whom the right is exercised does not object.	
Hungary	Direct and personal interest	<i>Right to bring action:</i> The Equal Treatment Authority can bring cases to the court, which affect defined persons or groups of persons in all cases of discrimination, and can initiate proceedings in cases of public interest claims when the unlawful conduct might affect an indefinable group of persons, in the fields of personal law and employment law.	<i>Right to bring action:</i> NGOS and other interest protection organisations can initiate proceedings in cases of public interest claims when the unlawful conduct might affect an indefinable group of persons, in the fields of personal law and employment law. <i>Representation and intervention:</i> Organisations can provide legal assistance by individual lawyers contracted by the organisation	
Ireland	- Personal direct interest; personal prejudice - Limited <i>actio popularis</i> in Constitutional Law – only a person actually or potentially aggrieved by an action has the right to seek redress in respect of it.	<i>Right to bring action:</i> The Equality Authority can: - bring three types of cases to the Equality Tribunal: cases of systemic discrimination, cases where a person has not made a claim and it is reasonable to expect that the person will not do so, and cases concerning advertising, vehicle equipment, station equipment and kerb ramps. - seek an injunction from the Circuit Court or the High Court if it can establish that a person has engaged in prohibited conduct and is likely to do so again. - become amicus curiae in court proceedings related to equality.	<i>Representation and intervention:</i> Associations can represent individuals in bringing cases in tribunals but not in courts Associations can assist individuals at court by providing funding	In practice, individuals can be represented by non-legally qualified persons before tribunals, but not before the courts.
Italy	<i>General rules:</i> Real and current (not only likely) interest; the applicant must be the holder of the right involved in the judicial proceedings; <i>Criminal proceedings:</i> in some cases, the victim of the discrimination has to lodge a complaint at the Public Prosecutor.	<i>Right to bring action:</i> <i>Labour Tribunal and Regional Administrative Tribunal:</i> - Equality advisors can bring a collective action - Equality advisors can bring a case to court in their geographical area of competence by delegation of the person concerned; <i>Criminal proceedings:</i> can intervene to obtain non-pecuniary damages in the case of crimes affecting several employees and from which it emerges that the discriminatory conduct might be considered as collective.	<i>Right to bring action:</i> - For racial and ethnic origin: institutions and associations included on a list approved by the Ministry of Employment and Social affairs and the Ministry of Equal Opportunity can sue, pursuant to delegation by the victim, on his/her behalf. They can also take legal action in cases of collective discrimination if there are no directly identifiable victims. - For equal treatment in employment: trade unions, associations, organisations representing the right infringed have legal standing for and on behalf of the victim. They can also take legal action in cases of collective discrimination if there are no directly identifiable victims.	

	Individuals	Equality bodies	Associations	Others
		<p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- UNAR can provide assistance in administrative or judicial proceedings;</li> <li>- Equality Advisers can also intervene in proceedings</li> </ul>		
Latvia	<ul style="list-style-type: none"> <li>- Legal capacity</li> <li>- Personal and direct interest</li> </ul>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- The Ombudsman can apply to a court in civil cases concerning discrimination, and in the administrative courts for cases of public interest. Has not been done in practice.</li> <li>- Can submit a complaint to Constitutional Court</li> </ul>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- Associations and foundations have legal standing if protection of human rights and of the rights of the individuals is in their statutes, with the consent of the individual concerned.</li> <li>- Trade Unions can bring a case to court</li> </ul> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- Trade unions can represent their members before State institutions if the case relates to the employment relationship, redress for health damages, housing or other social and economic rights or individual or collective disputes. They can represent their members without special authorisation in the settlement of individual disputes and bring an action to court in the interests of their members</li> <li>- Associations and foundations have legal standing if protection of human rights and of the rights of the individuals is in their statutes</li> </ul>	
Lithuania	<ul style="list-style-type: none"> <li>- Direct and legal interest</li> </ul>	<p><i>Right to bring action:</i></p> <p>Cannot initiate a case</p> <p><i>Representation and intervention:</i></p> <p>The Equal Opportunities Ombudsman may participate in proceedings as a State institution providing expert opinion in the case</p>	<p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- In employment issues, the trade unions can represent their members in proceedings, if they prove a legitimate interest and upon consent of the victim</li> <li>- Associations having in their statutes the competence to represent and defend victims of discrimination can represent the victim with the victim's consent.</li> </ul> <p>Representation by NGOS in civil courts has not taken place in practice.</p>	
Luxembourg	<ul style="list-style-type: none"> <li>- Legal interest</li> </ul>	<p><i>Right to bring action:</i></p> <p>The Centre for Equal Treatment does not have legal standing</p> <p><i>Representation and intervention:</i></p> <p>The Centre does not have the power to engage in investigations or other non-judicial enforcement or compliance mechanisms. It may only provide assistance to persons who feel that they are victims of discrimination and inform them on individual rights, legislation, case-law and means to uphold their rights.</p>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- For employment, nationally-recognised non-profit associations whose activity is to combat discrimination + 5 years legal personality + accreditation from the Ministry of Justice (without having to prove interest).</li> </ul> <p><i>Representation and intervention</i></p> <ul style="list-style-type: none"> <li>- For employment, associations, professional associations and trade unions can assist victims in court.</li> <li>- Legal representation and intervention by trade unions when the settlement of a dispute brought by an individual, where the dispute would serve the collective interest of its members,</li> </ul>	

	Individuals	Equality bodies	Associations	Others
			with the person's consent, without justifying a material or moral interest in the matter. - Three NGOs have recognised legal standing to represent victims of discrimination under the Law of 2006: ASTI asbl, Info-handicap asbl, Chiens guides d'aveugles asbl.	
Malta	- Legal interest: direct, juridical, real and actual interest	<i>Right to bring action:</i> - The National Commission for the Promotion of Equality can initiate a case before the civil court or industrial tribunal, - The National Commission Persons with Disability can refer a matter to the civil court after attempting to reach an amicable settlement between the parties. <i>Representation and intervention:</i> The National Commission for the Promotion of Equality can provide to victims assistance in pursuing their complaints.	<i>Right to bring action:</i> - Associations, organisations and other legal entities having a legitimate interest in employment disputes involving discrimination on any ground, and in disputes on the ground of gender in the area of access to goods and services can engage in judicial or administrative proceedings on behalf of or in support of the complainant, and with their approval. - Representative bodies (e.g. trade unions) can bring an action to protect its members if this affects its ability to function effectively as a union.	A third party having a legal interest can join the parties to the suit. Possibility of joint action when the actions are connected in the respect of their subject matter or if a decision in one action might affect the decision in another action.
Netherlands	- Legal interest	<i>Right to bring action:</i> Cannot initiate a case <i>Representation and intervention:</i> The opinion of the Equal Treatment Commission is taken into account in the proceedings before the court	<i>Representation and intervention:</i> Trade unions and organisations fighting discrimination can assist the victim in Court.	
Poland	- Legal capacity <i>Before the ordinary court:</i> Only victims of discrimination	No legal standing for the Ombudsperson	<i>Right to bring action:</i> Non-profit organisations whose statutes include the protection of equality and action against discrimination can bring an action on behalf of the victim or join the procedure at any stage with the consent of the victim. <i>Representation and intervention:</i> If they do not have recognised legal standing the NGOS can still present their views to the Court.	National Labour Inspectorates can initiate proceedings against a discriminating employer.
Portugal	- Interest - Quality	<i>Right to bring action:</i> Cannot initiate a case <i>Representation and intervention:</i> The equality bodies can only communicate their findings to the authorities if mediation has failed.	<i>Right to bring action:</i> Only individual rights give right to legal standing. <i>Representation and intervention:</i> - Trade Unions can assist the victim in legal proceedings - For race and disability, associations that under their statutes aim to defend non-discrimination on these grounds can intervene to represent or support the interested part with his/her approval. - For gender issues, the relevant NGOs can defend collective rights and interests.	
Romania	<i>Before the Court:</i> - Legal capacity	<i>Right to bring action:</i> Cannot initiate a case	<i>Right to bring action:</i> - For all types of discrimination, NGOs having as their scope	

	Individuals	Equality bodies	Associations	Others
	- Personal and direct interest	<i>Representation and intervention:</i> Can support the victim in Court.	the protection of human rights or having a legitimate interest in fighting discrimination, if the discrimination occurs in their field of activity and damages a community or a group of persons, or if an individual requests their assistance. - For equality opportunities and treatment between men and women: agencies, trade unions, NGOs specialised in human rights and other legal persons having a legitimate interest in the observance of the principle of equal opportunity between men and women upon request of the victim.	
Slovakia	Personal and direct interest	<i>Right to bring action:</i> Cannot initiate a case <i>Representation and intervention:</i> The Slovak Equality Body can defend a victim	<i>Right to bring action:</i> - If the violation of the principle of equal treatment infringes the rights or legally protected interests or freedoms of a larger number or an undetermined number of persons or in case that by this violation the public interest could be seriously threatened, the proceedings can be directly initiated also by the Slovak Equality Body or by a legal person whose activities are aimed at or consist of the protection against discrimination <i>Representation and intervention:</i> - Trade unions can represent their members. - Entities whose activities are the protection of public interest rights can participate in the proceedings as interveners.	
Slovenia	Legal interest	<i>Right to bring action:</i> The Advocate of the Principle of Equality does not have power to initiate a case <i>Representation and intervention:</i> The Advocate can intervene in the court's discussions.	<i>Representation and intervention:</i> - NGOs and trade unions can engage individuals to represent the victims in courts and administrative proceedings. - NGOS whose legal interest is recognised by the court can intervene in the court's discussions.	
Spain	<i>General rules:</i> Legal interest  <i>Administrative dispute:</i> right and legitimate legal interest	<i>Right to bring action:</i> Equality bodies cannot initiate a case, except in cases of discrimination on the ground of sex, when the violation of fundamental rights is a consequence of an advertisement that promotes stereotypical images of women or results in discrimination: Women's institute can exercise a cessation action against a discriminatory advertisement. <i>Representation and intervention:</i> Provide reports and information or opinions as requested by the judge.	<i>Right to bring action:</i> - Before the civil court: NGOs, associations, trade unions, with a legal interest. For NGOs, sufficient that their functions include combating discrimination or any other motives justifying a claim falling under their objectives or their statutes. - In administrative disputes, association with a right or a legitimate legal interest, trade unions and legally constituted associations whose primary aim is the defence of equal treatment of men and women, with authorisation of the victim. - Before the labour court: legitimate interest for associations, on behalf of their members for trade unions.	



	Individuals	Equality bodies	Associations	Others
			<ul style="list-style-type: none"> <li>- Discrimination on the ground of race: possibility to act in the victim's name with their consent.</li> <li>- Discrimination on the ground of gender, trade unions and legally constituted associations whose primary aim is the defence of equal treatment of men and women, with authorisation of the victim.</li> </ul>	
Sweden	<p><i>General rules:</i></p> <ul style="list-style-type: none"> <li>- Legal capacity</li> <li>- Victims of discrimination – can at any time bring an action to court in discrimination cases, but it is rarely done since it is better to let organisations, bring the action and consequently pay for all costs.</li> </ul> <p><i>Criminal proceedings:</i> the aggrieved person if the Prosecutor decided not to institute a prosecution – generally the aggrieved person does not have a right to institute a prosecution concerning unlawful discrimination, because it is considered as a crime against the public.</p>	<p><i>Right to bring action:</i></p> <p>The Equality Ombudsman has a subsidiary right of action: if the employees' organisations or non-profit organisations do not take action.</p>	<p><i>Right to bring action:</i></p> <p>Non-profit organisations whose statutes include the safeguarding of interests of its members may bring an action. In all cases, the consent of the individual is required.</p> <p><i>Representation and intervention:</i></p> <p>Employees' organisations can represent an individual.</p>	
UK	<ul style="list-style-type: none"> <li>- Completion of relevant formalities specified in the law in question (e.g. using the prescribed form; stating all the relevant required information).</li> </ul> <p><i>Before the County Court,</i> no formal requirement, but the court has general powers of case management including striking out statements of case if there are no reasonable grounds for bringing or defending a claim or which is an abuse of the process of the court.</p>	<p><i>Right to bring action:</i></p> <ul style="list-style-type: none"> <li>- The Equality and Human Rights Commission (ECHR, England, Wales, Scotland) and the Equality Commission for Northern Ireland (ECNI) can institute legal proceedings which are relevant to any of their functions, subject to any limitations imposed by law.</li> <li>- The ECHR and the ECNI have the sole power to bring a case to court against discriminatory advertisement, instructions to discriminate, and pressure to discriminate</li> </ul> <p><i>Representation and intervention:</i></p> <ul style="list-style-type: none"> <li>- The ECHR and the ECNI give assistance and will determine the type of service it can provide, including assistance of victims. They can support and intervene in legal proceedings.</li> </ul>	<p><i>Representation and intervention:</i></p> <p>NGOs, trade union and employers' associations can represent the victim with their consent.</p>	



Table IB.2– Legal Standing in the EFTA/EEA countries

	Individuals	Equality bodies	Associations
Iceland	<p><i>Before the Court:</i> Personal, direct interest, i.e. “legally protected interest”</p> <p><i>Before the Gender Equality Committee:</i> anyone considering that they are victim.</p>	<p><i>Right to bring action:</i> The Centre for Gender Equality can ask the Gender Equality Complaints Committee to examine a case.</p>	<p><i>Right to bring action:</i> - <i>Before the Court:</i> Personal, direct interest, i.e. “legally protected interest” for associations - <i>Before the Gender Equality Committee:</i> any entity considering that they are a victim in their own name or on behalf of their members</p> <p><i>Representation and intervention:</i> - Associations can represent their members if the interests at stake form part of the associations mandates</p>
Liechtenstein	<ul style="list-style-type: none"> <li>- Legal capacity and</li> <li>- Legal interest</li> </ul> <p>Incl. victims in civil litigation procedures</p> <ul style="list-style-type: none"> <li>- In case of discrimination on the ground of gender, the victim must first invoke a dispute settlement procedure</li> </ul>	No legal standing or intervention	<p><i>Right to bring action:</i> Two main associations are entitled to bring a class action on behalf of their members before the courts in the field of employment (INFRA – information and contact point for women) and disability (Liechtenstein Association for Disabled Persons)</p> <p><i>Representation and intervention:</i> Any organisation representing the interests of disabled persons (as listed by the government) incorporated for more than 5 years can directly represent the victim before the courts and authorities.</p>
Norway	<p><i>Before the ordinary court:</i></p> <ul style="list-style-type: none"> <li>- Legal capacity</li> <li>- legal interest: “genuine need” and direct interest</li> </ul> <p><i>Before the Equality and Discrimination Ombud/ Tribunal:</i> alleged victim of discrimination.</p>	<p><i>Right to bring action:</i> The Equality and Discrimination Ombud and Equality and Discrimination Tribunal have a right of action in their own name in relation to matters that fall within their purpose and normal scope under the condition that they have a legal interest. This right has not been exercised in practice.</p> <p><i>Representation and intervention:</i> The Ombud/Tribunal have a right to act as co-counsel/friend of the court in ordinary court proceedings when called upon to do so.</p>	<p><i>Right to bring action:</i> Organisations and associations have a right of action in their own name in relation to matters that fall within their purpose and normal scope under the condition that they have a legal interest.</p> <p>Trade Unions and NGOs working on discrimination are entitled to file a class action claim. This right has not been exercised in practice.</p> <p><i>Representation and intervention:</i> Associations have the right to represent and act as an agent on behalf of individual members before administrative authorities and courts, with the claimant power of attorney</p>

## Annex I C- Time and length

*Table IC.1 – Time and length in the EU Member States*

	Time limits to initiate the procedure	Length of the procedure
Austria	<ul style="list-style-type: none"> <li>- In discrimination cases (on all grounds) in employment matters leading to the refusal to employ or to promote someone: six months from the day the person's request was explicitly refused;</li> <li>- In discrimination cases based on sexual harassment: one year from the day on which the event took place;</li> <li>- In discriminatory termination or notice of termination of an employment contract (on all grounds): 14 days after the termination/notice;</li> <li>- Pecuniary and non-pecuniary damages upon discriminatory termination (on all grounds) of an employment contract: six months from the termination;</li> <li>- In other areas of discrimination (on all grounds): within three years from the date when the discriminatory act took place.</li> <li>- Collective labour agreements can provide for even shorter time limits.</li> <li>- The general rule for the prescription period for civil claims is three years. As regards the compensation of damages, the ordinary rule would provide for a period of three years from the discovery of the damage that occurred.</li> </ul> <p>If a victim chooses to involve the Equal Treatment Commission or the federal ombudsman, the time limits provided by law will be suspended for the time of the investigation. Upon receipt of the investigation results, there is a minimum period of three months to bring a claim to court, but only 14 days in the case of a contestation of discriminatory termination of an employment contract or a discriminatory notice of termination.</p>	<ul style="list-style-type: none"> <li>- No legally prescribed time limits for judges to settle or decide civil law suits.</li> <li>- On average a trial lasts, from the beginning of an action until a settlement or a judgment (in second instance or at the Supreme Court): 1 to 3 years.</li> <li>- The procedures initiated by Equal Treatment Commissions take one year or more.</li> </ul> <p>Procedure including a prior attempt to settle the dispute before the National Equal Treatment Body can last for 1 to 4 years.</p>
Belgium	<ul style="list-style-type: none"> <li>- Administrative procedures: 60 days after the administrative act was issued</li> <li>- Civil matters: if contractual liability, 10 y; extra-contractual liability, 20 y after damage or 5 years after the victim discovered the author's identity</li> <li>- Employment: 1 year</li> <li>- Criminal: 5 years</li> </ul>	<ul style="list-style-type: none"> <li>- The judge should have one month to decide (civil and criminal).</li> <li>- In administrative: 6 months - not compulsory and hardly ever respected.</li> <li>- Average in practice: 1½ years to 2 years</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>- 3 years from occurrence of violation before the Commission on Protection against Discrimination and the Civil courts.</li> <li>- Under law on domestic violence: 1 month from the day on which the act of domestic violence occurred</li> <li>- Employment: 1 month for dispute on limited financial liability of an employee; for appeal of administrative sanction "reprimande", 2 months for repeal of disciplinary sanctions, dismissal notices, changes or termination of employment relationship, 3 y for other labour disputes</li> <li>- Claims for compensation: 5 years</li> </ul>	<ul style="list-style-type: none"> <li>- Commission on Protection against Discrimination: no later than 14 days after open hearings</li> <li>- Civil proceedings on discrimination: approx. 1 year, and within one month from the last hearing.</li> <li>- Administrative court: first hearing within 2 months and decision within 1 month from the last hearing.</li> <li>- Criminal: the first hearing within 2 months following the preparation of the accusation or three months in complex cases.</li> <li>- Domestic violence: the hearing has to take place within 30 days from the filing of the</li> </ul>

	Time limits to initiate the procedure	Length of the procedure
	<ul style="list-style-type: none"> <li>- Discrimination resulting from an administrative act: 14 days from when the claimant was informed of the act.</li> <li>- Criminal: depends on the sentence provided for each crime (racial discrimination: 5 y).</li> </ul>	<ul style="list-style-type: none"> <li>claim- possibility of emergency procedure within 24 hours.</li> <li>- Unlawful dismissal and for compensation: first hearing within three weeks.</li> <li>- Unfair dismissal under the labour code: examined within three month from filing the claim at 1<sup>st</sup> instance and one month from the appeal at 2<sup>nd</sup> instance.</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>- Action before the employment tribunal: 1 year</li> <li>- Torts: 3 y to bring a claim before the district court</li> <li>- Administrative decisions challenged before Supreme Court: 35 days.</li> <li>- Appeal against judgment on the merits: 6 weeks from judgment.</li> <li>- Appeal against interlocutory judgment or decision: 14 days.</li> </ul>	All proceedings can take 2 to 3 years.
Czech Republic	<p>No specific time limits for discrimination cases.</p> <ul style="list-style-type: none"> <li>- In civil matters: 3 y from the date the damage was committed.</li> <li>- In cases of material damages: barred after 2 y from when the victim finds out that his/her rights have been violated and by whom (subjective period)</li> <li>- Administrative: 2 months from the delivery of the administrative decision</li> <li>- Criminal: least serious crimes: 3 y from commission, increasing up to 20 y according to seriousness of the crime. For the most heinous crimes, no limitation.</li> </ul>	<p>No time limits set in the law.</p> <ul style="list-style-type: none"> <li>- Usually two to three years in most common discrimination cases (always one appeal).</li> <li>- Some cases have lasted up to 6 or 7 years.</li> </ul> <p>Article 174a of the Law on Courts and Judges enables the party to the proceedings to propose the stipulation of the term within which the case must be decided. This institute was incorporated into the Law on Courts and Judges with the intention of guaranteeing the right to timely proceedings. The amendment, which entered into force on 1 July 2009, allows the court that is in delay to remedy the situation within 30 days or else otherwise it must submit the case to the superior court to decide on the party's proposal concerning the proceedings. This procedural mechanism against delays was inspired by Austrian law, and has been considered as an effective remedy by the European Court for Human Rights. Whether or not this mechanism will be considered as effective in practice for the Czech judiciary remains to be seen.</p>
Denmark	<ul style="list-style-type: none"> <li>- No time limits for initiating administrative or judicial proceedings on discrimination.</li> <li>- Civil procedure in discrimination and the labour market: within 5 years from the discrimination.</li> <li>- Civil procedure related to criminal cases: within 1 year of the decision on criminal action unless the claim for damages is instituted as part of the criminal procedure. In such case the limitation period is suspended.</li> </ul>	<p>No time limits set in the law.</p> <p>Statistics:</p> <ul style="list-style-type: none"> <li>- Discrimination cases before district court: 5 to 21 months (most 12 months).</li> <li>- High court: 1 to 34 months (most 18 months).</li> <li>- Supreme Court: 11 to 33 months (most 18 months by instance).</li> </ul>
Estonia	<p>Equal treatment and gender equality claims for compensation must be filed within 1 y from awareness or should have become aware of the damage.</p> <p>Other claims:</p> <ul style="list-style-type: none"> <li>- Before administrative court: 30 days.</li> <li>- Appeal and cassation: 30 days for delivery of the judgment.</li> </ul>	<p>No time limits set in the law.</p> <p>According to publicly available statistics, criminal cases usually take around 500 days, administrative cases around 160 days and civil cases around 270 days, first and second instances combined.</p>
Finland	<p>Actions pertaining to compensation or contract terms: within two years of the violation of the rules concerning discrimination or victimisation or if the infringement has been continuous within two years of its cessation.</p> <ul style="list-style-type: none"> <li>- Employee recruitment: within 1 year from when the job seeker discriminated against received the recruitment decision.</li> <li>- Equality Act: Action for compensation within two years of the violation</li> <li>- Employee recruitment: within one year.</li> <li>- Criminal code: charges on the grounds of discrimination or work discrimination within</li> </ul>	<p>No time limits set in the law.</p> <ul style="list-style-type: none"> <li>- Discrimination tribunals: 1 to 6 months.</li> <li>- Administrative court: may take years.</li> </ul>

	Time limits to initiate the procedure	Length of the procedure
	two years.	
France	N/A	No time limits for a tribunal or the judge to determine a case.
Germany	<p>Claims based on the General Act on Equal Treatment must be:</p> <ul style="list-style-type: none"> <li>- asserted towards the other party within 2 months from when the discriminated person learned of the discrimination</li> <li>- brought to the civil courts within 3 years from when the discriminated person learned of the discrimination.</li> <li>- Claims in the context of labour law based on the General Act on Equal Treatment: within 3 months after the claim was asserted towards the other party</li> <li>- Claims based on the General Act on Equal Treatment and other public laws dealing with anti-discrimination must be brought before administrative, fiscal and social courts within 1 month from when the discriminated person learned of the discriminatory administrative act</li> </ul>	<ul style="list-style-type: none"> <li>- Average length of procedures before the labour courts of first instance in 2008: 3 months.</li> <li>- Average length of procedures before the civil courts of first instance in 2008: (1) with regard to the local courts 4.5 months and (2) with regard to the regional courts 8.1 months.</li> <li>- Average length of procedures before the administrative courts of first instance in 2009: 11.3 months – there are discrepancies between the states (Bundesländer).</li> <li>- Average length of procedures before the social courts of first instance in 2009: 14 months.</li> </ul>
Greece	<p>In civil matters, 5 years from the time the injured party became aware of the damage and of the author's identity, and without regard to such knowledge within 20 years from the date of the commission of the unlawful act.</p> <p>In administrative procedures, 60 days after the administrative act was legally delivered to the interested person, or in any other case, after the cognisance of the content of the act by the interested person.</p>	<p>No official statistics.</p> <ul style="list-style-type: none"> <li>- Claim for damages in the first instance: 2-4 years from filing the suit.</li> <li>- A court decision on appeal 1-2 years.</li> <li>- Decision for provisional remedy: 2 months.</li> </ul>
Hungary	<p>Personal law right to compensation expires after 5 years from the date of the alleged conduct.</p> <ul style="list-style-type: none"> <li>- Employment: 3 years from the date of alleged unlawful conduct.</li> <li>- Unlawful termination or modification of an employees contract: 30 days of alleged unlawful conduct.</li> <li>- Independent Law Enforcement Complaint Body: within 8 days of the alleged unlawful conduct or from when it became known to the complainant or to the police.</li> <li>- Governmental Commissioner for Educational Rights: within 1 year from the conduct.</li> </ul>	<ul style="list-style-type: none"> <li>- Equal treatment Authority: 75 days to make a decision and 45 days if the complaint is a minor or if the Ombudsman initiated the procedure.</li> <li>- Independent Law Enforcement Complaint Body: has to issue a statement within 90 days from the receipt of the complaint.</li> <li>- According to tables indicating the length of procedures completed in 2009 most cases lasted no more than three months.</li> <li>- Approx. 88% of civil lawsuits in local courts took no more than one year, and only 1.3% took more than three years.</li> </ul> <p>Statistics for appeal cases at county-level courts show that approximately 96% of employment related cases were completed within one year. No cases took more than three years. In the case of lawsuits that started at county-level courts, almost 70% lasted less than one year, and 6.1% took more than three years. As for civil cases at appellate courts, 98% of cases took less than one year, and only 0.1 % took more than three years.</p> <p>Statistics about employment related cases at local courts show that approximately 85% of the cases took not more than one year, and only 1.4% took more than three years. At appeal courts, approximately 97% of employment related cases were completed within one year, and only 0.2% took more than three years. The Equal Treatment Authority's procedures are limited in time, which is a favourable feature for the plaintiff.</p>
Ireland	<p>The time limits to access the procedure are specific to equality cases (although may be the same as some types of employment case).</p> <ul style="list-style-type: none"> <li>- Claim for discrimination or victimisation: within six months of the date of the occurrence or the most recent occurrence of the act to which the case relates.</li> </ul>	<ul style="list-style-type: none"> <li>- Before the Equality Tribunal: average 3 years and non-employment cases, 1 year, without appeal.</li> <li>- District Court: usually within 1 year</li> <li>- No time limit for a tribunal or the judge to determine a case.</li> </ul>

	Time limits to initiate the procedure	Length of the procedure
	<ul style="list-style-type: none"> <li>- Equality Tribunal, the Labour Court or the Circuit Court may extend the period to 12 months if satisfied under exceptional circumstances.</li> <li>- No time limit for equal pay claims.</li> </ul>	
Italy	<ul style="list-style-type: none"> <li>- Administrative matters: 60 days from notification or publication of discriminatory act.</li> <li>- Civil: depends on the type of liability: contractual: 5 years from when the right can be asserted, extra-contractual: 10 years from when the right can be asserted</li> <li>- Employees' rights: for dismissal, 60 days from when it is communicated to the employee.</li> <li>- Right to salary: depends on the type of payment (weekly, monthly, annual).</li> <li>- Criminal: the time limit is equivalent to the maximum of the duration of the imprisonment.</li> <li>- Serious crimes subject to a fine: 6 y</li> <li>- Minor crimes subject to a fine: 4 y</li> </ul>	<ul style="list-style-type: none"> <li>- No time limit for a tribunal or the judge to determine a case.</li> <li>- Accelerated proceedings in discrimination cases.</li> <li>- Emergency procedures for urgent cases.</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>- Administrative matters: 1 month if indicated in writing in administrative act or 1 year if the time limited is not indicated r the plaintiff appeals against an actual act of an institution.</li> <li>- Civil (except for employment): for contractual and damage claims: 10 years.</li> <li>- Discrimination related employment cases: 3 months from the date of receipt of refusal of the employer to establish employment relationship with the job applicant or from he/she learned or should have learned of the violation of the prohibition of equal treatment.</li> <li>- Dismissals (incl. discriminatory): 1 month from the receipt of the notice of termination.</li> <li>- Criminal proceedings: 2 years for petty offences, 5 years less serious crimes, 10 years serious crimes and 15 years for especially serious crimes.</li> </ul>	<ul style="list-style-type: none"> <li>- No time limit for a tribunal or the judge to determine a case.</li> <li>- Reinstatement of an employee to work and cases of annulment of employer's notice: court hearing no later than 15 days after receiving explanation by the defendant.</li> <li>- Civil proceedings: average 3 to 6 months.</li> <li>- Supreme Court Senate: average 3 months.</li> </ul> <p>In the 23 discrimination court cases examined by LCHR, the length of proceedings in civil cases before first instance courts have, on average, ranged between two to four months, except for two cases coming from one court in the capital Riga where the length of proceedings appears excessive – 13 and 15 months respectively. Length of civil proceedings before appeal courts ranged from two to eight months, and only in one case it was 13 months. Proceedings before the Supreme Court Senate, on average, lasted between three to four and a half months. In sum, proceedings in civil cases, with a few exceptions, are considered to be concluded within a reasonable period of time.</p>
Lithuania	<ul style="list-style-type: none"> <li>No special time limit for discrimination.</li> <li>- Civil claim: 10 years</li> <li>- Exceptions: 1 month to 5 years</li> <li>- Employment relations under the Labour Code: 3 years</li> <li>- Employment Dispute Commission: within three months from s/he found out or ought to have found out about the violation of her/his rights.</li> <li>- Criminal cases: 2-15 years depending on the seriousness of the crime.</li> </ul>	<ul style="list-style-type: none"> <li>- Labour disputes in general courts must be examined within 30 days from when the case passed the first stage of examination.</li> <li>- In general, discrimination cases last for 6 months to 2 years.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>- Roma employment discrimination case: 1 year</li> <li>- Sexual harassment case: 2 years</li> <li>- Challenge of the Equal Opportunity Ombudsman decision to investigate a complaint: 1½ years</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>- Criminal complaint: within 3 years</li> <li>- No time limit for civil cases.</li> <li>- Employment cases: unfair dismissal: 3 months unless a written statement to the employer requested an explanation within one month of the termination, in which case, 1 year</li> </ul>	<ul style="list-style-type: none"> <li>- No time limits for a tribunal or the judge to determine a case.</li> <li>- Can range from 3 weeks to 42 months</li> </ul>

	Time limits to initiate the procedure	Length of the procedure
	- Special summons procedure for dismissals involving discrimination or victimisation: 15 days.	
Malta	- Industrial Tribunal: 4 months. - Claim for damages: 2 years - Criminal: incitement to racial hatred: 2 years - Other discrimination cases before the civil court: 2 years - Ombudsman: 6 months from when the complainant first had knowledge of the matter complained of. - Administrative review: 6 months.	- On average, at least 3 to 6 years without appeal. - Criminal proceedings: up to 7 years. - Industrial tribunal: procedures are much faster and should be concluded within a much shorter time frame.
The Netherlands	- Employment: 6 months - Civil (general unlawful act) - Criminal law specified per crime - CGB: no time limits specified	- Civil: no unreasonable delay in the proceedings
Poland	Employment, incl. discrimination: 3 years from the date on which the claim arose. Breaches of the principle of equal treatment: 3 years from the date on which the victim became aware of the breach but not more than 5 years from the occurrence of the breach.	No time limits set in the law.
Portugal	- Administrative procedure: 5 y from commission of the administrative offence. - Criminal in case of discrimination: 10 y from commission of the crime. - Claim for compensation or damages: 3 y from when the injured person obtained knowledge of the right or 20 years from the harmful event.	No time limits set in the law.
Romania	- Specific to discrimination: 3 y from occurrence of the discriminatory act or from the date when the claimant could acknowledge such act. - Gender: 1 y from the occurrence. - Crimes related to discrimination: 5 y from when the crime was committed.	No time limits set in the law. Usually, procedure before the court will last more than one year.
Slovakia	- Civil procedure: 3 y - In cases of material damages: barred after 2 y from when the victim finds out that his/her rights have been violated and by whom (subjective period) - Administrative: 2 months from the delivery of the administrative decision - Employment: within 2 months from the end of employment. - Criminal: 3 to 30 y, depending on the seriousness of the crime (depending on the years of imprisonment incurred). - Constitutional court: 2 months from the last decision of the authority violating the plaintiff's rights.	No time limits set in the law, but according to the case law of the Constitutional Court 6 month of inactivity of the court is considered as delays in court proceedings and violation of the fair trial rights Statistics: - in 2008, criminal cases for the district courts: 5.69 months and regional court: 65.91 months. - Civil procedure: 14.07 months; labour: 36.96 months; claims for damages: 28.30 months.
Slovenia	- Complaints to the Advocate of the Principle of Equality: 1 y from alleged discrimination. - Human Rights Ombudsman: No time limit. - To report a small offence to an inspectorate: 2 y from alleged discrimination. - Crimes: depends on the crime and the punishment foreseen. - Claim for compensation in employment or tort law: 3 y from when the victim learned	No time limits set in the law. On average 1 to 3 years

	Time limits to initiate the procedure	Length of the procedure
	<p>about the damage, but not later than 5 y from when the damage occurred.</p> <ul style="list-style-type: none"> <li>- Employment: within 5 y for the damage occurred as a result of the violation.</li> <li>- Administrative Court: within 30 days following the service of the violating decision to the claimant.</li> </ul>	
Spain	<p>Criminal discrimination (sexual harassment, sexual abuse and sexual aggression): 3 years from the date of the crime.</p>	<p>No time limits set in the law.</p> <ul style="list-style-type: none"> <li>- Typically in a labour and social security court: 4 to 6 months.</li> <li>- Appeal before Superior court: 8 months to one year.</li> <li>- Civil proceedings average length: 1 to 3 years</li> <li>- Criminal proceedings: 1 ½ to 2 years</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>- Employment, for notice of termination or summary dismissal: 2 weeks.</li> <li>- Claims for compensation: 4 months.</li> <li>- Other areas of employment: from 7 months to 31 months after the incident has occurred for labour organisations, one month more for employee.</li> <li>- Other areas of discrimination: 2 y from performance of the act or from the last date the obligation on which the obligation should have been fulfilled.</li> <li>- Criminal: 2 years</li> </ul>	<p>No time limits set in the law.</p> <ul style="list-style-type: none"> <li>- Average time in general courts: 27 months.</li> <li>- Average time in Labour court: 13 months.</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>- County and sheriff court: 6 months from when the alleged unlawful act occurred. The Court has discretion to allow claim after the time limit has lapsed</li> <li>- Employment / industrial / fair employment tribunal: within 3 months of the alleged conduct. The Tribunal can grant permission after the time has lapsed.</li> </ul>	<ul style="list-style-type: none"> <li>- In Northern Ireland, proceedings in employment discrimination cases: 2-3 years</li> <li>- County court: a claim for less than 5,000 GBP would last for up to 6 months.</li> <li>- Larger or more complex claims take longer.</li> </ul>

*Table IC.2– Time and length in the EFTA/EEA countries*

	Time limits to initiate the procedure	Length of the procedure
Iceland	<ul style="list-style-type: none"> <li>- General Penal Code; 6 months from the date the applicant became aware from the act or 2 years (special procedure).</li> <li>- Gender Equality Complaint Committee: 6 months from when the alleged violation became known or from when the situation regarded as an infringement ended or from when the person concerned became aware of the alleged violation. Sometimes, case can be examined after the deadline has passed (but in no case beyond 1 y).</li> <li>- Administrative procedure: 6 months from the issuance of the administrative act.</li> <li>- Civil claims: 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>- Judge has to deliver the ruling within 4 weeks.</li> <li>- Proceedings in the district court in criminal: average 2 months.</li> <li>- Civil cases: average 9 months.</li> <li>- Gender Equality Complaint Committee: has to decide within 3 months, but this time limit is not always respected.</li> </ul>
Liechtenstein	<ul style="list-style-type: none"> <li>- Any claim under the Act on Equal Treatment of Disabled Persons has to be brought to court within one year from when the victim became aware of the discrimination, but in any event within three years from when the discrimination took place.</li> <li>- All other claims regarding an employment contract: within five years from the termination of the contract or dismissal, including those for payment of salaries not received due to discrimination based on gender.</li> <li>- Abusive termination of a contract based on personal traits of the employee (i.e. race, religion, ethnic origin, age) must be refuted first and brought to the employer's attention in writing within the notice period provided by the contract. If no solution is reached, the employee has another 180 days to bring the claim to court, otherwise it will be forfeited.</li> <li>- Public employment sector: to the competent authority's attention within four weeks from the date when the discrimination took place.</li> <li>General claims for damages have a statute of limitation of 30 years.</li> </ul>	<ul style="list-style-type: none"> <li>- The law does not provide general time limit for court proceedings; the only non-discrimination lawsuit, which was reported so far, lasted four years.</li> </ul>
Norway	<ul style="list-style-type: none"> <li>- Discrimination cases: 3 years from the time knowledge of the facts.</li> <li>- No time limit to use the Ombudsperson: in practice, cases where discrimination have ceased to exist are dismissed.</li> </ul>	<ul style="list-style-type: none"> <li>- No time limits set in the law, but the aim of the Resolution of Disputes Act of 2008 is that all cases shall be decided within 6 months. Current figure is average of 5,4 months for court of first instance and 7,2 months for court of second instance.</li> <li>- Longer for the Ombudsperson and the Tribunal, as some cases take up to a year.</li> </ul>



## Annex ID- Legal costs

*Table 1D.1 – Legal costs in the EU Member States*

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
Austria	N/A	Legal representation: Not compulsory in first instance court if the claim is < 5,000 EUR. Compulsory in second instance and before the Supreme Court. Average costs: Legal fees are high and constitute an obstacle.	If the claimant loses the case, legal aid will not cover the fees of the defendant and s/he will have to pay the court fees and legal costs.
Belgium	From 150 to 250 EUR.	Legal representation: Not compulsory except for Supreme Court. Average costs: close to 3300 EUR	Yes.
Bulgaria	- No fees before the equality body, administrative proceedings, labour court for employees, criminal proceedings for the victim. - Exemption in civil proceedings for claimants who are workers, employees or cooperative members for any actions in employment relationships; claimant in cases for alimony; on any actions brought by a prosecutor; in any actions for damages sustained as a result of a tort or delict for which a sentence has been passed. - Exemption from court fees upon request by persons in need	Legal representation: Not compulsory. Average costs: The amounts of lawyers' costs are freely negotiated but cannot be lower than 75 EUR for inestimable claims such as discrimination; and could go up to as much as 100 EUR for claims with a value from 500-2500 EUR + 6% for the surplus value above 500 EUR.	When the person who received legal aid wins the case, the National Legal Aid Bureau pays legal costs. When the person who received legal aid loses the case completely or partially, he/she is obliged to pay the legal costs for the amount/part lost (Article 78, para.7 of CPC). However, if the person exempted from court fees wins the case, these should be paid by the opposing party (Article 78). If such a person loses the case he/she will not be held liable for any fees.
Cyprus	Variable; according to the value of the claim judicial stamp duty 17 EUR (for amount in litigation < 500 EUR), 31 EUR (from 501-2,000 EUR), 48 EUR (2,001-10,000 EUR), 94 EUR (10,001-50,000 EUR), and 154 EUR (50,001-100,000 EUR).	Legal representation: Not compulsory Average costs: As regards procedure costs, according to Cypriot lawyers, they agree their fees with the client, while the cap for actions brought before the Supreme Court is 3,000 EUR. The minimum lawyers' fees are specified by Procedural Regulation 2008. They depend on the amount of litigation: the minimum lawyers' fees for the proceedings at District Courts are approx. 500 EUR (for amount in litigation not exceeding 500 EUR), approx. 1,000 EUR (from 501-2,000 EUR), approx. 1,500 EUR (2,001-10,000 EUR), approx. 2,000 EUR (10,001-50,000 EUR), approx. 2,500 EUR (50,001-100,000 EUR). In practice, lawyers negotiate fees. Contingency fees arrangements are not permitted in Cyprus.	Legal costs and court fees. <i>Exceptions:</i> The Court may decide to what extent costs will be awarded to the winning party.
Czech Republic	Court fees apply for each proceeding, but waivers available if the applicant does not have sufficient resources and if the case has a chance of success. Generally from 24 EUR if	Legal representation: Not compulsory. Average costs: The estimates for legal representation costs vary, but the majority of experts assume – depending on the number of court instances – that it could be somewhere between 1,000-3,000 EUR.	Always applies. In theory, small possibility for the judge to depart from this principle in <i>cases of special regard</i> . If the discrimination victim seeks

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
	compensation sought is < 600 EUR. If there is no monetary compensation involved, the fee is 40 EUR. Administrative judiciary fees are 80 EUR.		compensation of 8,000 EUR, and loses, the amount to be paid to the winning party will be at least 1,990 EUR (also for proceedings concluded in first instance).
Denmark	Court fees from 68 EUR. If the value of the case exceeds 6,800 EUR, the fee is increased by 34 EUR plus 1,2 % of the amount exceeding 6,800 EUR. The maximum cost for initiating legal proceedings is 10,200 EUR. In order to set down the case for trial, a further fee of 68 EUR is required as well as 34 EUR if the case value exceeds 6,800 EUR and 1,2 % of any value above this limit. Maximum fee is 10,200 EUR.	N/A	Generally, principle applies, but the Court can waive in certain circumstances.
Estonia	Depends on cost of the matter in civil cases and on the subject matter in administrative proceedings. Reimbursable if judgment issued in favour of applicant. Relief of court fees, partially or fully, or payment of costs in monthly instalments if (1) insolvency and in civil proceedings, the financial situation (2) likely successful outcome, and (3) EU residence. Not granted in certain specific situations listed in the law.	Legal representation: Compulsory only when the person is unable to represent him/herself because of the complexity of the case or because legal representation is obligatory (e.g. the person has restricted legal capacity). <i>Criminal proceedings</i> : compulsory. Average costs: Lawyers' fees not set by law. Generally an hour of lawyer's service is 1,000-1,500 EEK (64-96 EUR) while under state legal aid, the minimum rate is set to 250 EEK (16 EUR) for an hour.	Yes.
Finland	National discrimination tribunal: no fees.  Courts: 49-230 EUR depending on the matter and on the instance.	Legal representation: Lawyers not compulsory, but often needed. Average costs: Costs constitute an obstacle.	Yes - with some exceptions. For example if the legal issue was not unclear that the losing party had justifiable reasons to proceed.
France	Stamp duty.	Legal representation: Not compulsory in first instance. Average costs: N/A	Yes, but court can waive this requirement.
Germany	Costs depend on value of dispute.	Legal representation: Not compulsory in first instance. Average costs: Lawyers' fees depend on value of dispute and can be high before general courts. They are lower before the labour courts.	Yes - except before the labour courts of first instance, where each party bears their own lawyer's costs.
Greece	Labour disputes: average 80-350 EUR.  All disputes: stamp duty.	Legal representation: Not compulsory for administrative proceedings, one-member courts and justice of the peace in labour disputes. Minimum level of attorney's fees, depending on amount in civil litigation and the type of procedure. In practice, the fees are fixed with an agreement with the client. Average costs: The lawyers' fees depend on the amount in litigation and the degree of jurisdiction. The fees for the following cases usually are:	Yes.

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
		<ul style="list-style-type: none"> <li>- approx. 350 EUR for filing of a petition for injunction proceedings, submission of legal brief and hearing of the case before the Single-Member Court of First Instance;</li> <li>- approx. 200 EUR for filing of a civil claim before the Single-Member Court of First Instance, submission of pleadings and hearing of the case regarding an amount up to 12,000 EUR;</li> <li>- approx. 350 EUR for amounts from 12,001-44,020 EUR;</li> <li>- approx. 400 EUR for amounts from 44,021-88,040;</li> <li>- approx. 1,100 EUR for amounts from 293,471-880,410 EUR;</li> <li>- approx. 1,700 EUR for filing of a petition for the cassation of a court decision, submission of pleadings and hearing before the Areios Pagos.</li> </ul>	
Hungary	Depends on value of the object of the lawsuit or the amount in dispute. 6% of the value but not less than 30 EUR and not more than 3,500 EUR. Employees whose income is below a certain amount (1,500 EUR) can file an employment suit free from court fees.	<p>Legal representation: Not compulsory.</p> <p>Average costs: Lawyers' fees depend on the length of the procedure. They usually depend on procedure length. According to informal sources, lawyers' fees range from 20-40 EUR per hour for less expensive attorneys, to 80-120 EUR for more 'prestigious' ones. However this is not the upper limit, lawyers' fees may be higher than this. Often attorneys and the clients agree on a lump sum for the case in advance. This sum depends on various conditions including the value of the object, complexity of the case, the quantity of documents and the anticipated length of the case. A case involving a clear case of discrimination in an employment context would cost approximately 200-400 EUR.</p> <p>Experts' fees vary. Additional costs include the travel expenses of witnesses. The actual fees are defined each year by the act of the annual National Budget:</p> <ul style="list-style-type: none"> <li>- cases dealt with outside courts: 6-25 EUR.</li> <li>- concerning court cases (civil procedures): from 12-50 EUR per hour;</li> <li>concerning appeal cases: max 50% of allocated fees.</li> </ul>	Yes - but if the plaintiff loses the case, the legal aid is paid by the State.
Ireland	Stamp duty: in <i>District Court</i> 20 EUR, in <i>Circuit Court</i> 65 EUR. No costs in <i>Equality Tribunal</i>	<p>Legal representation: Not compulsory.</p> <p>Average costs: Estimated costs of a case: 1,500 EUR.</p>	Judge decides on a case-by case-basis.
Italy	For <i>civil procedures</i> , 30-1,110 EUR, depending on the value of the case. For <i>administrative procedures</i> , depending on the area concerned, between 250-2000 EUR. Civil proceedings in the <i>Labour Tribunal</i> are exempt <i>Criminal procedures</i> : fees paid in advance by the State.	<p>Legal representation: Compulsory in judicial procedures. In civil procedures there are some exceptions, i.e. : 1) in case of discrimination; 2) in civil proceeding before a Justice of the Peace. For cases &lt; 516 EUR, representation is not compulsory.</p> <p>Average costs: The total cost of a lawyer results from the sum of the costs of the legal acts or services listed on a grid. The grid indicates minimum and maximum costs of such legal acts and services. The minimum of the range is not mandatory: the lawyer can derogate from it - the costs can be less than the minimum.</p>	Yes - except for the identification of serious and exceptional reasons by the judge where he/she may divide the costs between the parties.

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
		<p>Each range of costs indicated on the grid differs according to the court involved in the proceeding and according to the economic value of the interest or right in question in the proceeding (value of the proceeding). For these reasons, it is not possible to provide precise figures about the costs.</p> <p>For instance, for Civil Tribunal proceedings the cost is between 5,200.001-25,900 EUR:</p> <ul style="list-style-type: none"> <li>- studying of the case: from 210-835 EUR</li> <li>- meeting of the lawyer with the client, from 110-420 EUR</li> <li>- inspection of the relevant places, from 55-215 EUR</li> <li>- discussion with the lawyer in the hearings: from 110-425 EUR,</li> <li>- recourse to bring the case to the tribunal: from 85-330 EUR.</li> </ul> <p>The cost of the technical advice depends on the expertise of the advisor and the duration of the consultation. Therefore, it is not possible to give numbered estimates of these costs.</p> <p>The costs of a lawyer in an anti-discrimination action range approximately from a minimum of 2,000 EUR to a maximum of 3,000 EUR. This is an average calculated on the ground of the costs in some case law selected for this report.</p>	
Latvia	In discrimination related civil cases (except for discrimination related employment cases) fixed fee depending on the amount claimed. In administrative proceedings against a State or other government institutions: state fee of 30 EUR +14 EUR for appeal. No fee for cassation or ancillary complaints. In employment matters, the claimant is exempted from state fees.	<p>Legal representation: Not compulsory. Victims can be represented by anyone.</p> <p>Average costs: Fixed State fees are approx.19 EUR/hour for consultation, approx. 28 EUR/hour for representation in court, fees ranging between 15-42 EUR for drawing up different procedural documents. Fees agreed directly with the client are usually much higher.</p>	Yes.
Lithuania	Court fees: 29 EUR. In employment, no court fees.	<p>Legal representation: Not compulsory, except for some proceedings (e.g. cassation proceedings).</p> <p>Average costs: 1 hour of private lawyer's consultation on average costs 100 EUR. On average from 290-870 EUR.</p>	If the case is partially won, the judge distributes legal costs proportionally.
Luxembourg	No fees for administrative proceedings, but the courts may require losing party to pay costs relating to proceedings. Civil proceedings: legal costs paid at the end of the court case.	<p>Legal representation: Compulsory before the courts.</p> <p>Average costs:N/A</p>	Yes.
Malta	<p><i>Industrial tribunal</i>: no judicial fees.</p> <p><i>Court of First Instance</i>: 116.47 EUR. <i>Court of appeal</i>: 174.70 EUR.</p> <p>In addition, other fees are due depending in</p>	<p>Legal representation: Not compulsory.</p> <p>Average costs: Each note filing court ranges from 46.59-232.94 EUR. Other declarations: 23.29-232.94 EUR.</p> <p>Fees for each definitive judgment in a cause for a remedy under the Constitutional provisions on fundamental rights the costs are from 46.45-</p>	Yes - but at the Court's discretion.

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
	the value of the claim: from 1.75-8.15 EUR per 100 EUR or part thereof.	698.91 EUR. In actions related to human rights, payment of wages or claims for unjust dismissals from employment, fees are rebated by 50%. The lawyer and the client can agree on a fee different to this. A case would at the very least be 1,000 EUR.	
The Netherlands	No court fees for criminal proceedings Court fees in the sub-district court: from 39-298 EUR.	Legal representation: Lawyer compulsory, except before the sub-district court. Average costs: N/A	Yes - at the Court's discretion.
Poland	<i>Labour Court</i> : free of charge. <i>Civil Court</i> : depends on the claim for damages and on this instance. In cases concerning infringements of personal interest, 150 EUR. Possibility of exemption (partial or total)	Legal representation: Not compulsory. Average costs: Civil labour and social insurance cases: min. for a value of the case 125 EUR, costs of 15 EUR. For 375 EUR it is > 45 EUR	Yes.
Portugal	Court fees set on the basis of a schedule which takes as a reference the monetary value of the case.  Procedural costs, Labour admin, Offences and criminal proceedings: from 105-1050 EUR.  Claims for compensation or damages: depend on value and complexity of the cause, from 105-9,450 EUR.	Legal representation: Average costs: Lawyer's fees must correspond to an economic compensation adequate to the services performed. The fee scale approved by Ordinance gives indicative values of the min. amounts applicable to all relevant acts performed by lawyers ranging from 26 EUR for legal advice to 3,276 EUR for a declaratory action in civil proceedings with the highest values of the claims. (Usually higher and depend on the case.)	Yes – at the Court's discretion.
Romania	Applications on the ground of discrimination are exempt from court fees.	Legal representation: Not compulsory, except in some cases (e.g., criminal). Average costs: Legal fees from a few 100 to a few 1000 EUR depending on complexity of the case.	Yes, in civil cases (lato sensu), if the parties request so.
Slovakia	Recourse in case related to violation of the principle of equal treatment without a claim for non-pecuniary damages: 66 EUR. With a claim for non-pecuniary damages: 66 EUR +3% of the case non-pecuniary damages claimed. Employment: No court fees to be paid by the employee as plaintiff at the beginning of the procedure regarding the validity of the termination of the employment relationship; but if the court has to decide whether employment relationship exists: 99.50 EUR. Claims for damages caused by unjust	Legal representation: Not compulsory. Average costs: 2,000 Euro if the claimant loses the case. In case of no pecuniary amount, in case of consumer contracts and in cases of social insurance the amount of basic tariff is 62,70 EUR for one operation of legal service). In cases where the pecuniary amount is claimed, the basic tariff is calculated according to the formula set up by the decree (varies from the minimum 16,60 EUR per for one operation of legal service with claimed damages less than 165,92 EUR up to 486,29 EUR per for one operation of legal service with claimed damages more than 33 193, 92 EUR and this amount increases always plus 6, 64 EUR for further 3 319, 39 EUR exceeding the amount of 33 193, 92 EUR (for example, in case of claimed damages of 40 000 EUR, the basic tariff for one operation of legal service	Yes. Except for the reasons set up by law (§142 and following of the Civil Procedure Code – Act 99/1963); in some cases the judge may divide the costs between the parties or decide that no party has right for reimbursement of the costs

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
	termination of employment: 6% of the claimed amount of damages from at least 16.50-16,596.50 EUR.	is of 506,21 EUR).	
Slovenia	Depending on the value of the dispute. Social or labour disputes not relating to property: 20 EUR. No court fees in collective labour dispute and some social law disputes. No court fees in individual labour dispute about entering employment, existing employment or termination of employment. Claims relating to the rights of persons with disabilities in employment: free of charge + employer has to bear all expenses for taking evidence even if the plaintiff did not succeed with the claim. Exemptions from court costs possible in certain cases.	Legal representation: Not compulsory in first instance procedures. Average costs: Unpredictable costs of court procedures are recognised as a problem. The cost of legal representation depends on the services provided by the attorney and is defined by various variables. For example, preparation of a lawsuit due to dismissal from employment is calculated on the basis of average gross salary of the employee in the last six months. If that salary is 1,500 EUR, the award for the attorney is 89.70 EUR; if the salary is 2,000 EUR, the award is 113.10 EUR. The same fees are paid if the employee claims compensation in these amounts.	Yes.
Spain	First instance: 210 EUR. Second instance: 300 EUR. Cassation: 600 EUR. Multiple exemptions: - natural persons - NGOs - public interest associations - small associations (turnover < €5 million) - no court fees for protection of fundamental rights). <i>Criminal court</i> : deposit as guarantee (varies depending on the case and decided by the court).	Legal representation: Lawyer compulsory for administrative judicial procedures. Solicitor compulsory for actions and appeals brought before Superior Tribunals, National Audience and Supreme Court. Lawyers' fees approx. 2,000-5,000 EUR. Average costs: N/A	Administrative procedure: almost never applied except when <i>mala fide</i> .
Sweden	No court fees in discrimination cases.	Legal representation: Not compulsory. Average costs: N/A	Yes. <i>Discrimination outside employment</i> : costs of the courts can be divided when the losing party has reasonable cause to bring action to Court.
United Kingdom	No fees before the employment/industrial tribunal or fair employment tribunal <i>County Court</i> : issue fee depending on the amount claims from 36-438 EUR.	Legal representation: Not compulsory. Average costs: The costs of a case vary significantly. For a case settled before hearing, the average cost is around 4,255 EUR. Heard at County Court or Tribunal: 3,647 or 7,295 EUR respectively. Higher courts: significantly more.	Yes. In employment / industrial / fair employment tribunals, the tribunal does not award costs, but in certain cases, they may or must do so based on the conduct of the parties.

Table 1D.2 – Legal costs in the EFTA/EEA countries

	Judicial Court Fees	Legal representation & estimated average cost of a case	Loser Pays Principle
Iceland	From 150 EUR to 750 EUR.	Legal representation: Not compulsory. Average costs: Lawyers' fees are not decided by law. Hourly fees are approximately 100-155 EUR + 24.5%VAT. A simple case may entail 70 to 80 hours: about 8,700 EUR for a case.	Yes
Liechtenstein	Depends on the value of the claim. Employment matters with a claim not exceeding 21,700 EUR are free of charge. Court fees in total amount to at least 350 EUR.	Legal representation: Not compulsory. Average costs: For compensation claim of 10,000-15,000 EUR (hypothetical 3 months' of salary), a claimant would be charged a minimal fee of between 185-220 EUR per hour. Assuming an estimated workload of 30 hours (including taking a case to the second instance), those fees would amount to a total between 5,000-6,600 EUR. In case of a loss, or if a claimant does not have the necessary means to pay the bill (and neither fulfils the conditions for legal aid), lawyers tend to reduce their bills by 10-25%. Should there be no agreement on fees, official court tariffs for legal representation apply. In this case, for a claim of 15,000 EUR, a lawyer will be remunerated 714 EUR (including all expenses.) for one written statement in court. For obvious reasons, lawyers will insist on fixing an hourly rate with the claimant.	Yes
Norway	No court fees for criminal proceedings. For cases under the employment legislation: no court fees. <i>Civil disputes</i> : approx. 520 EUR. Where a case is rejected or refused, agreed or solved through an out-of-court settlement: 200 EUR.	Legal representation: Not compulsory. Average costs: 1 hour of private lawyer's consultation on average costs 200 EUR. A full court proceedings in the court of first instance will cost between 10.000 and 30000 EUR	Yes - but the Court can exempt a party from liability for legal costs in whole or in part if justifiable grounds justify the exemption. In some exceptional cases, the costs may be shared at the courts discretion



## Annex IE- Sanctions

*Table IE.1 – Sanctions in the EU Member States*

Member State	Non-criminal sanctions <sup>80</sup>	Criminal sanctions
Austria	<ul style="list-style-type: none"> <li>- Discriminatory job advertisement: maximum fine 360 EUR</li> <li>- Disability, religion and ethnic origin regarding access to publicly available institutions and services: maximum 1,090 EUR or 2,180 EUR.</li> <li>- Revocation of licence</li> <li>- Exclusion of the employer from public funding</li> </ul>	<ul style="list-style-type: none"> <li>- Race and ethnic origin: slander having a racist motivation: imprisonment up to 3 months and 180 day fines.</li> <li>- Public unrest for the same reason: imprisonment for up to 2 years</li> <li>- Crime committed with a racist or xenophobic motivation: aggravating circumstance</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>- Discriminatory clauses can be declared null and void</li> <li>- Publication of the decision</li> <li>- Additional penalty in case of non-compliance with the judgment</li> </ul>	<ul style="list-style-type: none"> <li>- Not enforcing an <i>action en cessation</i> is a criminal offence (contempt of court): imprisonment 1 month to 1 year, and/or fine of 150 to 1,000 EUR + extra publicity of the judgment</li> <li>- Incitement to discrimination, violence or hatred towards people protected under the law: imprisonment 1 month to 1 year, and/or fine of 150 to 1,000 EUR, except for civil servants: 2 months to 2 years imprisonment; aggravating circumstance: double the imprisonment; felony: increase by 2 years</li> <li>- In race, also discrimination in access to and supply of goods and services and employment</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>- Commission on Protection against Discrimination (CPaD): 125 EUR to 1,000 EUR, second violation: double the initial sanction</li> <li>- Court: Termination of the violation, restoration of the <i>status quo ante</i>, restraint on further violation, and compensation for damages</li> <li>- Non-execution of a decision by CPaD or Court: 1,000 EUR to 50,000 EUR, if violation continues: 2,500 to 10,000 EUR</li> <li>- Discrimination via an administrative act: act can be revoked or annulled</li> </ul>	<ul style="list-style-type: none"> <li>- Imprisonment: depending on the crime: For incitement of racial hostility or racial discrimination: up to 3 years imprisonment</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>- Annulment of administrative decision or act infringing the principle of equal treatment</li> <li>- Ombudsman: small fines up to 600 EUR for discriminatory behaviour, treatment or practice</li> <li>- Reinstatement to employment in case of unfair dismissal</li> </ul>	<ul style="list-style-type: none"> <li>- Non-compliance with the principle of equal treatment: fine up to up to 3,450 EUR (gross negligence) or 6,870 EUR (intentional crime) or imprisonment up to 6 months or both; Legal entity: fine up to 6,870 EUR (gross negligence) or 12,000 EUR (intentional crime)</li> <li>- Offences for hindering labour inspectors: fine up to 1,720 EUR (gross negligence) or 5,150 EUR (intentional crime) and/or imprisonment not exceeding 3 months; legal entity: up to 5,150 EUR (gross negligence) or 8,600 EUR (intentional crime)</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>- Employment offices and trade inspectorate: fine up to 40,000 EUR</li> </ul>	<ul style="list-style-type: none"> <li>- Imprisonment, house arrest, community service, property confiscation, financial penalties, bans on certain activities, ban on residence, ban on entry to events, loss of honorary titles and awards, loss of military rank, expulsion from the State territory</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>- Board on Equal Treatment: Can overrule dismissals in discrimination in employment, based on legislation or collective agreements</li> </ul>	<ul style="list-style-type: none"> <li>- Hate speech directed towards groups or persons identified by their race, colour, national or ethnic origin, belief or sexual orientation: fine or imprisonment for up to 2 years. Case-law: usually 133 EUR to 676 EUR.</li> <li>- Violation of equal treatment in respect to access to public places, goods and services: fine</li> </ul>

<sup>80</sup> Does not include compensation, see Annex IF.1



Member State	Non-criminal sanctions <sup>80</sup>	Criminal sanctions
		and imprisonment for up to 6 months. Case-law: most fines amount to 133 EUR
Estonia	- Termination of the discrimination	- Incitement to hatred or violation of equality: fine up to 1,150 EUR (191,735 EUR for legal persons), pecuniary punishment: 96 to 1,598 EUR as a minimum (3,196 to 15,978 EUR for legal persons), detention up to 30 days, or imprisonment: up to 3 years - Violation of equality: fine up to 1,150 EUR, pecuniary punishment: 96 to 1,598 EUR as a minimum, detention up to 30 days, or imprisonment: up to 1 year
Finland	Discrimination Tribunal and Equality Board: - Prohibition of continuation or repetition of conduct - Conditional fine Courts: can change discriminatory and contractual terms or declare a contract void; Administrative courts may overturn appealable administrative decisions	- Crime of discrimination and work discrimination: fine (amount of the day fine depending on the income of the offender) or imprisonment for up to 6 months
France	- Equality body: 3,000 EUR + compensation for damages - Labour Tribunal	- All types of discrimination: 45,000 EUR and 3 years (225,000 EUR for legal persons) - Except for discrimination committed in a public place or discriminatory prohibition of access to a public place: 75,000 EUR and 5 years
Germany	- Termination of discriminatory conduct - Revocation of administrative act - Labour law: provisions of an agreement that violate the prohibition of discrimination are declared null and void; and claim for reemployment	- Incitement to hatred: 3 months to 5 years. - Incitement in written form publicly displayed: 3 years and/or a fine.
Greece	- Non-repetition of the wrongful act or omission - Violation of prohibition of discriminatory practice in employment: fine for each violation from 500 to 50,000 EUR. - Annulment of the administrative act - Disciplinary sanctions for servants violating the prohibition of discrimination	- Incitement to discrimination, hatred or violence on the ground of race, national origin or religion, participation in activities tending to racial discrimination: up to 2 years imprisonment and/or a fine - Public expression of offensive ideas on the ground of race, national origin or religion, maximum 1 year imprisonment and/or a fine. Fines cannot be lower than 150 EUR and higher than 15,000 EUR - Commission of an offence motivated by ethnic, racial or religious hatred or hatred based on sexual orientation constitutes an aggravating circumstance. - Violation of the principle of equal treatment in the access to goods and services to the public: imprisonment from 6 months to 3 years and a fine of 1,000 to 5,000 EUR. - Sexual harassment: 6 months to 3 years and a fine of 1,000 EUR. - If employer does not cease discrimination: fine up to 5,900 EUR and imprisonment for up to 1 year
Hungary	<i>Equal Treatment Authority:</i> - Exclusion of the employer from public procurement procedures and exclusion from access to governmental and EU support funds - Order to stop the discrimination - Publication of the decision - Additional fines from 175 EUR to 21,000 EUR <i>National Labour Inspectorate:</i> - Warning the employer to stop the unlawful conduct - Recommend issuance of a fine against the employer	--

Member State	Non-criminal sanctions <sup>80</sup>	Criminal sanctions
Ireland	<p>Specific performance of the contractual obligations</p> <p>* in a non-dismissal claim, the Equality Tribunal may order:</p> <ul style="list-style-type: none"> <li>- arrears for old remuneration going back to 3 years before the date of the referral</li> <li>- equal remuneration from the date of the referral</li> <li>- compensation for the effect of a discriminatory act which occurred not earlier than 6 years before the referral</li> <li>- that the person specified in the order take the specified course of action</li> </ul> <p>* in a dismissal claim, the reinstatement with or without an order for compensation</p>	<ul style="list-style-type: none"> <li>- Procedural offences under the Employment Equality Act and Equal Status Act: on summary conviction: imprisonment of 1 year and/or a fine of 1,904.61 EUR, or on conviction on indictment: imprisonment of 2 years and/or a fine of 31,743.45 EUR.</li> </ul>
Italy	<p><i>Civil remedies:</i></p> <ul style="list-style-type: none"> <li>- cessation of the conduct or any other act capable of putting an end to discrimination</li> <li>- for non-recruitment: payment by employer into public retirement fund of an amount equivalent to 1 year of salary the victim would have been entitled to</li> <li>- publication of the judgment in newspapers</li> </ul> <p><i>Administrative remedies:</i></p> <ul style="list-style-type: none"> <li>- confiscation of benefits</li> <li>- unilateral termination of contract with public administration</li> <li>- ban of access to public contracts for 2 years</li> <li>- For non-recruitment: payment by employer into public retirement fund of an amount equivalent to 1 year of salary the victim would have been entitled to</li> <li>- disability: publication of the judgment in newspapers</li> </ul> <p><i>Administrative remedies:</i></p> <ul style="list-style-type: none"> <li>- confiscation of benefits</li> <li>- unilateral termination of contract with public administration</li> <li>- ban of access to public contracts for 2 years</li> </ul>	<ul style="list-style-type: none"> <li>- Propagation of ideas based on ethnic or racial hatred: imprisonment of up to 3 years</li> <li>- Incitement to discrimination based on racial or ethnic origin, nationality or religion: 6 months to 3 years</li> </ul> <p>Aggravating circumstances applicable to crimes committed for a discriminatory purpose or for reason of ethnic, national, racial or religious hatred</p> <ul style="list-style-type: none"> <li>- For groups whose aim is to incite discrimination or racial hatred: 1 to 6 years, or community service, or restriction of freedom of movement or the exercise of certain civil rights.</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>- State Labour Inspectorate in employment cases and courts in discrimination cases outside employment: Violation of the prohibition of discrimination specified in regulatory enactment: administrative fine from 140 EUR up to 710 EUR</li> <li>- Discriminatory dismissal: reinstatement to employment</li> </ul>	<p>Violation of prohibition of discrimination: depending on the circumstances of the case</p> <ul style="list-style-type: none"> <li>- Fine up to 30 minimum monthly salaries;</li> <li>- Imprisonment of up to 2 years, community service and/or fine up to 50 minimum monthly salaries</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>- Equal Opportunity Ombudsman: from 29 EUR to 1,158 EUR</li> </ul>	<ul style="list-style-type: none"> <li>- Incitement against any national, racial, ethnic, religious or other groups of persons: punished by a fine, restriction of liberty, arrest, or imprisonment from 1 to 3 years</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>- Civil sanctions: annulling the cause of the contention (contract, collective contract or internal procedure leading to the contention, rules of non-profit or profit organisations), annulling a dismissal and reinstating the employee in the job, imposing a penalty, publishing the judicial decision or imposing compensation payments.</li> </ul>	<ul style="list-style-type: none"> <li>- Discrimination against natural or legal persons, a group or community of persons where it affects a person's access to employment, vocational training, employment conditions, and membership in an employee or employer's organisation: imprisonment from 8 days to 2 years and/or a fine from 251 EUR to 25,000 EUR.</li> </ul>

Member State	Non-criminal sanctions <sup>80</sup>	Criminal sanctions
Malta	<ul style="list-style-type: none"> <li>- Industrial Tribunal: order cancellation of a contract of service or of any clause in a contract or a collective agreement which is discriminatory, and order the payment of compensation</li> <li>- Employment and Training Corporation: order a government department or employer to give employment to an applicant rejected without just cause</li> </ul>	<ul style="list-style-type: none"> <li>- For breaches of the employment law, a fine up to 11,646.87 EUR</li> <li>- Discrimination in employment, sexual harassment, and racial discrimination in all areas: a fine of approx. 2,300 EUR and/or to imprisonment of up to 6 months.</li> <li>- Employment with a government body: a fine from 1,164.69 EUR to 11,646.87 EUR</li> <li>- Incitement to hatred: 6 to 18 months imprisonment</li> <li>- Punishment increased when racially or religiously aggravated or else motivated by xenophobia, harm committed on a person above 60 years old or person suffering from physical or mental infirmity.</li> </ul>
The Netherlands	N/A	<ul style="list-style-type: none"> <li>- Sanctions for discrimination are established in Criminal Code (depending on the crime)</li> <li>- In cases of general criminal offences with a discriminatory aspect on the basis of Article 137c Criminal Code, the sanction requirement is increased by 25%</li> </ul>
Poland	N/A	<ul style="list-style-type: none"> <li>- Violence or unlawful threat towards a group of persons or an individual because of national, ethnic, political, or religious affiliation or because of lack of religious belief: 3 months to 5 years imprisonment</li> <li>- Public promotion of a fascist or other totalitarian system of state or incitement to hatred based on national, ethnic, racial or religious differences: fine, restriction of liberty or imprisonment for up to 2 years</li> <li>- Public insult of a group or person, affection of the physical integrity of a person: deprivation of liberty up to 3 years</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>- Labour: exclusion or restriction of access to employment, professional activity and training on the ground of sex: from 20 to 600 times the value of the monthly minimum wage (475 EUR)</li> <li>- Racial discrimination: a fine between 1 to 5 times the highest value of the monthly minimum wage if committed by an individual, and 2 to 10 times the same value if committed by a legal person; in case of recidivism: double this sanction</li> <li>Additional sanctions, depending on the seriousness of the offence and guilt</li> <li>- Sex discrimination: fine between 5 and 10 times the value of the guaranteed monthly minimum wage; by a collective person: fine between 20 and 30 times the value of the guaranteed monthly minimum wage. In case of relapse or retaliation the minimum and maximum limits are doubled. The attempt and negligence are also punishable, diminishing the maximum and minimum limits to half.</li> <li>Fulfilment of a duty, if still possible.</li> <li>Accessory sanctions.</li> </ul>	<ul style="list-style-type: none"> <li>- Crime of racial, religious, or sex discrimination: imprisonment 1 to 8 years,</li> <li>- Defamation or insult on grounds of race, ethnic origin, nationality, sex or sexual orientation: 6 months to 5 years</li> <li>- Domestic violence: 1 to 5 years</li> <li>- Sexual harassment: up to 1 year, or a fine of up to 120 days</li> </ul>
Romania	<ul style="list-style-type: none"> <li>- Administrative fines: from 200 EUR to 3,750 EUR</li> <li>- Civil sanctions: order to cease the act of discrimination</li> <li>- Withdrawal or suspension of authorisation or functioning of a legal person, termination of employment contract, reemployment of victim and payment of remuneration lost following the change in the work relations</li> </ul>	<ul style="list-style-type: none"> <li>Crimes related to discrimination:</li> <li>- Imprisonment from 6 months to 5 years for abuse of office by limitation of fundamental rights</li> <li>- Fine from 125 to 7,500 EUR or imprisonment from 6 months to 3 years for instigation to acts of discrimination</li> </ul>

Member State	Non-criminal sanctions <sup>80</sup>	Criminal sanctions
Slovakia	<ul style="list-style-type: none"> <li>- Violation of equal treatment: Court can order to refrain from discriminatory conduct and/or rectify the illegal situation, and/or provide adequate satisfaction (+ the right for reimbursement of damages)</li> <li>- Unlawful termination of employment: 12 months' salary and reimbursement of the remaining period of the employment relationship at the judge's discretion</li> </ul>	<ul style="list-style-type: none"> <li>- Support and propagation of groups aiming to repress basic rights and freedoms: imprisonment of up to 5 years.</li> <li>- Manufacturing of extremist materials: imprisonment from 3 to 6 years</li> <li>- Spreading of extremist materials: imprisonment from 1 to 5 years</li> <li>- Keeping extremist materials: imprisonment of up to 2 years</li> <li>- Defamation of a nation, race and conviction: imprisonment of 1 to 3 years</li> <li>- Incitement towards national, racist and ethnic hatred: imprisonment of up to 3 years</li> <li>- Incitement, defamation and menace towards persons for their race, nation, nationality, skin colour, ethnic group or origin: imprisonment of 1 to 3 years.</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>- Publication of the judgment</li> <li>- Administrative fines: 250 to 1,200 EUR (natural person) and 2,500 to 40,000 EUR (legal person)</li> <li>- Putting a jobseeker or an employee in unequal position: 3,000 to 20,000 EUR</li> <li>- Reinstatement of employee to position of employment</li> <li>- Sums of money corresponding to the wage from the end of court proceedings until reinstatement</li> </ul>	<ul style="list-style-type: none"> <li>Incitement to ethnic, racial, gender, religious or political intolerance or related to sexual orientation: up to 835 EUR</li> <li>Suspended imprisonment and financial punishment</li> </ul>
Spain	<ul style="list-style-type: none"> <li>- Actions should be declared null and void if found to be discriminatory</li> <li>- Reinstatement of worker is possible</li> </ul>	<ul style="list-style-type: none"> <li>Discriminatory behaviour due to racial, ethnic, national, or religious motives:</li> <li>- very serious infractions: from 10,000 to 100,000 EUR</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>- Board against discrimination: financial penalty</li> <li>- Court can modify or set aside clauses that are discriminatory in individual contracts or collective agreements</li> </ul>	<ul style="list-style-type: none"> <li>- Crime of unlawful discrimination on ethnic grounds, belief or sexual orientation: fine or imprisonment for up to 1 year</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>- Equality in employment: declaration regarding the rights of the parties, make recommendations that the respondents take within a specified period, action to obviate or reduce the adverse effect</li> <li>- Indirect discrimination: a Tribunal cannot award damages unless it has first considered making a declaration or a recommendation</li> </ul>	<ul style="list-style-type: none"> <li>NB: very rare</li> <li>- Intentionally stirring up hatred on racial or religious ground, on ground of sexual orientation: up to 7 years imprisonment or a fine, or both on indictment</li> <li>On summary conviction: 6 months imprisonment and/or a fine</li> </ul>

Table IE.2– Sanctions in the EFTA/EEA countries

Member State	Non-criminal sanctions <sup>81</sup>	Criminal sanctions
Iceland	<ul style="list-style-type: none"> <li>- Centre for Gender Equality: per diem fines if request for information not complied with or if enterprises or institutions failed to adopt gender equality plans.</li> <li>- Failure to comply with instructions of the Centre for Gender Equality, the Centre may decide that the party is to pay per diem fines until it complies with the instructions. This can amount to up to 312 EUR/day.</li> </ul>	<ul style="list-style-type: none"> <li>- Hate speech and discrimination: fine and imprisonment up to 2 years, and in services: up to 6 months</li> </ul>
Liechtenstein	<ul style="list-style-type: none"> <li>Civil: sanction of three months' salary for discriminatory non-employment based on gender</li> </ul>	<ul style="list-style-type: none"> <li>- Aggravating circumstance if the crime has a racist or xenophobic motive</li> <li>- Racist act: imprisonment from 1 day to 2 years</li> </ul>
Norway	<ul style="list-style-type: none"> <li><i>Equality Tribunal:</i></li> <li>- Order to stop, remedy or adopt other measures necessary to ensure that discrimination, harassment, instructions, reprisals cease and to prevent their repetition</li> <li>- Coercive fine</li> <li><i>Ordinary courts:</i></li> <li>- Discriminatory clauses can be declared null and void</li> <li>- Revocation of administrative acts</li> </ul>	<ul style="list-style-type: none"> <li>- Gross discrimination committed jointly by several persons, hate-racism: fine or imprisonment up to 3 years</li> <li>- Refusal of providing goods and services as well as admission to public performance/exhibition/gathering in relation to discrimination because of skin colour or national or ethnic origin, religion, sexual orientation or lifestyle: fine or imprisonment up to 6 months.</li> <li>- Fines are left to the discretion of the judge.</li> </ul>

<sup>81</sup> Does not include compensation, in Annex IF.2

## Annex IF- Civil compensation

Table IF.1 – Civil compensation in the EU Member States

Country	Material damage	Moral damage	Punitive damages	Limit
Austria	Y	Y	N	- Minimum for harassment 720 EUR - Discriminatory non-employment: at least 2 months' salary, max. 500 EUR if the employer proves that the victim would not have been promoted or recruited in any event
Belgium	Y	Y	N	- Fixed lump sum for moral damages outside employment: 650 EUR or 1,300 EUR - Employment: 3 or 6 months' gross salary
Bulgaria	Y	Y	N	No upper limit
Cyprus	Y	Y	Y	No upper limit
Czech Republic	Y	Y	N	No upper limit- so far amounts awarded have ranged from 200 EUR to 6,000 EUR
Denmark	Y	N	N	No upper limit- average equivalent to six months' salary: 14,864 EUR
Estonia	Y	Y	N	No upper limit
Finland	Y	Y	N	<i>Equality Act</i> : minimum is 3,240 EUR but can be reduced or waived based on the situation of the offender (e.g. financial situation), No upper limit, except for recruitment, where max. is 16,210 if the employer can show that in any case the victim would not have been employed had the decision been made on the basis of non-discriminatory decisions, and 15,000 EUR for suffering caused by discrimination and victimisation. <i>Non-Discrimination Act</i> : maximum for compensation for the suffering caused by such discrimination or victimisation is in principle 15,000 EUR. Where special cause exists, the maximum level of compensation may be exceeded if this is justified by the duration and severity of the discrimination and other circumstances of the case. Moreover, an injured party may also claim damages under the Tort Liability Act (412/1974) before district courts either as a civil claim or in conjunction with criminal proceedings concerning discrimination crime or work discrimination crime.
France	Y	Y	N	No upper limit
Germany	Y	Y	N	Three months' salary in the event of non-recruitment if the employer proves that the victim would not have been promoted or recruited in any event
Greece	Y	Y	N	No upper limit
Hungary	Y	Y	N	In employment, two to twelve months' salary + reimbursement of the claimants' salary and other employment benefits or other losses of the employee
Ireland	Y	Y	Y (Circuit court only)	In the non-employment context, before the District Court and Equality Tribunal: up to 6,350 EUR or an order that a person or person(s) specified in the order take a specified course of action In employment cases: before Equality Tribunal and the Labour Court: limited to two years remuneration for cases ordering compensation for the effect of discrimination or compensation along with reinstatement or reengagement. In all other cases, up to 12,700 EUR Before the Circuit court: No upper limit
Italy	Y	Y	Y (Race and	No upper limit

Country	Material damage	Moral damage	Punitive damages	Limit
			ethnicity in the labour sector)	
Latvia	Y	Y	N	No upper limit, except for the state administrative bodies, up to 28,500 EUR For state administrative bodies, minor violations: written or public apology as principal or additional compensation for moral harm
Lithuania	Y	Y	N	No upper limit
Luxembourg	Y	Y	Y	No upper limit
Malta	Y	N (except injury to feelings in discrimination on disability)	N	No upper limit, except for moral damages in case of discrimination based on disability: 465.87 EUR
Netherlands	Y	Y	N	No upper limit
Poland	Y	Y	Y	Labour limit: not less than 1 month minimum wage (=300 EUR), no upper limit Civil law: no lower or upper limit Criminal law also provides for compensation to victims
Portugal	Y	Y	N	No upper limit
Romania	Y	Y	N	No upper limit
Slovakia	Y	Y	N	No upper limit-Employment: at least 12 months average salary guaranteed if unjust termination of employment relationship
Slovenia	Y	Y	N	No upper limit
Spain	Y	Y	N	No upper limit
Sweden	Y	Y	Y	No upper limit - usually between 500 and 10,000 EUR
UK	Y	Y	Y	No upper limit

*Table IF.2 – Civil compensation in the EFTA/EEA countries*

Country	Material damage	Moral damage	Punitive damages	Limit
Iceland	Y	Y	N	No upper limit
Liechtenstein	Y	Y	N	Sexual harassment: compensation of approximately 3,600 EUR Improper termination of the employment contract: up to 6 months' salary Discriminatory non-employment based on gender: 3 months' salary
Norway	Y	Y	Y	No lower or upper limit. However, only the ordinary courts may award compensation. The Equality Tribunal cannot award compensation.





## **ANNEX II**



## Annex II – Methodology Note

The analytical framework and investigation method followed for the completion of this study are described below:

### *(1) Development of methodological materials*

In order to ensure uniformity among the country studies, the management team developed methodological materials which were distributed to the national legal experts in April 2010. These materials included:

- Templates for Country Studies and Project Guidelines

The management team developed templates for the country studies including specific instructions under each heading. Detailed project guidelines on the series of steps for completing the country study were developed and distributed to the national experts. The guidelines expanded on the methodology set out in the proposal. In order to build on past experience and provide clearer guidance to the national experts, the guidelines were revised in accordance with discussions held during the Inception Meeting and approved by DG EMPL<sup>82</sup> with the Inception Report.

- Stakeholder questionnaires

The management team developed two questionnaires (one for authorities and one for organizations) for the retrieval of information from selected officials or representatives of NGOs or social partners. Instructions to the stakeholders are included at the beginning of the questionnaires.

### *(2) Gathering national transposing laws, regulations and administrative provisions and consulting stakeholders*

Once provided with the country study template, guidelines and questionnaires, the national experts set about collecting all of the relevant national legislation and contacting the relevant stakeholders.

### *(3) Filling out the Country Studies*

Deadlines were set with each expert for submission of the country studies. The first draft of each completed report was sent to the Milieu team for review and back to each expert with comments until the report was finalised.

### *(4) Completion of Comparative Study*

The management team and the senior experts refined the template for the comparative study on the basis of the technical specifications and indicative outline provided in the proposal. The information under each heading of the national reports was compared through the use of tables. Common elements and differences across the countries reviewed were identified and noted. The elements of practical implementation form an integral part of the analysis of each specific topic. The issues by country are summarised in the study and recommendations are made at national and EU level.

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<sup>82</sup> The relevant unit was transferred to DG Justice in January 2011.



## **ANNEX III**



## Annex III – Sources of Information

### EU Level Sources

Interviews with stakeholders:

The Milieu team has organized a number of interviews with EU level stakeholders. Meetings have taken place with:

- AGE (the European Older People's Platform)
- EDF (the European Disability Forum)
- ILGA Europe (the International Lesbian and Gay Association – Europe)
- European Women's Lobby
- MPG (Migration Policy Group)

European Commission Publications:

Bettio, F., and Verashchagina, A. (March 2009), *Gender segregation in the labour market: root causes, implications and policy responses in the EU*, available at: <http://ec.europa.eu/social/main.jsp?catId=418&langId=en&pubId=364&type=2&furtherPubs=yes>

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Foubert, P. (May 2010), *The Gender Pay Gap in Europe from a Legal Perspective*, available at: <http://ec.europa.eu/social/main.jsp?catId=738&langId=cs&pubId=578&type=2&furtherPubs=no>

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Expert Group on Gender Equality and Social Inclusion, Health and Long-Term Care Issues (EGGSI) (March 2010), *More women in senior positions - key to economic stability and growth*, <http://ec.europa.eu/social/main.jsp?catId=738&langId=cs&pubId=558&type=2&furtherPubs=no>

Expert Group on Gender Equality and Social Inclusion, Health and Long-Term Care Issues (EGGSI) (July 2010), *Access to healthcare and long-term care: equal for women and men?*, Final Synthesis Report, available at: <http://ec.europa.eu/social/main.jsp?catId=738&langId=cs&pubId=558&type=2&furtherPubs=no>

Equinet publications:

*European Network of Equality Bodies (2009)* Equinet Annual Report 2009, available at: [http://www.equineteurope.org/equinet\\_annual\\_report\\_2009\\_final\\_for\\_print.pdf](http://www.equineteurope.org/equinet_annual_report_2009_final_for_print.pdf)

*European Network of Equality Bodies (2009)*, Dynamic Interpretation: European Anti-Discrimination Law in Practice IV, available at: [http://www.equineteurope.org/2010\\_03\\_16\\_dynamic\\_interpretation\\_report\\_w\\_layout.pdf](http://www.equineteurope.org/2010_03_16_dynamic_interpretation_report_w_layout.pdf)

European Network of Equality Bodies (December 2009), *Statistics on Discrimination and Database on Complaints A contribution from national equality bodies*, available at: [http://www.equineteurope.org/2010\\_03\\_02\\_database\\_on\\_complaints\\_w\\_template.pdf](http://www.equineteurope.org/2010_03_02_database_on_complaints_w_template.pdf)

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European Network of Equality Bodies (May 2008), *Beyond the Labour Market: New Initiatives to Prevent and Combat Discrimination*, An Equinet Opinion, available at: [http://www.equineteurope.org/2678\\_Beyond\\_Labour\\_online\\_v1.pdf](http://www.equineteurope.org/2678_Beyond_Labour_online_v1.pdf)

Publications of the network of legal experts

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Burri, S., and Prechal, S. (October 2009) - *Gender Equality Law in 30 European Countries, 2009 Update*, available at: <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>

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Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC: Existence, independence and effectiveness*, available at:

Tobler, C. (June 2005), *Remedies and sanctions in EC non-discrimination law, Effective, proportionate and dissuasive national sanctions and remedies, with particular reference to upper limits on compensation to victims of discrimination*, Thematic Report, available at: <http://www.non-discrimination.net/publications>

Fundamental Rights Agency (FRA) publications:

European Union Agency for Fundamental Rights (June 2010), *Annual Report 2010*, available at: [http://www.fra.europa.eu/fraWebsite/attachments/AR\\_2010-conf-edition\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf)

European Union Agency for Fundamental Rights (November 2009), *The situation of Roma EU citizens moving to and settling in other EU Member States*, available at: [http://www.fra.europa.eu/fraWebsite/attachments/Roma\\_Movement\\_Comparative-final\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/Roma_Movement_Comparative-final_en.pdf)



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European Union Agency for Fundamental Rights (March 2009), *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation*, available at: [http://www.fra.europa.eu/fraWebsite/attachments/FRA\\_hdgso\\_report\\_Part%202\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_Part%202_en.pdf)

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Milieu Ltd. (2007), *Access to justice in environmental matters*, available at: [http://ec.europa.eu/environment/aarhus/study\\_access.htm](http://ec.europa.eu/environment/aarhus/study_access.htm)

United Nations Development Programme (March 2004), *Access to Justice: Practice Note (Draft 1), 8/3/2004*, available at: [http://europeandcis.undp.org/files/uploads/HR/mat%20PracticeNote\\_AccessToJustice.pdf](http://europeandcis.undp.org/files/uploads/HR/mat%20PracticeNote_AccessToJustice.pdf)

#### International legal instruments

European Convention for the Protection of Human Rights and Fundamental Freedoms of November 1950, as amended by Protocols No. 11 and No. 14

Universal Declaration of Human Rights of December 1948

United Nations Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979

United Nations Covenant on Civil and Political Rights of 16 December 1966.

United Nations Covenant on Economic, Social and Cultural Rights of 16 December 1966

International Convention on the Elimination of all forms of Racial Discrimination of 4 January 1969

International Labour Organisation Convention No 111 of November 1960

European Union legal instruments

#### *General legislation*

Treaty on the Functioning of the European Union  
Community Charter of the Fundamental Social Rights of Workers

#### *European Directives*

Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Directive 2004/113/EC prohibiting sex discrimination as to access to and supply of goods and services.

Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426 of 2 July 2008

#### *Sectoral documentation*

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 2 July 2008 - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe [\[COM\(2008\) 412\]final](#).

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 2 July 2008 – Non-discrimination and equal opportunities: A renewed commitment [\[COM\(2008\) 420\]final](#).

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a Community framework strategy on gender equality (2001-2005) [COM(2000) 0335]final].

Communication from the Commission on the strategy for equality between women and men 2010-2015, 21 September 2010 [COM(2010) 491 final].

Communication from the Commission on racism, xenophobia and anti-semitism, December 1995 [COM(95) 653 final].

Communication from the Commission on Equal opportunities for people with disabilities: a European action plan, 30 October 2003, [COM(2003) 650]final]

Communication from the Commission on the Situation of disabled people in the enlarged European Union: The European Action Plan 2006-2007, 28 November 2005 [COM(2005) 604]final].

Council Joint Action (96/443/JHA) concerning action to combat racism and xenophobia

Recommendation 86/379/EEC on the employment of disabled people in the Community

Resolution of 17 June 1999 on equal employment opportunities for people with disabilities

Resolution of 29 June 2000 for Employment and Social Policy on the balanced participation of women and men in family and working life (2000/C 218/02).

Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Equality between women and men — 2010 {SEC(2009)1706}

Guidelines for Member States' Employment Policies 2000 was adopted [Official Journal L 72, 21.03.2000].

Court of Justice Case-Law

C-33/76, *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*

C-14/83, *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*

C-170/84, *Bilka-Kaufhaus*

C-109/88, *Handels-og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*

C-208/90, *Theresa Emmott v Minister for Social Welfare and Attorney General*

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C-410/92, *Elsie Rita Johnson v Chief Adjudication Officer*

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C-342/93, *Gillespie and Others v Northern Health and Social Services Board and Others*

C-444/93, *Megner and Scheffel v Innungskrankenkasse Rheinhessen-Pfalz*

C-100/95, *Brigitte Kording v Senator für Finanzen*

C-180/95, *Nils Draehmpaehl v. Urania Immobilienservice OHG*

C-246/96, *Mary Teresa Magorrian and Irene Patricia Cunningham v Eastern Health and Social Services Board and Department of Health and Social Services*

Joined Cases C-279/96 to C-281/96, *Ansaldo Energia and Others*

C-394/96, *Brown*

C-326/96, *Levez*

C-167/97, *R v Secretary of State for Employment, ex parte Seymour Smith and Perez*

C-185/97, *Coote/Granada Hospitality Ltd*

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