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ACCESS TO JUSTICE – A SOCIOLOGICAL STUDY ON CASES OF DISCRIMINATION IN THE EU – FRA D/SE/10/05

FINAL REPORT - Version 30 November 2011

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List of abbreviations

ACAS	Advisory, Conciliation and Arbitration Service (UK)
ADR	Alternative dispute resolution
ADSNT	Additional Support Needs Tribunal (UK)
CAB	Citizen's Advice Bureau (UK)
CEOOR (Belgium)	Centre for Equal Opportunities and Opposition to Racism
CEPEJ	European Commission for the Efficiency of Justice
CJEU	Court of Justice of the European Union
COMEDD	Committee for the Measurement and Evaluation of Diversity and Discrimination (*Comité pour la mesure et l'évaluation de la diversité et des discriminations*) (France)
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECNI	Equality Commission for Northern Ireland (UK)
ECRI	European Commission on Racism and Intolerance
EHRC	Equality and Human Rights Commission (UK)
ERRC	European Roma Rights Centre
ETA	Equal Treatment Act (*Gleichbehandlungsgesetz*) (Austria)
ETC (Austria)	Equal Treatment Commission (*Gleichbehandlungskommission*)
EU	European Union
EU-MIDIS	European Union Minorities and Discrimination Survey
FRA	European Union Agency for Fundamental Rights
FRALEX	FRA network of legal experts
FRANET	FRA multidisciplinary research network (replaced FRALEX in 2011)
HALDE	Equal Opportunities and Anti-Discrimination Commission (*Haute Autorité de Lutte contre les Discriminations et pour l'Egalité*) (France)
IEWM	Institute for the Equality of Women and Men (Belgium)
INED	National Institute for Demographic Studies (*Institut National Etudes Démographiques*) (France)
LGBT	Lesbian, gay, bisexual and transgender
MPG	Migration Policy Group
MRAX	Movement against Racism, Anti-Semitism and Xenophobia (*Mouvement Contre le Racisme, l'Antisémitisme et la Xénophobie*) (Belgium)
NHRI	National human rights institution
NGO	Non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OET (Austria)	Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*)
OJ	Official Journal of the European Union

PADA	Protection Against Discrimination Act (*Закон за защита от дискриминация*) (Bulgaria)
PADC	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*) (Bulgaria)
SENDIST	Special Educational Needs and Disability Tribunal (UK)
SPSS	Statistical Package for the Social Sciences
UK	United Kingdom
UNAR	National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazione Razziale*) (Italy)
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly

EXECUTIVE SUMMARY

1 INTRODUCTION

1.1 Background to this study

This report is written within the framework of the project 'Access to justice – A sociological study on cases of discrimination in the EU', commissioned by the European Union Agency for Fundamental Rights (FRA).

The purpose of the project is to gain insight into the obstacles and incentives for complainants in pursuing their complaints and gaining access to justice through equality bodies or similar entities and thus to assist stakeholders in the field of access to justice in discrimination cases, to enhance the effectiveness and efficiency of their actions.

The principle of non-discrimination is firmly established in EU law and EU legislation in this field includes provisions relating to access to justice. For example, Article 7 of Council Directive 2000/43/EC (Race Directive) provides that:

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

Other equality directives, such as the Council Directive 2000/78/EC (Employment Equality Directive), the Council Directive 2004/113/EC (Gender Goods and Services Directive) and Council Directive 2006/54/EC (Gender Employment and Occupation Directive – recast) contain the same provision.[2]

Moreover, the Race Directive, the Gender Goods and Services Directive and the Gender Employment and Occupation Directive (recast) require Member States to designate a body (or bodies) which:

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

The body or bodies designated on the basis of the provisions of these three directives are generally referred to as (specialised) equality bodies and "... may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights." [3]

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[1] Council Directive 2000/43/EC, OJ 2000 L 180, p. 22.
[2] Council Directive 2000/78/EC, OJ 2000 L 303, p. 16; Council Directive 2004/113/EC, OJ 2004 L 373, p. 37; Council Directive 2006/54/EC, OJ 2006 L 204, p.23.
[3] See, for example, Council Directive 2000/43/EC, Article 13.1.

The EU equal treatment directives do not contain specific requirements as to how the equality bodies should be structured to carry out their functions and activities, but guidance on the establishment and operation of these bodies can be drawn from standards developed by both the United Nations for national human rights institutions (NHRIs) – the 'Paris Principles'[4] – and the Council of Europe's European Commission against Racism and Intolerance (ECRI) General Recommendations No. 2[5] and No. 7.[6]

This report aims to:

- provide an overview of existing information, research and data regarding the different bodies and organisations tasked with securing access to justice in cases of discrimination in the EU Member States covered in this study;
- give an insight into the perspectives and experiences of a particular group of complainants on bringing cases of discrimination and into the perspectives of equality bodies, other similar bodies and intermediary bodies on access to justice in cases of discrimination;
- identify issues in relation to access to justice concerned with the procedures used in discrimination cases, the support available to complainants in discrimination cases and aspects of access to justice that go beyond the individual case.

1.2 Organisation of the research project

The research project was carried out by a consortium of two organisations: Human European Consultancy and the Ludwig Boltzmann Institute for Human Rights.

The project had three main building blocks:

- a literature review conducted for eight Member States and a selection of seven additional Member States;
- fieldwork (interviews) in eight selected Member States;
- a peer-review meeting in September 2011 with the whole research team, representatives of equality bodies, other stakeholders and the FRA to discuss preliminary findings and conclusions.

The full team of researchers brought together by the two organisations consisted of a central research team and national research teams for the eight selected EU Member States.[7]

[4] UNGA (1993).
[5] ECRI (1997).
[6] ECRI (2002).
[7] See page 1 for an overview of experts included in the project management team, the central research team and the national research teams.

The eight selected Member States were Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Italy and the United Kingdom. These countries were chosen so as to include a geographical spread, a mix of old and new Member States and a range of different justice systems. The latter is important, since a diversity of access to justice systems shows a variety of equality bodies which are different in history, structure, scale and mandate. It includes equality bodies which have a predominantly tribunal function (= hearing and deciding individual instances of discrimination) and those which have a predominantly promotional function (= mix of promotional activities and providing assistance to individuals in instances of discrimination).[8]

The central team was responsible for the design and guidance of the research at project level and for preparing the final research report. The national research teams were responsible in each of the eight selected Member States.

The national research teams implemented the fieldwork and interviewed the respondents, consisting of the following four categories:
- complainants
- non-complainants
- intermediaries
- equality bodies.

Before the research started, a briefing meeting was held with the national research teams of the eight selected Member States, introducing the objectives of the research, the key concepts, the relevant issues concerning the literature and the qualitative fieldwork. The briefing allowed the researchers to comment on draft questionnaires to be used for the interviews and the overall methodology of the research and ensured a coherent approach across the eight research teams.

Two meetings were held with the FRA during the research: an inception meeting shortly after signing the contract and a progress meeting halfway through the project. An exchange on progress, concerns and other issues also took place on a weekly basis.

1.3 Aim and structure of the report

The structure of the report is the following. Chapter 2 describes the main methodological issues relating to the report: the constitutive elements of the concept of access to justice used in this report, the terminology, the approach to the desk study and literature review, the approach to and set up of fieldwork and the peer review meeting. Chapter 3 describes the findings of the literature review and additional desk research. It first gives an overview of the access to

[8] See Section 2.2 for a more detailed explanation of the differences between the two types of bodies.

justice systems in the eight selected Member States. It then provides information on the procedures in discrimination cases, the support available in discrimination cases, measures that are used in the Member States to enhance legal certainty and which strategies are followed to raise the awareness of rights.

Chapters 4 to 7 describe in detail the findings of the fieldwork conducted in the eight countries, structured according to the same four main topics as Chapter 3 (access to a dispute resolution body in the systems of the eight countries, procedures and support in discrimination cases and legal certainty and awareness of rights). Each chapter first describes the experiences and views of complainants and subsequently the views on the subject expressed by representatives of equality bodies, administrative/judicial institutions and intermediaries.

Chapter 4 describes findings regarding institutional structures and the paths available to complainants in the systems in the eight Member States and the issue of the geographical accessibility of dispute resolution bodies.

Chapter 5 describes the findings with regard to four elements of access to justice in relation to procedures and includes fair proceedings, the timely resolution of cases, effective remedies and redress, and efficiency and effectiveness of procedures.

Chapter 6 gives the findings on support in cases of discrimination with legal advice and assistance and emotional, personal and moral support, awareness of rights and accommodation of diversity.

Chapter 7 includes the findings on legal certainty and the promotion of the culture of rights.

Chapter 8 provides the conclusions and recommendations.

A list of references and glossary are included at the end of the report.

2 METHODOLOGY

2.1 Constitutive elements of access to justice

For the purpose of an earlier study on access to justice, the FRA developed a typology of 'access to justice' that includes five constitutive elements.[9]

The typology is based on the consideration of the right to a fair trial as well as the broader right to a remedy contained in Articles 6 and 13 of the European Convention on Human Rights (ECHR), Articles 2(3) and 14 of the International Covenant on Civil and Political Rights and Article 47 of the Charter of Fundamental Rights of the European Union. It encompasses a broad conception of judicial and non-judicial means of accessing justice.

The five constitutive elements of this typology are:
- the right to effective access to a dispute resolution body;
- the right to fair proceedings;
- the right to timely resolution of disputes;
- the right to adequate redress;
- conformity with the principles of efficiency and effectiveness.

These five constitutive elements are, however, not sufficient to address access to justice in discrimination cases. Research and surveys such as the European Union Minorities and Discrimination Survey (EU-MIDIS) have demonstrated a diversity of factors that contribute to low levels of reporting in cases of discrimination.[10] Access to justice in cases of discrimination therefore also requires consideration of four additional elements:
- access to information and confidence-building measures;
- access to legal advice and assistance and to a range of emotional, moral and personal support;
- initiatives to stimulate and support a culture of rights among the general population and in organisations;
- initiatives to secure legal certainty in the interpretation of the provisions of equal treatment legislation.

The central research team identified an additional element: accommodation of diversity of complainants in the policies, procedures and practices of the relevant institutions of the justice system. This relates to the following: equality requires a differentiated approach within human rights, while not undermining common provisions for all groups in international human rights law instruments.

The accommodation of diversity in access to justice as an additional complementary subject for research in this present project reflects this

[9] FRA (2011b), pp. 14-16.
[10] FRA (2010a), EU-MIDIS, p.3.

approach. Access to justice can be examined in a manner that is relevant to all groups experiencing discrimination.

Accommodating diversity is only explicitly mentioned in EU equal treatment legislation in Directive 2000/78/EC (Employment Directive) in relation to the ground of disability.[11] However, the further exploration of the practical implications of diversity for access to justice reveals the need for a broader approach to accommodating diversity in justice systems, which encompasses all grounds covered by equal treatment legislation.

The grounds covered by the EU equal treatment legislation include gender, age, racial or ethnic origin, religion or belief, disability and sexual orientation. Each ground brings specific needs and experiences, and particular barriers may arise for each of these grounds. Access to justice strategies need to be tailored to address the specificities of each ground, while seeking to respond to the shared barriers that lead to under-reporting. If access to justice is to be achieved, diversity needs to be accommodated in:

- exercising the right to effective access to a dispute resolution body, to fair proceedings, to timely resolution, to adequate redress and to securing conformity with the principles of efficiency and effectiveness;
- information and awareness-raising activities and strategies targeting people experiencing discrimination;
- the provision of, or support for the development of, legal and personal supports for those who allegedly suffered from discrimination;
- initiatives to secure legal certainty in terms of clarity and predictability of the law and its interpretation;
- awareness-raising activities and strategies among the general public and within organisations.

Building on the approach developed by the FRA, while adding the above five elements, was deemed appropriate to reflect the findings of academic research and other studies. For the purposes of this study, therefore, the concept of 'access to justice' includes ten elements which can be grouped under four different headings:

a) Access to a dispute resolution body encompassing the first constituent element of the FRA typology.
b) Procedures, encompassing the next four elements of the FRA typology.
c) Access to support, including information and confidence-building for those who experience discrimination; legal advice and assistance and personal, emotional and moral support; accommodation of diversity.
d) Measures beyond the individual case to secure legal certainty and to stimulate and support a culture of rights among the general population and within organisations.

[11] Council Directive 2000/78/EC, OJ 2000 L 303, p. 16.

The research examines these ten elements of access to justice. It seeks to explore barriers and enablers for those who experience discrimination not only to start a procedure but to be able to make effective use of procedures in a way that secures access to justice. This is done in relation to each of the ten elements.

2.2 Terminology

For a better understanding of this report some key terms need to be explained. Specific definitions are included in the glossary at the end of the report.

At the centre of this research are the people who experienced discrimination and decided to take action – the complainants. Complainants in this report are the people who lodged, successfully or not, a complaint about discrimination with an equality body, court or administrative / judicial institution. Non-complainants are people who experienced discrimination, but did not lodge a complaint about their discrimination experience with an equality body, court or administrative / judicial institution.

In this report four types of relevant actors in the systems to access justice are distinguished:
- equality bodies;
- courts;
- entities similar to equality bodies – in short “similar entities”;
- intermediaries.

The institutions or people at whom the complaint is directed, and who are (allegedly) the perpetrator(s) of the discrimination which is the subject of the complaint, are the defendants in the procedures before an equality body, court or administrative / judicial institution.

Equality bodies can be divided into two types: predominantly tribunal-type and predominantly promotion-type. Both are established by statute under equal treatment legislation. Promotion-type equality bodies spend the bulk of their time and resources on a broad range of activities that encompass supporting good practice in organisations, raising awareness of rights, developing a knowledge base related to equality and non-discrimination and providing legal advice and assistance to individual victims of discrimination. Tribunal-type equality bodies, on the other hand, spend the majority of their time and resources hearing, investigating and deciding on individual cases of discrimination brought before them.

Courts are state institutions with the authority to adjudicate legal disputes between parties and to give binding enforceable decisions. Courts can be first instance, appellate or supreme courts.

"Similar entities" are for the purpose of this report administrative / judicial institutions which deal with cases of discrimination. They can be approached by complainants and can bring a case to a formal conclusion. These "similar entities" include national human rights institutions, ombudsmen, labour inspectorates and specialised tribunals. In bringing discrimination cases to a conclusion these institutions function as "similar entities" to predominantly tribunal-type equality bodies. Predominantly tribunal-type equality bodies could fall within this category but, for the purpose of this research, they are dealt with as a separate category.

Intermediaries are public institutions, non-governmental organisations (NGOs) or individuals who function as links between the complainant and the institutions through which they seek to secure justice. They play roles in providing information on rights and how to make a claim, providing legal advice and assistance and personal support to complaints, securing legal certainty and building a positive attitude to the right to equality and non-discrimination. Potential intermediaries include NGOs, victim support organisations, trade unions and lawyers and other professionals, such as, for example, mediators.

2.3 The constitutive elements of access to justice

The ten constitutive elements of access to justice in discrimination cases, grouped under the four headings mentioned above, are defined by the central research team as follows.

a) **Access to a dispute resolution body**
Access to a dispute resolution body is effective access to judicial and non-judicial means of obtaining redress for instances of discrimination. It requires an institutional infrastructure that can be accessed by individual complainants in cases of discrimination. This is the first element of access to justice in cases of discrimination.

b) **Procedures**
These are legal and non-legal processes in a court, predominantly tribunal-type equality body or administrative / judicial institution during which cases are lodged, parties are informed, evidence is presented and facts are determined.

Elements 2, 3, 4 and 5 are the following.

- *Fair proceedings,* which includes the principle of equality of arms, sharing of the burden of proof and allowing for appeal against decisions made.
- *Timely resolution of disputes,* which means that disputes are tackled and solved within an adequate and appropriate period of time.
- *Effective remedy or redress,* which means that the situation of the complainant(s) is changed for the better or the damage is compensated

for in a way which is proportional to the level of damage done and the outcome is satisfactory from the perspective of the victim (see the glossary under 'adequate redress').

- *Efficiency and effectiveness,* defined by the Committee of Ministers of the Council of Europe as, "The delivery of quality decisions within a reasonable time following a fair consideration of issues".
  Moreover, in the same recommendation the Committee stated that: "*The efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 [right to fair trial] of the [European] Convention [on Human Rights], legal certainty and public confidence in the rule of law."* This thereby clearly identifies efficiency as a component of fair trial.

c) **Support in cases of discrimination**
The key elements under this heading, numbered 6, 7 and 8, are the following.

- *Support which includes legal and personal support.*
  - *Legal advice and assistance.*
    Legal advice and assistance is defined as support to complainants in bringing a case. It includes legal advice services as well as support in the form of representation and securing access to court and / or tribunal systems.
  - *Legal aid* is a means to enable access to legal advice and assistance and is therefore an indicator of barriers in this area rather than the actual element. Legal aid is defined as financial means / resources made available to support victims in covering the economic costs of seeking access to justice (for example, costs of pre-legal advice, representation in court / lawyers' fees, as well as the cost of the legal proceedings themselves).
  - *Personal, emotional and moral support*. This is support designed and provided to motivate and encourage the complainant to sustain engagement in the process and to minimise experiences of isolation and loss of relationships.
- *Awareness of rights* encompasses knowledge about the existence of rights, about the availability of mechanisms and institutions for the protection or vindication of rights, as well as about how to use these mechanisms and institutions for seeking redress for rights violations.
- *Accommodation of diversity* covers adjustments made in response to differences between complainants and their different needs in terms of support in relation to factors such as language, physical impairment or disability, financial resources, age, religious, cultural, ethnic, social, political and educational backgrounds, gender, sex and/or sexual orientation. These specific needs arise from the specific experience (relationship of people with the majority population and the institutions of society), situation (people's economic, political and social status) and

identity (the norms and values held that shape people's attitudes and behaviours) of groups which experience inequality

d) **Access to justice beyond the individual case**
Elements 9 and 10 are the following.
- *Legal certainty*, which encompasses clarity and predictability of the law and the absence of gaps in the interpretation of the law.
- *Culture of rights* which exists within the general population such that people are aware of discrimination and inequality and are supportive of equality, the case for a more equal society, diversity and the different groups which make up society, rights and the importance of people exercising rights, equality legislation and the institutions established to implement this legislation.

2.4 Literature review

In the eight selected countries, the literature review was carried out by the national research teams and based on available background materials.

The literature reviews by the national experts consist of literature findings relevant in analysing access to justice in cases of discrimination in the national context and include a wide range of sources[12]:
- surveys and research data on, for example, under-reporting, on the specific needs of particular groups in relation to access to justice and on the experiences of complainants with access to justice in cases of discrimination;
- official, semi-official and unofficial data and information;
- reports (including shadow reports) by NGOs, equality bodies, ministries of justice, NHRIs and ombudsmen offices;
- academic literature;
- judgments under Article 6 of the ECHR.

On the basis of the outcomes of the literature review by the research team and national research teams, a background report was produced. The background report contains sections on systems of access to justice in the eight selected EU Member States as well as on findings under the three other headings: procedures, support and legal certainty and awareness of rights.

The background report is mainly based on information provided by national experts on the existing literature in the eight selected Member States. Furthermore, the access to justice systems served as models for the presentation of different types of access to a dispute resolution body in discrimination cases (key element 1) in Chapter 2. For the presentation of access to justice in relation to the other elements, literature was reviewed

[12] See List of References for full list of sources and bibliographic references.

regarding the jurisdictions of other EU Member States (Estonia, Greece, Latvia, the Netherlands, Poland, Portugal and Sweden).

The choice of the examples from additional Member States included in the background report was determined by the availability of literature and reports on key issues for this research project, such as the level of rights knowledge and knowledge of institutions, the level of trust in systems and procedures available, the structure of the system of access to justice in discrimination cases and the adequacy of procedures for providing access to a diverse clientele.

The background report addresses:
- how each Member State implemented the obligation under the EU equality legislation to designate specialised bodies in the fields covered by the equality legislation;
- relevant findings from social research and related sources on the theme of access to justice since 2003;
- specific findings from research on different entities which can receive complaints, including an overview of the main differences and similarities between equality bodies and other similar entities;
- evidence concerning obstacles and good practices regarding access to justice in discrimination cases;
- an overview and analysis of the procedures in place for accessing equality bodies and similar entities.

The literature review was used to gain an overview of the structure of the systems of access to justice in discrimination cases as well as to identify the main obstacles and factors facilitating access to justice in discrimination cases.

The literature review resulted in 20 hypotheses in relation to the ten key elements of the concept of access to justice, which were then verified against the findings of the fieldwork. The hypotheses are presented at the end of Chapter 3, which describes the findings of the literature review.

2.5 Fieldwork and processing of the data

2.5.1 Organisation of the fieldwork

The fieldwork consisted of face-to-face and telephone interviews with four groups of respondents: complainants, non-complainants, intermediaries and representatives of equality bodies, based on the four different questionnaires. The fieldwork was carried out between March and September 2011 in the eight countries selected for this research.

The objective of the interviews was to give an insight into the perspectives and experiences of complainants in bringing cases of discrimination and into the

perspectives of equality bodies, other similar bodies and intermediary bodies on access to justice in cases of discrimination.

The development of the four questionnaires was carried out by the central research team in consultation with the FRA. The questionnaires included open and closed questions.

In each Member State 46 interviews were held, with the exception of Austria (48) and the Czech Republic (47), bringing the total number of interviews to 371:

- 213 interviews with complainants;
- 28 interviews with non-complainants. Non-complainants either reported discrimination, but decided not to lodge a complaint, or lodged a formal complaint, but withdrew the complaint at some point during the procedure;
- 95 interviews with intermediaries (lawyers, representatives of NGOs and other professionals);
- 35 interviews with representatives of equality bodies or similar entities (with equal distribution between bodies if more than one) were conducted by the national research teams in the eight selected Member States.

2.5.2 Processing the information

Transcripts of the interviews were written in English. A template was provided for the transcripts, based on the questionnaires for each group of respondents. This ensured coherence and consistency in the transcripts and facilitated processing the information from the interviews.

The interviews were conducted in the national language. The questionnaires for the four groups of respondents were translated into each of the national languages for this purpose. Outside the United Kingdom three interviews were conducted in English (in Belgium and Finland). Two interviews were conducted in sign language (in Austria and the United Kingdom).[13]

Each national research team conducted between five and ten interviews and submitted the transcripts of these interviews to the central research team for a quality check and feedback. Based on the feedback from this check, the transcripts were improved and interviewers had the opportunity of utilising the feedback for further interviews.

During this process of feedback, questions and terminology were identified that required further clarification. Such clarification was sent to all research teams twice. In order to ensure a common understanding of concepts, a glossary was

[13] Interviews in the United Kingdom included interviews in England, Wales, Scotland and Northern Ireland.

produced before the interviews started, in which some difficult and abstract subjects such as accommodation of diversity and culture of rights were defined. The glossary was further used throughout the research project and is included in the Annex.

The data from the transcripts for each of the four groups of respondents were processed as follows.

- The quantitative data were entered and processed through the statistics program, Statistical Package for the Social Sciences (SPSS).
- The answers to the open questions were categorised with a view to addressing some of the research gaps identified by the background report.

The assessment of the interviews does not aim to provide an in-depth analysis of the eight national contexts, but rather tries to trace the various routes of access to justice and how the complainants perceive and assess these different routes in terms of access to the system, different kinds of support available, procedures and outcomes in relation to the expectations of and goals set by the respondents.

2.5.3 The sample

The sample for the fieldwork is not representative of the whole population of complainants in cases of discrimination in the eight selected EU Member States.

The majority of complainants interviewed for this report were identified as complainants because they brought a claim under equal treatment legislation. Only a small number of people were interviewed who did not lodge a complaint (28 out of 241, see above). The group of complainants interviewed is not representative of all people who have experienced discrimination, since research shows that many people who experience discrimination do not lodge a complaint (see Section 2.1).

Moreover, the composition of the group of complainants was atypical: 42% of the complainants and non-complainants were approached and interviewed after being named as potential respondents by equality bodies. Hence the selection of respondents resulted in a specific sample, in which people who experienced discrimination and lodged a complaint with or via an equality body are over-represented.

The samples of the groups of representatives of equality bodies and intermediaries are also not representative of the whole population of equality bodies and intermediaries.

In the group of representatives of equality bodies not all the equality bodies which operate in each of the eight Member States could be interviewed, for

reasons of time and resources. This applies to the United Kingdom, where the equality bodies in Scotland and Wales were not interviewed, and to Austria, Belgium and Italy, where not all regional offices and equality body structures could be interviewed.

In addition, only a small number of representatives of each equality body was interviewed in comparison to the overall number of staff. Furthermore, representatives were asked for their own views and experience rather than for the overall views and experience of the equality body. Finally, in Austria, Belgium, Finland and Italy, interviews were not only conducted with representatives of equality bodies but also with representatives of judicial / administrative institutions, which further adds to the diversity and non-representative nature of the sample.

The group of intermediaries, like the group of complainants, consisted of an atypical selection. They were selected mainly after being named by representatives of equality bodies, by complainants or through the national researchers' own professional network. Furthermore, their numbers per category of intermediaries were small.

The largest group among the intermediaries interviewed were lawyers and lawyers specialised in equal treatment law, followed by NGOs and victim support organisations. Lawyers (specialised or not) and representatives of NGOs were interviewed in all eight Member States. Victim support organisations were not interviewed in Austria, Bulgaria and Italy. Representatives of trade unions were among the respondents in Finland, Italy and the United Kingdom. In Austria representatives of the Chamber of Labour (*Kammer für Arbeiter und Angestellte*), which is a social partner organisation, were interviewed as intermediaries.

However, the non-representative nature of the various groups of respondents was anticipated and was in conformity with one of the main aims of this research project, which is to gain insight into the obstacles and incentives for complainants in pursuing their complaints and gaining access to justice through equality bodies or similar entities in discrimination cases.

Apart from the fact that the sample of respondents in the group of complainants is not representative of the whole population of complainants and in addition to the specific manner of selecting respondents, the selection of respondents has the following atypical features:

- Sixty per cent of the interviews were conducted in the capitals of the respective Member States; the use of telephone interviews (105, compared with 261 face-to-face interviews, and five interviews using a combination of both techniques) made it possible to interview complainants living at a distance from the institution where the complaint was lodged.
- More than 60% of the complainants and non-complainants were women.

- Sixty per cent of the complainants and non-complainants were highly educated (tertiary education).
- All grounds but not all fields of discrimination were covered in all eight Member States (see graphs in Chapter 3).

It is important to read the results of the fieldwork in relation to the experiences and perceptions of complainants, bearing in mind the particular nature of the sample interviewed.

In the presentation of the findings of the fieldwork in Chapters 4-7 no conclusions are drawn regarding statistical significance. This is due to the above-mentioned fact that the sample is not representative of the various groups of respondents in the eight Member States.

With regard to the group of complainants, it is also due to the fact that the complainants interviewed display a number of atypical features as mentioned above. There are quite a number of variables which have to be taken into account simultaneously when analysing the data of the fieldwork concerning complainants, which in turn results in rather small numbers of cases in each of the categories by which the sample was broken down.

Because the sample is not representative for the group of complainants, the other a-typical features listed above and the small numbers of respondents per group this report refrains from drawing any conclusions on statistical significances throughout the report.

2.6 Peer review meeting

On 26 September 2011 the results from the literature research synthesised in the background report and the preliminary findings and conclusions emerging from the literature review and fieldwork were presented to a meeting consisting of the national research teams, representatives of equality bodies and intermediaries in the eight countries selected for research, as well as representatives from the FRA. The background report and a summary of the initial findings were sent to the participants before the meeting.

The meeting provided the central research team with feedback on the facts as presented in the background report regarding access to a dispute resolution body, the procedures, support and legal certainty and building a culture of rights. The meeting also served to provide feedback on the preliminary conclusions drawn by the central research team and the draft recommendations for main stakeholders that the central research team formulated and presented at the meeting.

3 FINDINGS OF THE DESK STUDY AND LITERATURE REVIEW

3.1 The justice systems in cases of discrimination

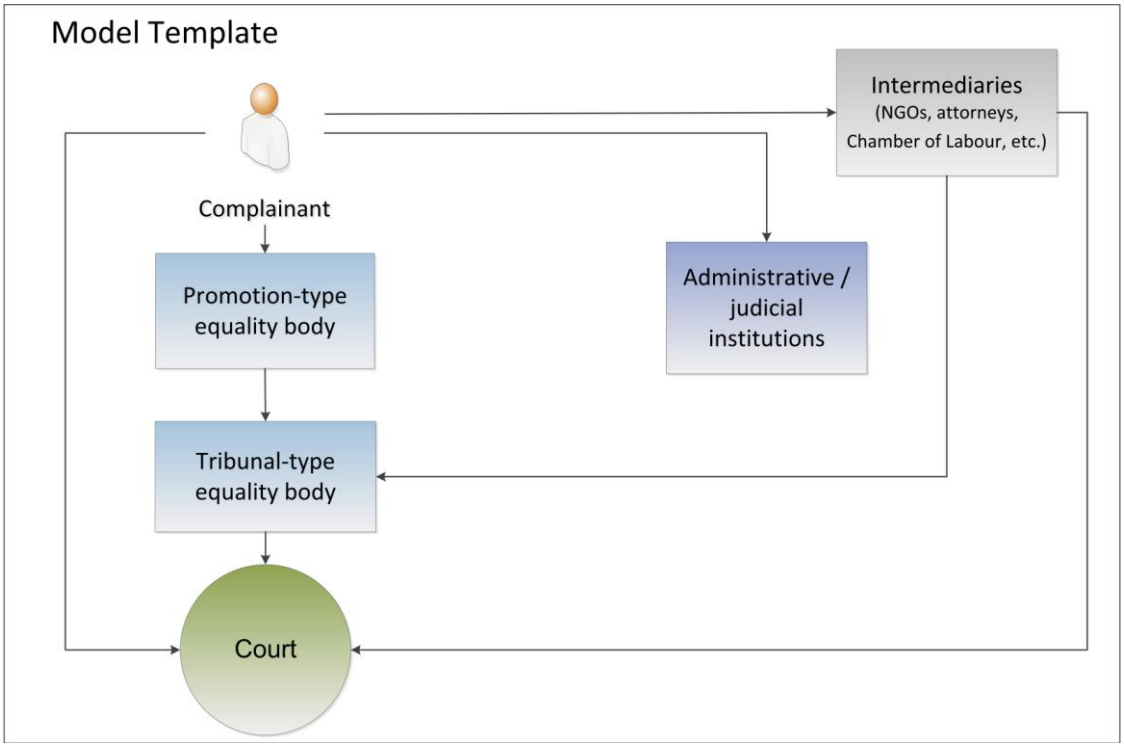
The EU directives on equal treatment and non-discrimination require Member States to ensure the availability of judicial and / or administrative procedures to people who consider themselves victims of discrimination within the scope of the directives. The vast majority of Member States have chosen to combine judicial with non-judicial procedures. Moreover, judicial procedures may be civil, labour, administrative or criminal procedures and may include mediation or other conciliation procedures.[14]

The justice systems in cases of discrimination in the eight selected countries can be divided into three main approaches to facilitate comparison.[15]

- *Type 1 – specialised tribunal-type equality bodies and courts.*
  Systems of this first type provide two ways of obtaining a decision in cases of discrimination. The advantage of tribunal-type equality bodies over courts is that their procedures are 'low threshold': less costly, less complex procedures and more specialised in cases of discrimination than the courts. On the other hand, tribunal-type equality bodies and "similar entities" may be limited in imposing sanctions or awarding compensation. In addition, decisions may need to be referred to a court of law to be legally binding.
- *Type 2 – promotion-type and tribunal-type equality bodies and courts.*
  These systems offer the same two paths set out above. However, these two paths are supplemented by the promotion-type of equality body, which provides assistance to victims of discrimination in accessing the justice system, promotes rights awareness among potential complainants and contributes to a culture of rights in society.
- *Type 3 – promotion-type equality bodies and courts.*
  These systems do not offer complainants a choice of path for obtaining a decision regarding their discriminatory treatment. In these systems a victim can only obtain a decision through the courts.

In describing the system for each Member State a model diagram is used which gives a schematic picture of the different paths available for access to justice. This facilitates comparison of the different systems. The diagram shows the variety of structures and procedures available.

[14] European Commission (2010), p. 64.
[15] These distinctions are derived from: Ammer, M. *et al*. (2010), p. 63.

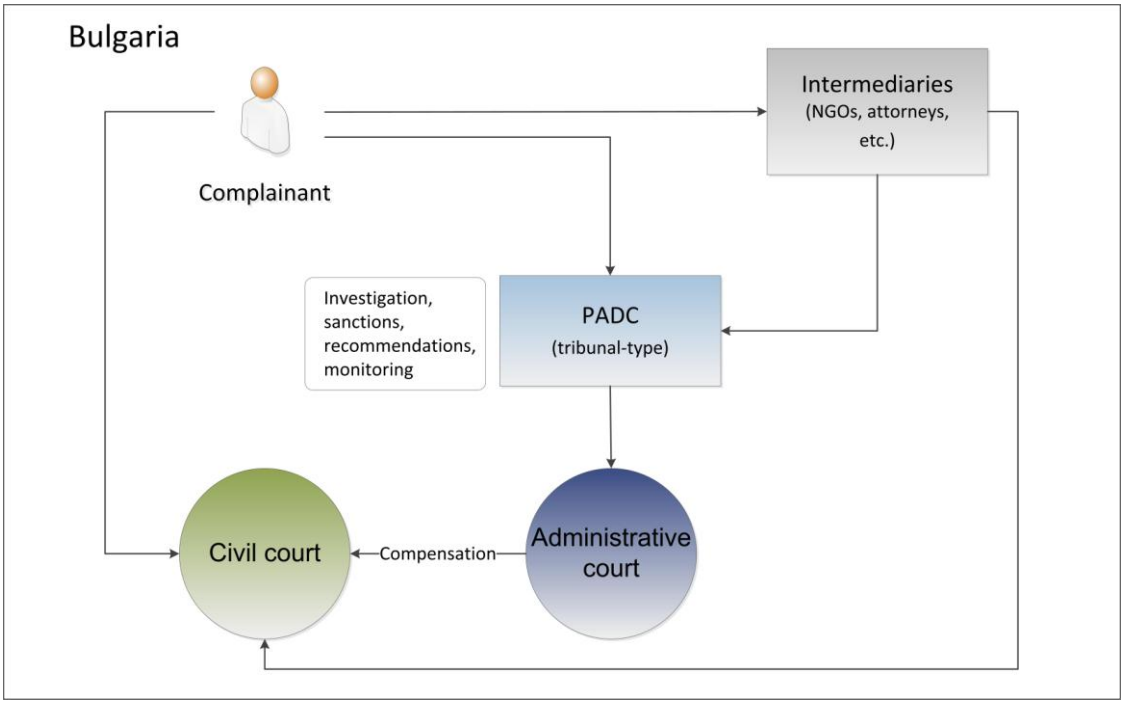


The main reference point is the route a complainant has to take through the justice system, but the diagrams also show the role of intermediaries, promotion-type equality bodies or other entities involved. It should be noted that in most systems equality bodies or other “similar entities” do provide for various means of alternative dispute resolution (ADR).

Obviously, neither the diagrams nor the description can cover all available routes in a national context. The overview has a clear focus on the role of equality bodies and it does not cover the structures and procedures at the provincial / regional or municipal level.

In addition to the description of the justice system, a short overview is provided of the main equal treatment legislation and specialised bodies in place in the eight Member States. The competences of these bodies and the procedures to lodge and pursue claims of discrimination are set out.

3.1.1 Type 1 – tribunal-type equality bodies and courts – Bulgaria



In Bulgaria EU Directives 2000/43/EC, 2000/78/EC and 2004/113/EC have been transposed by means of a single legal act, the Protection against Discrimination Act (PADA) (*Закон за защита от дискриминация*) of 2004 and the creation of the Protection against Discrimination Commission (PADC) (*Комисия за защита от дискриминация*) (tribunal-type equality body) in 2005.[16] Whether all elements of Directive 2006/54/EC have been fully transposed into Bulgarian law is disputed by experts.[17]

The law covers gender, ethnic origin, religion or belief, age, sexual orientation, disability, nationality, genetic characteristics, education, political affiliation, personal or public status, family status, property status and any other ground protected by law or international treaties. The scope of this protection covers all areas for which protection is envisaged by the EU equal treatment directives and is explicitly stated to apply to any field.

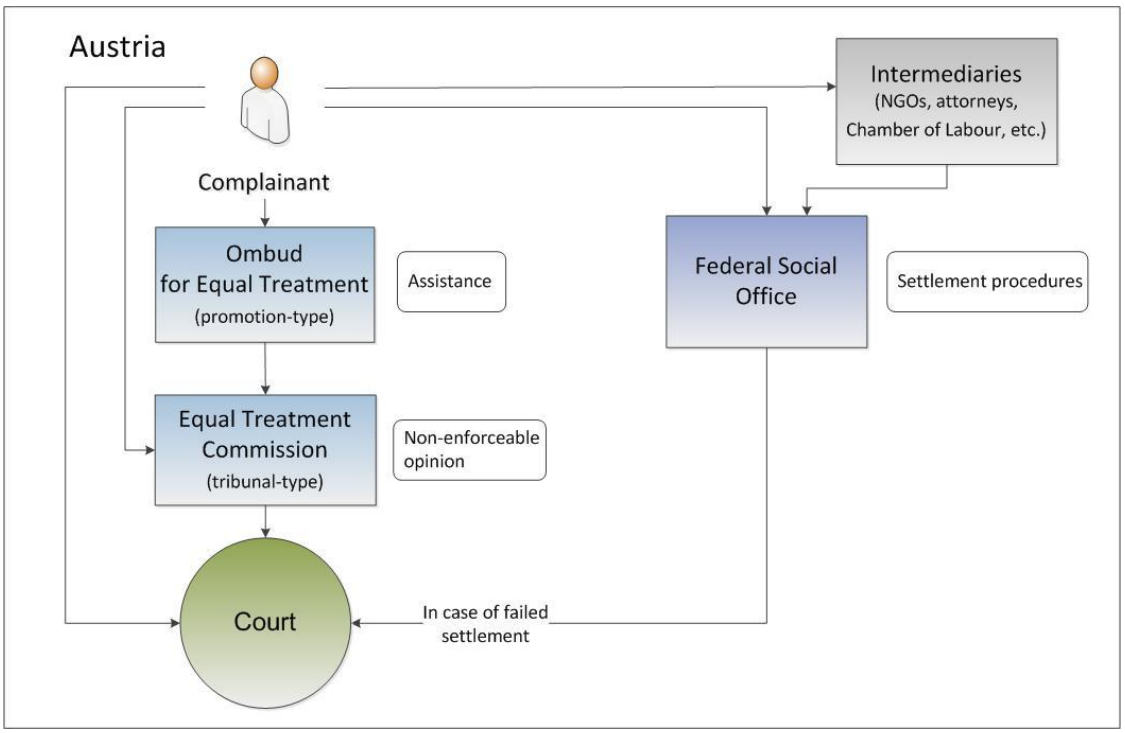
The PADC has a mandate to hear and investigate complaints by victims of discrimination and communications by third parties, to initiate its own proceedings, to issue legally binding decisions, to issue mandatory instructions for remedial or preventative redress, to make recommendations to public authorities, including for legislative change, to assist victims of discrimination, to carry out independent research and to publish independent reports.[18]

[16] Protection Against Discrimination Act (*Закон за защита от дискриминация*),January 2004, last amended, SG, No. 68 of 22 August 2006.
[17] European Commission (2009c), p 17.
[18] European Commission (2010), p 76.

The PADC initiates proceedings when a complaint is filed. In cases which are admissible it begins fact-finding procedures and, after a public hearing, decides on the merits of the case. The awarding of compensation is limited to the courts which, on the basis of a decision finding the existence of discrimination, can also, like the PADC, order the termination of the discriminatory action, the taking of remedial action and a commitment to refrain from future action or inaction. Courts can also be approached after having obtained a PADC decision in order to claim compensation.

3.1.2 Type 2 – promotion-type and tribunal-type equality bodies and courts – Austria and Finland

Austria



The Equal Treatment Act (ETA) (*Gleichbehandlungsgesetz*),[19] as well as the system of equality bodies regulated by a separate act,[20] the Ombud for Equal Treatment (OET) (*Gleichbehandlungsanwaltschaft*) (promotion-type equality body) and the Equal Treatment Commission (ETC) (*Gleichbehandlungskommission*) (tribunal-type equality body) are structured on the basis of a distinction of grounds and sectors:

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

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

a) Issues of equal treatment for men and women in the labour market.
b) Issues of equal treatment on the grounds of ethnic origin, religion or belief, sexual orientation or age in the labour market.
c) Issues of equal treatment in other fields beyond the labour market on grounds of gender or ethnic origin.

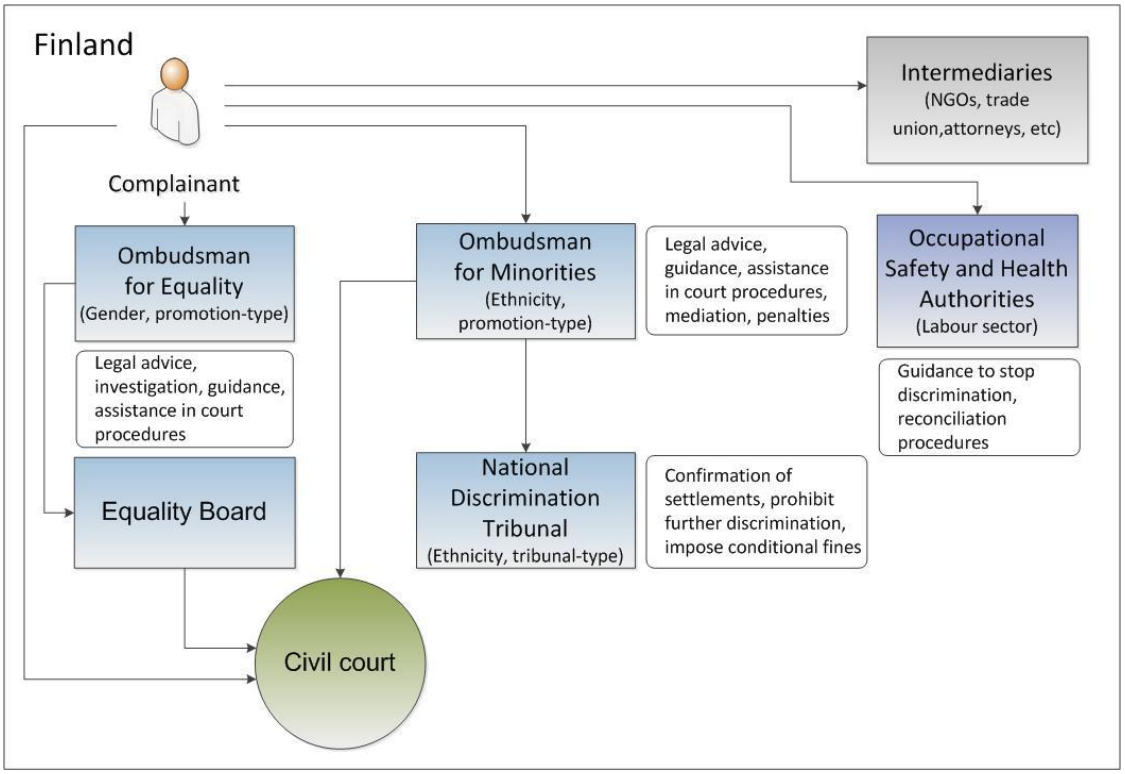
Protection against discrimination for all six grounds as well as multiple discrimination is provided for in the area of employment. A wider scope of protection against discrimination in access to goods and services is provided for the grounds of ethnic origin, gender and disability. Further protection against discrimination in the fields of education, health and social protection is restricted to discrimination on grounds of ethnic origin.

In most instances complainants have two choices. They can bring their case before the ETC, which can issue a legally non-binding decision (*Prüfungsergebnis*) on whether or not the treatment in question was discriminatory. The other route is to go to the competent civil court or labour and social welfare court (*Arbeits- und Sozialgericht*) and claim damages. Victims of sexual harassment can take the perpetrator to a criminal court.[21] Complainants can obtain assistance from the OET as well as from NGOs and the Chamber of Labour (in employment cases only).

In cases of discrimination on the ground of disability, the social welfare agency (Federal Social Office - *Bundessozialamt*) must be contacted prior to filing a claim at court. This body is obliged to initiate a settlement procedure, which must be attempted before a claim can be filed in court.[22]

Finland

[21] Austria, Penal Code (*Strafgesetzbuch*), Article 218.
[22] Austria, Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*), BGBl. I Nr. 82/2005, last amended BGBl I 7/2011.



In Finland, the Racial Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC were transposed through the adoption of one new act, the Non-Discrimination Act (*Yhdenvertaisuuslaki)* (21/2004).[23] The Act provides that discrimination is prohibited on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men *(Laki naisten ja miesten välisestä tasa-arvosta).*[24]

The scope of protection for all grounds includes employment (access to self-employment and occupation, conditions for access to employment, employment and working conditions and vocational guidance), education (access to education, all types of vocational training and retraining), and membership of and involvement in an organisation of workers or employers. Discrimination on grounds of ethnic origin is also unlawful in the fields of health and social services, social benefits and advantages, military or civilian service, including voluntary military service for women, and provision of housing and other supply of services and goods available to the public. Discrimination on grounds of gender is prohibited in all areas of life, the only exceptions being relationships in private life and religious practices.

[23] Finland, Non-Discrimination Act (*Yhdenvertaisuuslaki)*,2004/21 1 February 2004.
[24] Finland, Act on Equality between Women and Men *(Laki naisten ja miesten välisestä tasa-arvosta)* 1986/609, 8 August 1986.

The Ombudsman for Equality *(Tasa-arvovaltuutettu*) (promotion-type equality body) supervises compliance with the principle of non-discrimination on the grounds of gender. It is competent to provide advice and assistance to victims of discrimination on grounds of gender. Its field of competence includes counselling, investigations in relation to specific cases (collecting data, asking for clarification and carrying out inspections in the workplace). Furthermore, the Ombudsman for Equality can take the case to the Equality Board (*tasa-arvolautakunta)*, which can prohibit anyone from continuing or repeating the discriminatory practice. The Board may also impose the threat of a penalty on the party to whom the prohibition applies.

The Ombudsman for Minorities (*Vähemmistövaltuutettu)* (promotion-type equality body) can be asked for assistance in cases of discrimination on grounds of ethnicity and is empowered to issue guidance and advice in order to stop discrimination, to take measures to achieve reconciliation and to request for clarifications of the matter from the suspected perpetrator. Furthermore, in the event of non-fulfilment of the request to impose a penalty payment, the Ombudsman can take the case to the National Discrimination Tribunal *(Syrjintälautakunta)* (tribunal-type equality body). The National Discrimination Tribunal is entitled to hear a case on grounds of ethnicity, to confirm settlements between parties, to prohibit further discriminatory action and to impose conditional fines. Individuals may also take cases to the National Discrimination Tribunal themselves.

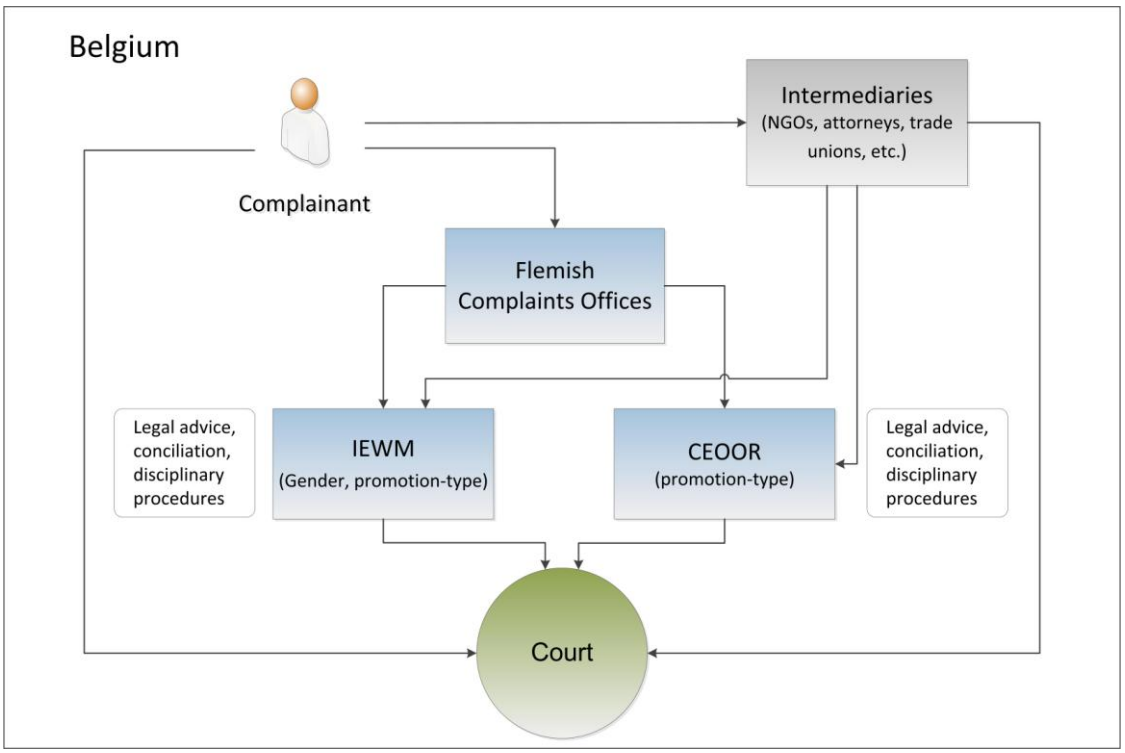
The most significant difference regarding the powers of the Ombudsman for Minorities and the Ombudsman for Equality is that the latter also covers discrimination in working life. Both Ombudsmen are allowed to assist a person who has been subjected to discrimination in judicial proceedings, if the matter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

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

Cases of discrimination on all grounds protected by law in the fields of occupation and employment can be referred to the regional Occupational Safety and Health Authorities (*Aluehallintovirastojen työsuojelusvastuualueet)* . Following a preliminary investigation, if the case is deemed as violating the prohibition of work-based discrimination provided in the Criminal Code (*Rikoslaki)*, they can forward the case to the public prosecutor for consideration of charges or to the police for investigation. Furthermore, they may inform the complainant about the possibility of filing a claim with the courts in order to claim compensation on grounds of the Non-Discrimination Act.

3.1.3 Type 3 – promotion-type equality bodies and courts – Belgium, the Czech Republic, France, Italy and the UK

Belgium



In Belgium, EU Directive 2000/78/EC has been transposed at the federal level by the Anti-Discrimination Act (*Loi tendant à lutter contre certaines formes de discrimination; Wet van 10 mei 2007 ter bestrijding van bepaalde vormen van discriminatie)* ,[25] covering age, sexual orientation, civil status, birth, wealth, religion or belief, political conviction, trade union membership or affiliation, language, actual or future state of health, disability, physical or genetic characteristic and social origin. EU Directive 2000/43/EC has been implemented by means of the Anti-Racism Act (*La loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme et la xénophobie ; Wet tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden*).[26] EU

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

[26] Belgium, Act of 10 May 2007 aimed at combating particular forms of racism and xenophobia (*La loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme et la xénophobie (modifiée par la Loi du 10 mai 2007, MB 30 V 07); Wet tot bestraffing van bepaalde*

Directives 2004/113/EC and 2006/54/EC were transposed by means of the Gender Act (*Loi tendant à lutter contre la discrimininatión entre les femmes et les homes; Wet ter bestrijding van discriminatie tussen vrouwen en mannen*), covering sex, including transgenderism and transsexualism.[27]

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

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

Both the CEOOR and the IEWM act as the first point of reference for complainants in discrimination cases. If the respective institution deems itself to be competent in the case, an examination procedure is initiated and, together with the complainant, a decision is made about how to deal with the case. In order to establish the facts of a case, the CEOOR may rely on the investigative powers of other authorities, such as the federal and regional labour inspectorates. Actions can include negotiation / conciliation or a transferral of the case to the competent court.

The Czech Republic

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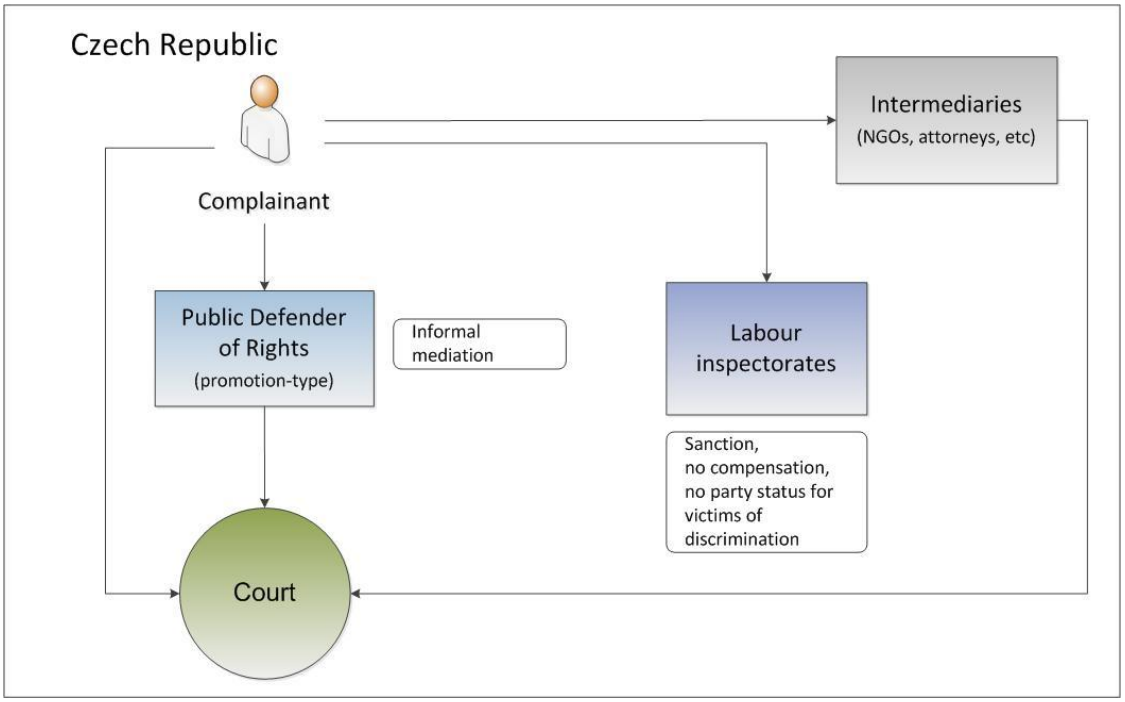
door racisme of xenofobie ingegeven daden), Belgian Official Journal (*Moniteur belge*) (30 May 2007. Last amendment: Act of 6 June 2010, Belgian Official Journal (*Moniteur belge*) (1 July 2010).

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



In the Czech Republic, the EU Directives 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC were transposed by the Anti-discrimination Law of 2009.[28] The law provides for protection against discrimination on grounds of gender, race, ethnicity and nationality, religion, belief and opinions, age, sexual orientation and disability.

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

The Public Defender of Rights (*Veřejný ochránce práv*) is assigned the role of the Czech equality body (promotion-type equality body). Its tasks include providing assistance to victims of discrimination, conducting research and the publication of reports and recommendations. Protection is provided by the Public Defender of Rights in relation to discrimination on grounds of gender, ethnic origin, religion and belief, age, sexual orientation, disability and nationality. Specific provisions for protection against discrimination in the workplace are laid down in the 2004 Law on Employment[29] and in the 2005 Law on Labour Inspection.[30] The Law on Employment defines the role of the labour

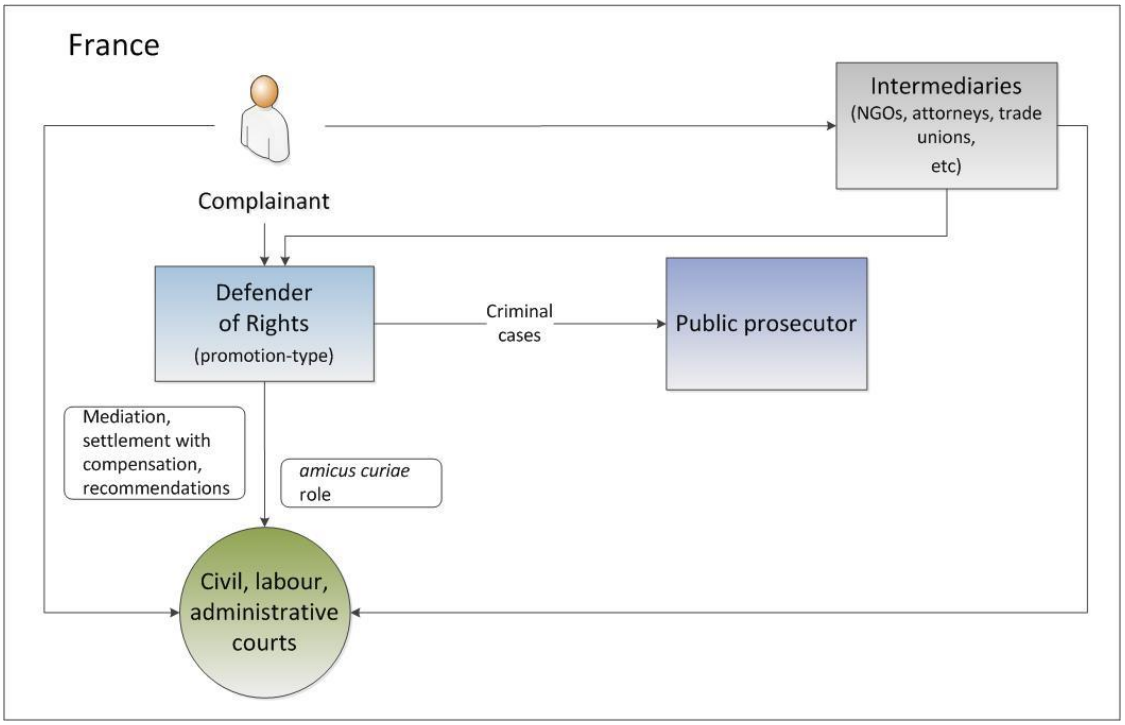
[28] Czech Republic, Law no. 198/2009 Coll. (Official collection of laws) Anti-discrimination Act.
[29] Czech Republic, Law no. 435/2004 Coll. Law on Employment
[30] Czech Republic, Law no. 251/2005 Coll. Law on Labour Inspection.

offices, which are competent to investigate cases of discrimination preceding the conclusion of a labour contract.

The Public Defender of Rights can provide mediation where appropriate and can investigate directly in cases where the possible involvement of public bodies is presumed. Discrimination complaints in the area of employment are investigated by labour inspectorates, which initiate administrative proceedings and can impose sanctions (no compensation for victims). Victims of discrimination can complain to the labour inspectorates and as such stimulate the initiation of proceedings, but they have no rights other than being informed of whether or not discrimination was established.

In order to gain redress and compensation, victims of discrimination must approach the courts, where they can be represented by NGOs and trade unions.[31]

France



In France, the EU equal treatment directives have been transposed in stages and not only by means of specific non-discrimination legislation. Directives 2000/43/EC and 2000/78/EC were transposed through non-discrimination legislation in 2001, 2004 and finally 2008, but also in legislation modernising

[31] Czech Republic, Law no. 99/1963 Coll., Civil Procedure Code, Section 26, para 1 and 3.

social law in 2002 and 2005.[32] Directives 2004/113/EC and 2006/54/EC were transposed by the Anti-Discrimination Act of 2008 *(Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations),* completing the transposition of all relevant non-discrimination Directives, including the missing elements in previous transpositions.[33]

Protection against discrimination is provided on the grounds of age, gender, origin, family/marital status, way of life, genetic characteristics, actual or assumed, belonging to an ethnic group, nation or race, physical appearance, disability, health condition, pregnancy, surname, political opinion, religious beliefs and trade union activity. Fields of protection include access to goods and services (including housing and healthcare) and the employment sector.[34] There is an extended material scope covering social protection, social advantages, education, access to health services, and goods and services, which applies only to the grounds of ethnic origin and race.

An institution with competence for all these areas and grounds of discrimination was established by law as an independent statutory authority in 2004.[35] The former Equal Opportunities and Anti-Discrimination Commission (*Haute Autorité de Lutte contre les Discriminations et pour l'Egalité*, HALDE), which from 1 May 2011 was incorporated into the institution of the Defender of Rights (*Défenseur des droits*) (promotion-type equality body), was assigned with a mandate to combat all forms of discrimination and to promote equality. A 2006 law on equal opportunities added a power to propose to the perpetrator of a discriminatory action which is punishable under the Criminal Code (*Code pénal*), that they pay a fine to indemnify the victim. Both the perpetrator and victim have to agree on the fine, which must be approved by the public prosecutor's office.[36] All public prosecutor's offices also have non-discrimination departments with a deputy prosecutor in charge of enforcing the state's criminal policy in discrimination cases and a delegated representative of the state prosecutor in charge of processing discrimination complaints.

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

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

[34] France Criminal Code (*Code pénal*), Article 225.

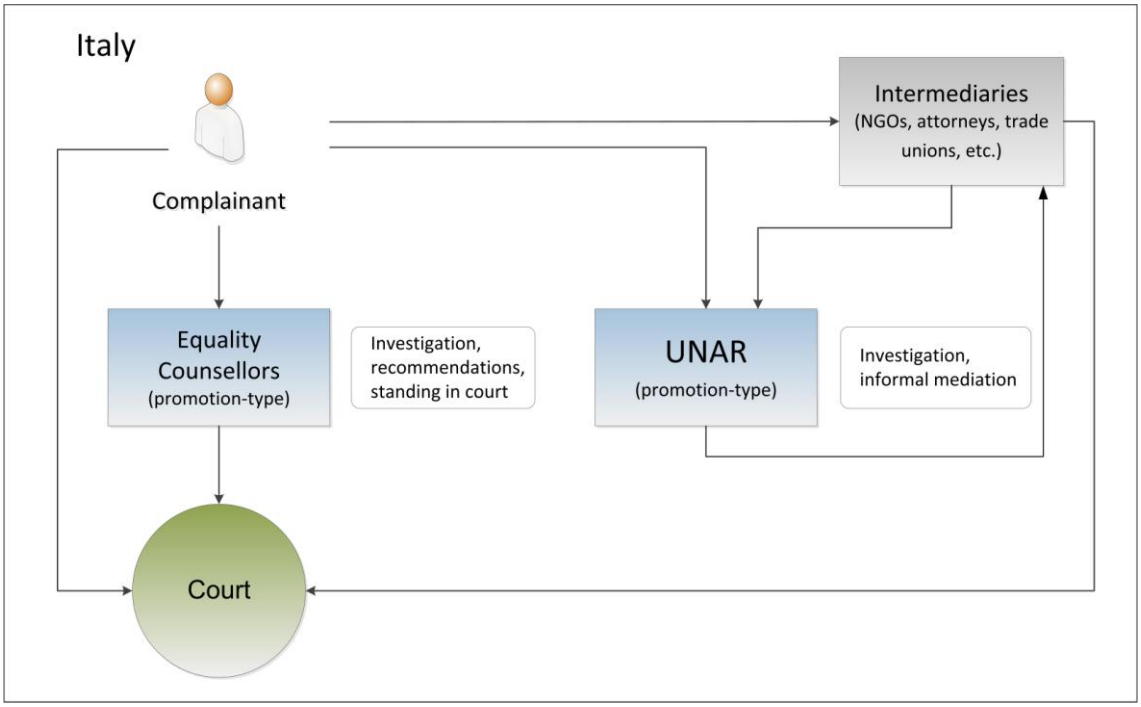
[35] See above, Law 2004-1486 of 30 December 2004 on the creation of the Equal Opportunities and Anti-Discrimination Commission (consolidated) (*Loi N° 2004-1486 du 30 décembre 2004 portant création de la Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (Consolidée)*).

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

Victims of discrimination can now choose either to file their complaint with the Defender of Rights, with the option of mediation or of seeking its assistance in further proceedings, or they can file their claim directly with the court. The Defender of Rights provides advice on legal options and helps to establish evidence (including by means of situation testing). It can make use of investigative powers, which include hearing any people it deems necessary, visiting places it deems necessary, demanding documents, and taking evidence from witnesses. If requests for information are not complied with, the Defender of Rights may issue a formal order to reply within a set time. In the event of non-fulfilment, its Chair can refer the case to the interlocutory judge who can order investigatory measures. The Defender of Rights assists in making the choice of the most appropriate procedural option. This can include mediation by the institution itself in order to reach a settlement agreement. In criminal cases, it can refer the case to the public prosecutor for a decision if the Defender of Rights has established a case of discrimination under the Criminal Code.

In cases initiated by parties before a civil or administrative court, the Defender of Rights can present its legal analysis to the competent court. In addition, it may present observations at the request of the judge or of one of the parties. It may ask the court to be heard as an expert institution, which does not make it a party to the lawsuit but can be interpreted as an *amicus curiae* role. With respect to claims that are not subject to legal proceedings, the Defender of Rights can make recommendations to (alleged) perpetrators of discrimination to modify its practice or to indemnify complainants. If its recommendation is not followed, it can publish a special report in order to publicise is decision and the fact that it has not been enforced.

Italy



In Italy, the main reference legislation in the field of non-discrimination is Legislative Decree[37] no. 215/2003 (*Decreto Legislativo n. 215 del 9 luglio 2003*), implementing Directive 2000/43/EC, and no. 216/2003 (*Decreto Legislativo n. 216 del 9 luglio 2003)*, implementing Directive 2000/78/EC. These decrees provide protection against discrimination on grounds of gender, ethnic origin, sexual orientation, religion and belief, age and disability. The scope of application is as required under the equal treatment directives. Directive 2004/113/EC has been implemented by Decree no. 196/2007, which adds ten articles to the Code of Equal Opportunities (*Codice delle Pari Opportunità*).[38] Directive 2006/54/EC has been transposed by Legislative Decree 5/2010 (*Decreto legislativo n. 5 del 25 gennaio 2010*).

Institutional assistance is provided for the grounds of gender and ethnic origin/race. Equality Counsellors (*Consigliere/i di parità*) at provincial, regional and national level are appointed by the Minister of Labour (*Ministro del Lavoro e della Previdenza Sociale*) in consultation with the Minister for Equal Opportunities (*Ministro delle Pari opportunità*) with a remit for issues of equal treatment of men and women in the labour market.[39]

[37] Italy, Decree issued by government based on delegation of government with the formal force of a law.
[38] Italy, Legislative Decree No. 198/2006 (*Decreto Legislativo 11 aprile 2006, n. 198*); European Commission (2009b), p. 92.
[39] Italy, Law 125/1991 (10 April 1991) (*Legge n. 125 del 10 aprile 1991*), modified by Legislative decree196/2000 (23 May 2000) (*Decreto legislative n. 196 del 23 maggio 2000*) and by Legislative decree 5/2010 (25 January 2010) (*Decreto legislativo n. 5 del 25 gennaio 2010*).

The National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazione Razziale*, *UNAR*) (promotion-type equality body) was established in 2003.[40] Its mandate comprises the prevention and elimination of discrimination on grounds of race or ethnic origin, the promotion of positive action and the undertaking of studies and research. Based on a policy directive by the Ministry of Equal Opportunities (*Ministro delle Pari opportunità*), since 2010 it has started to include discrimination on grounds of age, disability, sexual orientation, transgenderism, religion and belief in its awareness-raising activities. At the level of the provinces and regions, non-discrimination offices provide first stage legal advice, counselling and mediation.

Equality Counsellors (for the ground of gender) are able to receive complaints, provide counselling and offer mediation services. Equality Counsellors also have the power to ask an employer suspected of discriminatory acts, agreements or behaviours of a direct and indirect nature and with a collective impact to develop and implement measures to remove discriminatory practices.[41] In the event that these measures are considered by the Counsellor to have been inadequately implemented, they can be made enforceable and in case of non-fulfilment the matter can be brought to court (complementary to actions brought directly to court).

The Equality Counsellors cooperate with Labour Inspectors (*Ispettorati del Lavoro*), who have investigative powers, in establishing the facts in discrimination cases.[42] The national and regional Equality Counsellors also have a legal standing in court cases in cases of collective impact if no individual victim can be identified.[43]

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

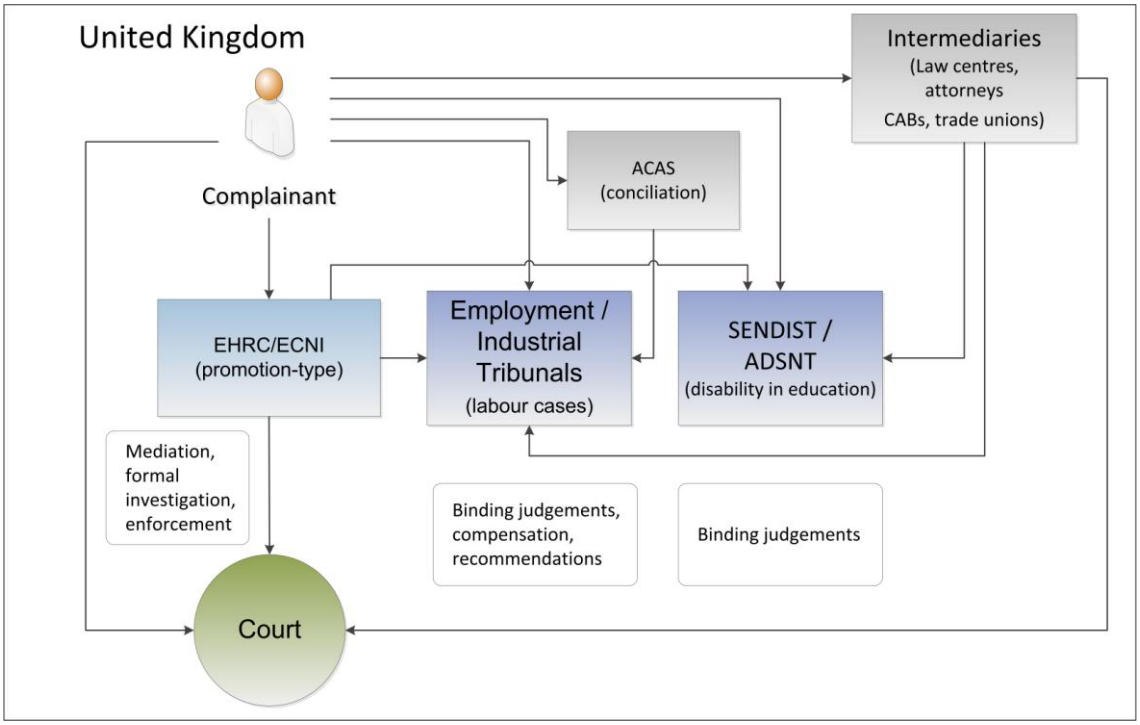
Decisions about the discriminatory content of an action, regulation or other matter are reserved for the regular courts. Procedures in court follow general rules of civil procedures. Special provisions are in place for cases of

[40] Italy, Legislative Decree no. 215 of 9 July 2003 (*Decreto Legislativo n. 215 del 9 luglio 2003*).
[41] Italy, Code of Equal Opportunities (*Codice delle Pari Opportunità*), Legislative Decree No. 198/2006 (*Decreto Legislativo 11 aprile 2006, n. 198*), Article 37.
[42] Based on the establishment of a technical liaison board with the Office of the Director general for Inspection Activity of the Ministry of Labour (*Ufficio del Direttore Generale per l'attività ispettiva del Ministero del Lavoro*).
[43] Italy, Code of Equal Opportunities (*Codice delle Pari Opportunità*), Legislative Decree No. 198/2006 (*Decreto Legislativo 11 aprile 2006, n. 198*), Article 37.

discrimination on grounds of gender, race, ethnic origin, citizenship, religion, disability and, only in relation to employment, also for the grounds of age, sexual orientation and transgender identity.[44]

Claims can be filed at the civil courts of first instance without legal representation and judges can, after a short and informal procedure, order the termination of a discriminatory conduct, the removal of the effects of discrimination, compensation payments (including non-material damages) and the publication of the judgment in a national newspaper.

The United Kingdom



In the United Kingdom, the situation in England, Wales and Scotland is different from that in Northern Ireland.

In England, Wales and Scotland, the Equality Act 2010[45] unified, simplified and extended all previous non-discrimination legislation and transpositions of the EU equal treatment directives. It prohibits discrimination in relation to age, disability, gender, gender-reassignment, religion and belief, sexual orientation, pregnancy and maternity, race and marriage/civil partnership, as well as multiple discrimination. It prohibits discrimination on these grounds in relation to

[44] Pirazzi, M. (ed.) (2008).
[45] United Kingdom, Equality Act 2010, www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

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

The Equality and Human Rights Commission (EHRC) (promotion-type equality body) was established in 2007 as a single body with competences for the protection of discrimination on grounds of race, disability, gender (including transsexuality), age, sexual orientation, religion and belief. It took over the functions and powers of the three Equality Commissions which existed previously, covering race, disability and equal opportunities for men and women. It provides assistance to victims of discrimination on grounds of gender (including transsexuality), age, disability, sexual orientation, race, religion and belief. It provides legal advice and conciliation in individual cases (80% of cases).

The United Kingdom government is consulting on a reform of the EHRC. Proposals include that provision of the public helpline and legal support grants be managed directly by government rather than the EHRC.[46]

In Northern Ireland the EU equal treatment directives have not been transposed in one single act, but by a number of different legal acts.[47] The Equality Commission for Northern Ireland (ECNI) (promotion-type equality body), which was established in 1999, is competent for discrimination on grounds of age, disability, gender, political belief, religion, race and sexual orientation. It has similar powers and functions to the EHRC.

[46] When referring to the EHRC's mandate and activities in the different chapters of this report, we report of the actual situation at the time of writing. However, the possibility of changes must be taken into account. More information on the consultation process and the EHRC response can be accessed at www.equalityhumanrights.com/about-us/vision-and-mission/government-consultation-on-our-future/

[47] The main Northern Ireland laws in relation to discrimination are:

a. Equal Pay Act (Northern Ireland) 1970.
b. Sex Discrimination (Northern Ireland) Order 1976.
c. Disability Discrimination Act 1995.
d. Race Relations (Northern Ireland) Order 1997.
e. Fair Employment and Treatment (Northern Ireland) Order 1998.
f. Northern Ireland Act 1998.
g. Equality (Disability, etc.) (Northern Ireland) Order 2000.
h. Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.
i. Special Educational Needs and Disability (Northern Ireland) Order 2005.
j. Disability Discrimination (Northern Ireland) Order 2006.
k. Employment Equality (Age) Regulations (Northern Ireland) 2006.
l. The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

Claims in the field of employment must be filed at employment tribunals in England, Wales and Scotland and at industrial tribunals in Northern Ireland. Specific fair employment tribunals have also been established for cases concerning religion or political opinion in Northern Ireland. These tribunals all have judicial competence with the power to issue legally binding opinions. Procedures are less legalistic and allow for lay representation. Complainants can receive written reasons for the tribunal's judgment, which must include, among other things, relevant findings of fact and a concise statement of the applicable law and how the law has been applied. For enforcement of tribunal decisions the standard court system must be used. The government has recently announced the introduction of court fees to bring cases to employment tribunals, which might constitute a considerable barrier in access to justice.[48]

A specific Advisory, Conciliation and Arbitration Service (ACAS) offers conciliation in every employment dispute that is filed at the employment tribunals in England, Wales and Scotland. It also has the power to offer conciliation in cases where no claim has yet been filed. In practice, every complainant will receive notice from ACAS of the appointment of a conciliator who will then seek to agree a settlement of the case to avoid the need for a formal hearing.

Disability cases in the field of education can be filed at the Special Educational Needs and Disability Tribunal (SENDIST) in England, Wales and Northern Ireland and at the Additional Support Needs Tribunals (ADSNT) in Scotland. These are relatively informal in their procedures and can make binding judgments. There are no fees for initiating a claim at the SENDIST or at any of the other tribunals.

Cases of discrimination in other fields must be processed via the mainstream court system. Claims for less than GBP 5,000/EUR 5,800 may be allocated to the small claims arbitration procedure. Under this simplified procedure, losing parties do not have to pay the costs of the winning side and lay representation of complainants is permitted.

3.1.4 Justice systems in cases of discrimination – summary

All Member States included in this research have transposed the EU equal treatment directives into national law and designated a specialised body (or bodies) to ensure access to justice in discrimination cases. Although the directives do not prescribe a structure, there are many differences in the structures that have been established.

[48] Information provided by UK experts at the Peer Review Meeting in Vienna, 26 September 2011.

The justice systems in discrimination cases can be characterised by three different types:

- *type 1* – systems of mainly tribunal-type equality bodies and courts; only the Bulgarian system can be characterised as such a system;
- *type 2* – systems of promotion-type equality bodies, tribunal-type equality bodies and courts; the systems in Austria and Finland are type 2 systems;
- *type 3* – systems of promotion-type equality bodies and courts; the systems in Belgium, the Czech Republic, France, Italy and the United Kingdom can be characterised as such.

Even within the three categories of systems there are many differences in the roles and function of equality bodies and in the paths to access the various institutions, depending on the national context, but also according to the type of case and the type of discrimination.

The regular courts remain key institutions for people seeking to uphold their rights. Nevertheless, equality bodies and other "similar entities" play a key role in all systems, either by facilitating access to the courts or other institutions (promotion-type bodies) hearing cases or by hearing cases themselves in less formal procedures (tribunal-type bodies).

In all but one (Czech Republic) of the Member States selected for research equality bodies are located in the capitals, which may cause problems of geographical access to (support in) access to justice. All countries where geographical distance is an issue have dealt with this problem by means of specific measures. Such measures include the establishment of contact points at provincial or regional level (for example, Belgium), regional offices (for example, Bulgaria and France) or the setting up of networks with NGOs and public administrative authorities at the local level (for example, Finland and Italy). The British EHRC has a telephone-based helpline as the primary route for complainants to access its service.

Accessing justice in discrimination cases in the eight Member States selected for research is not only characterised by difficulties arising from the complexity of channels to access the system. In addition, procedures, access to support and the general context beyond the individual case may constitute barriers on the routes to justice. The findings of the literature reviews on these issues will be described in Sections 3.2 to 3.4.

3.2 Procedures

The right to fair proceedings is a key element for access to justice in discrimination cases and requires the implementation of measures to establish equality of arms, including procedures to shift the burden of proof, and the possibility of appeal.

The shift of the burden of proof is included in equal treatment legislation in all EU Member States. However, the desk research showed that the shift of the burden of proof is not applied adequately in all Member States selected for this research.

Another shortcoming from the perspective of the right to fair proceedings is that there are no provisions for appeals against the decisions of tribunal-type equality bodies (Austria, Bulgaria and Finland), although it should be borne in mind that, in the event of dissatisfaction with a tribunal decision, complaints can be filed at the regular court(s). Decisions of a regular court can be appealed.

Undue length of procedures is an issue of concern in all countries. Cases relating to the length of procedures are frequently filed at the European Court of Human Rights (ECtHR). A significant number of cases at the ECtHR relate to undue delays in procedures and suggest that problems with delays in judicial systems are systemic.[49]

However, there is no standard length of procedure defined in international law, which makes an assessment of the timely resolution of disputes difficult. Moreover, the review of national research indicates that the appropriate length of procedures has to be assessed on the basis of particular circumstances and cases and that there is no 'standard procedure', which could be used for measuring the appropriate length for cases. The introduction of specific procedures for discrimination cases and the use of injunction procedures emerged as valuable in shortening the time needed for dispute resolution procedures.

Obtaining effective remedy or redress is an issue of concern in most countries. Most jurisdictions foresee financial compensation as the main means of reparation in discrimination cases rather than measures for restitution to the original or the desired state. Moreover, research reveals that the level of compensation and sanctions and their adequacy in terms of being effective, proportionate and dissuasive is insufficient.[50]

Overview of possibilities of redress in the eight selected Member States

	Compensation for material damages	**Compensation for non-material damages**	**Sanctions**	**Non-financial forms of reparation**
Austria	Can be awarded by courts only.	Can be awarded by courts only.	In case of discriminatory advertisements, sanction of a maximum of EUR 360 issued	Can be subject of (non-binding) recommendatio ns by the ETC.

[49] FRA (2011b), p. 41.
[50] Milieu (2011), p. 44.

	Compensation for material damages	Compensation for non-material damages	Sanctions	Non-financial forms of reparation
			by the district administrative authority.	
Belgium	Yes, by courts.	Yes, by courts. Entitlement to award lump sum damages.	Yes. Criminal sanctions exist in case of discrimination committed by public servants and in cases of racial discrimination in employment.	Can be part of settlement achieved by means of conciliation.
Bulgaria	Yes, by courts.	Yes, by courts.	Yes, by tribunal-type equality body.	The PADC issues mandatory instructions for remedial or preventative redress. The PADC can approve settlements between parties, which can also include non-financial forms of reparation.
Czech Republic	Yes, by courts.	Yes, by courts.	Yes, by labour inspectorates.	Can be part of settlement agreement.
Finland	Yes, by courts.	Yes, by courts.	The National Discrimination Tribunal can impose conditional fines to enforce compliance with its decisions. The Equality Board has the power to impose conditional fines to enforce compliance with its decisions.	The Ombudsman for Minorities and Ombudsman for Equality are both empowered to issue guidance and advice in order to stop discrimination. The Ombudsman for Minorities is also entitled to take measures to achieve reconciliation.
France	Yes, by courts.	Yes, by courts.	Limited to	Can be part of a

	Compensation for material damages	Compensation for non-material damages	Sanctions	Non-financial forms of reparation
			criminal cases, by courts.	settlement agreement reached by mediation provided by the Defender of Rights.
Italy	Yes, by courts.	Yes, by courts.	No.	The Equality Counsellor can request employers to develop and implement measures to remove discriminatory practices. Courts can order the termination of a discriminatory conduct, the removal of the effects of discrimination and the publication of the judgment in a national newspaper.
United Kingdom	Yes, by courts and administrative or judicial tribunals.	Yes, by courts and administrative or judicial tribunals.	No, the introduction of fines is under discussion.	Specialised tribunals can make recommendations for action (but e.g. cannot order that the complainant be reinstated).

In most countries financial compensation can only be awarded by the courts and tends to be low. Tribunal-type equality bodies can issue decisions on discrimination and sometimes also formulate recommendations, but these are often either non-binding or not enforceable. National research from the United Kingdom indicates that many complainants would prefer to secure change in their situation and the removal of structural discrimination rather than receive financial compensation. [51]

[51] Aston, *et al*. (2006); Denvir, *et al* (2007); Hurstfield, *et al.* (2004).

The lack of resources of institutions within the justice systems emerges as a key obstacle to the efficiency and effectiveness of procedures in discrimination cases. Efficiency and effectiveness have been improved in some jurisdictions by introducing innovative procedures, developing alternative means of dispute resolution and strengthening the powers and independence of equality bodies. The research on Belgium and Bulgaria identified injunction procedures in order to put an end to an ongoing discrimination (Belgium) and the possibility of *ex officio* investigations[52] (Bulgaria) as innovative procedures in this regard.

Most countries use alternative forms of conflict resolution to provide for better and faster outcomes. ADR can be a prerequisite for entering formal proceedings (for example, in Bulgaria and, in disability cases, in Austria), the outcome of a mediation / reconciliation / settlement can be binding, in other countries the legal status of ADR is not certain. Belgian research indicates that complainants would prefer to have their cases dealt by means of ADR.[53] However, there is a lack of research about the level of satisfaction with outcomes of different forms of ADR in comparison to outcomes of more formal ways of decision-making.

Tribunal-type equality bodies as well as other "similar entities" have the power to issue opinions and make recommendations. However, in most cases these decisions are not legally binding and can leave complainants, even with favourable decisions, without adequate redress.

A lack of resources and of independence frequently impedes the application of powers available to institutions within the justice system. Strengthening the powers of equality bodies and "similar entities" both formally as well as factually emerges as important for an increase of efficiency and effectiveness of procedures in discrimination cases.

3.3 Support

Legal aid, which is usually composed of an exemption (or preliminary exemption) from court fees and funding of legal assistance and representation by a lawyer for procedures in court, was identified as a key support. The fear of high costs is a factor in under-reporting and is not without substance, even though legal aid is available in all EU Member States. This is due to tight applicability rules for legal aid, which can leave many procedures outside its scope. Practical obstacles include a lack of qualified attorneys undertaking free legal representation and the non-availability of legal aid for proceedings taking place predominantly within tribunal-type equality bodies or "similar entities", where legal representation is not obligatory and no court fees apply.

[52] Investigations on an institution's own initiative, in this case by the equality body.
[53] Vrielink (2010).

Legal advice and assistance is provided by equality bodies, NGOs and trade unions. This can include information about the legal situation, rights and obligations, ways to combat discrimination and various procedural options. It can include support to complainants in bringing forward a case and advice on how to find the most effective ways to access rights, representation and securing access to court and / or tribunal. However, this support is limited by a lack of resources available to these bodies and by barriers to accessing their services (lack of knowledge about their existence, centralisation of services, etc.).

The availability of personal, emotional and moral support appears to be very limited and does not appear in the literature referenced in the national reports.

A lack of rights awareness is one of the main factors for under-reporting identified throughout research. Access to justice requires knowledge about the existence of rights, about the availability of mechanisms and institutions for the protection of rights, as well as on how to use these mechanisms, and about institutions for seeking redress for rights violations. Gaps in knowledge about the institutions within the general population as well as among vulnerable groups are identified in all these areas in the research reviewed in the reports.[54]

There are also significant differences in knowledge levels between different groups of society. However, no research has been identified examining why certain groups might be less aware of their rights than others nor how those groups could be reached effectively. Nevertheless, there is evidence of extensive work in building knowledge of rights. This includes preparing and disseminating information materials, communicating case law outcomes, training and the development of training materials, networking with relevant stakeholders and the preparation of codes of practice.

Accommodation of diversity involves taking into account difference and the different needs of potential complainants from across the six grounds. No evidence emerges that this is a standard approach within the institutions of the justice system. What is being done by these institutions remains at a very basic level (barrier-free websites and publication of information in different languages as well as in easy-to-read versions). The institutions within the justice system do not appear to deploy strategies to take account of the diversity of groups targeted or include procedures to identify and respond to the specific needs of individual complainants across the full diversity of grounds covered, although efforts to that effect are made by various institutions.[55]

3.4 Beyond the individual case

[54] FRA (2010a); also Lemmens, P. *et al* (2010).
[55] See, for example, on the Belgian CEOOR, Ouali, N. *et al* (2008), pp. 76-79.

Access to justice in cases of discrimination is impeded not only by barriers for individual complainants but can also depend on factors beyond the individual case.

A lack of legal certainty, due to legal provisions being unclear for the individual or due to lack of legal interpretation, makes seeking one's rights more risky. Insecurity about the outcomes of the case has been found to be a factor in under-reporting in research reviewed.

The review of research and literature identified tools that are used to enhance legal certainty. These include strategic support of selected cases, litigating a case in the general interest on one's own behalf, filing a class action in the interest of a group, intervening as *amicus curiae* or simply by providing extensive legal assistance in cases of strategic interest. The publication of case law and the development of guidance for legal interpretation are other tools to improve legal certainty.

A favourable context for rights execution, a culture of rights within overall society, is an important prerequisite for effective access to justice in discrimination cases. Limited research and activities could be identified by the review of literature and research on how societal attitudes could be addressed in order to create a more favourable atmosphere, on initiatives in this regard or the effects thereof.

Activities identified by national literature reviews include public awareness-raising campaigns, work with the media, the provision of training to key groups and initiatives to enhance the effectiveness of equal treatment legislation. A strategic incorporation in equal treatment legislation of a general duty on public sector bodies of "building understanding and respect for rights" (Australia),[56] of "encouraging and supporting a society" free of discrimination and respectful of the protection of human rights (United Kingdom)[57] has been seen to assist in this regard only outside continental Europe.

3.5 Conclusions

The findings of the literature review above provided the context for carrying out the fieldwork undertaken for this study. Preliminary conclusions drawn from the literature review were used to formulate a set of 20 hypotheses to be verified against the findings of the fieldwork, presented in Chapter 4 - 7. The hypotheses are presented below

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[56] Australian Human Rights Commission (2010).
[57] As foreseen for the ECHR by United Kingdom, Equality Act 2006, Article 3, see http://www.legislation.gov.uk/ukpga/2006/3/section/3

a) **Structures**

There is a wide range of different paths for access to justice in discrimination cases. The availability of different points of access is dependent on the type of case, the field of competencies of the different institutions in charge, the applicability of federal or provincial / regional legislation and structures, the geographical distance and the objectives of the potential complainant.

Hypothesis 1: The complexity of institutional structures, equal treatment legislation and the diversity of paths available to complainants pose obstacles to access to justice

Hypothesis 2: The geographical distance between potential complainants and dispute resolution bodies impedes access to justice

b) **Procedures**

The operation of structures and procedures for access to justice reveals some deficits with regard to the right to fair proceedings. Little is done in order to equalise the position and the range of arms of parties in discrimination cases, specifically the shift of the burden of proof is not applied adequately. No appeal procedures are available against decisions of predominately tribunal-type equality bodies and most “similar entities” with competency to formulate non-binding decisions. Appeal is limited to enforceable judgements made by courts.

Hypothesis 3: Equality of arms between the complainant and the (alleged) perpetrator of discrimination enhances access to justice.

Hypothesis 4: Inadequate application of the shift of the burden of proof diminishes access to justice in cases of discrimination.

Hypothesis 5: Appeal procedures in cases of discrimination are sufficiently available to ensure fair proceedings.

There is evidence that procedures in discrimination take too long, even if the specific circumstances of a case are acknowledged to be the determining factor for the length of procedures and no standard procedure is available as measurement criteria.

Hypothesis 6: Procedures in cases of discrimination are taking too long and complainants do not know how long they may have to wait for justice, which contributes to under-reporting.

Remedies and redress in discrimination cases are mostly limited to pecuniary compensation, which can only be obtained by enforceable court judgements

and tends to be low. Decisions by predominately tribunal-type equality bodies can include recommendations but are not legally binding. There is evidence that complainants would prefer to secure change in their situation and the removal of structural discrimination compared to financial compensation.

Hypothesis 7: The range of remedies available in discrimination cases does not include sufficient remedies that reflect the aspirations of complainants.

Hypothesis 8: The sanctions available and the compensations ordered are too low in cases of discrimination to be dissuasive and effective.

Hypothesis 9: Giving equality bodies the power to make legally binding decisions, as other administrative and judicial institutions already have, enhances the effectiveness of remedies.

A lack of resources, limitations of independence and of powers of equality bodies emerge as key obstacles to the efficiency and effectiveness of procedures in discrimination cases. There are some examples of innovative procedures that might have a positive impact on efficiency and effectiveness. ADR procedures are used frequently inter alia to increase efficiency and effectiveness.

Hypothesis 10: Innovative procedures applied by equality bodies and administrative and judicial institutions in cases of discrimination enhance the efficiency and effectiveness of procedures.

Hypothesis 11: The availability of ADR procedures has a positive effect on the efficiency and effectiveness of procedures.

Hypothesis 12: The lack of powers, resources and limitations of independence of equality bodies undermines the efficiency and effectiveness of their procedures.

c) **Support**

Legal aid and assistance are formally available but lack accessibility in practice due to strict application of means testing, lack of experience of legal professionals who provide free legal aid, limitation of legal aid for court procedures and limited resources of NGOs and equality bodies. Research on under-reporting, however, shows that the costs of procedures as well as a lack of knowledge about rights are decisive factors in whether or not to file a complaint. The provision of emotional and personal support is not addressed as a subject of research.

Hypothesis 13: Legal aid and assistance are critical for complainants to navigate complex institutional systems and to achieve successful outcomes in cases of discrimination,

Hypothesis 14: Emotional and personal support are important in motivating and sustaining the complainant in cases of discrimination.

A lack of rights awareness is one of the main factors for under-reporting identified throughout the research. There are also significant differences in knowledge levels between different groups of society.

Hypothesis 15: Low levels of awareness of rights under equal treatment legislation and of how to exercise these rights is a critical barrier for access to justice in cases of discrimination.

Hypothesis 16: Levels of awareness of rights differ for different groups covered by equal treatment legislation.

Potential complainants in discrimination cases are characterised by a variety of different backgrounds, characteristics, levels of rights knowledge and needs, which has to be taken into account in order to provide equal access to justice. Only limited initiatives to ensure difference is addressed and diversity accommodated can be identified in the procedures of the institutions involved and in the support provided by a range of different bodies.

Hypothesis 17: Equality bodies and other administrative and judicial institutions show little awareness and concrete action regarding accommodation of diversity in procedures and support for the different grounds of discrimination and/or for different groups.

d) **Beyond the individual case**

A lack of legal certainty can increase insecurity about the potential outcomes of a case. In a broader context, lack of clarity about legal definitions and concepts builds a barrier to putting principles into practice. Strategic support of individual cases and litigation in the general interest emerge as possible ways to increase legal certainty. Other strategies include documentation of case law and decisions in discrimination cases.

Hypothesis 18: Enforcement models beyond the individual rights strategy enhance access to justice.

Hypothesis 19: Uncertainty among complainants about the possible outcome of a case is a factor in under-reporting.

The general attitude within society towards the execution of rights in discrimination cases is not very favourable in many national contexts. This is identified as a main obstacle to reporting cases of discrimination.

Hypothesis 20: A culture of rights within the general population stimulates and encourages people to report incidents of discrimination.

The presentation of the findings of the fieldwork in Chapters 4-7 is structured around the four headings for grouping the elements of access to justice and the presentation of the hypotheses:

- Chapter 4 – Access to a dispute resolution body
- Chapter 5 – Procedures
- Chapter 6 – Support in cases of discrimination
- Chapter 7 – Access to justice beyond the individual case.

Each of the chapters starts with a presentation of the hypotheses generated in connection with the elements of access to justice in this section (see a) – d) above). This is followed by the experiences and views of the complainants in connection with the respective aspects of access to justice. Their assessment is at the core of each of the (sub-)sections. Information generated by the interviews with non-complainants is only added to provide examples and is not assessed in a systematic way.

The experiences and views of the complainants are followed by the presentation of the contextual conditions on access to justice for (potential) complainants, as perceived by the respondents from equality bodies, “similar entities” and intermediaries.

Where the opinions of the latter on the contextual conditions are very different, they are dealt with separately; where their views converge, they are presented together. At the end of each (sub-)section we compare the experiences of the complainants with the assessment of the representatives of the equality bodies, “similar entities” and intermediaries and relate these findings to the respective hypotheses.

4 ACCESS TO A DISPUTE RESOLUTION BODY

The framework for the analysis of access to dispute resolution bodies is based on the following two hypotheses which were listed in Section 3.5:

- Hypothesis 1: The complexity of institutional structures, equal treatment legislation and the diversity of paths available to complainants pose obstacles to access to justice.
- Hypothesis 2: The geographical distance between potential complainants and dispute resolution bodies impedes access to justice

This chapter first looks into the legal provisions, institutional structures and paths available to the complainants in the systems in the eight Member States (see Section 4.1). In a second step (Section 4.2) the importance of the geographical accessibility of dispute resolution bodies is analysed.

4.1 Structure and legislation

The complexity of the institutional structures and the diversity of paths available to complainants can first of all be discerned from the different paths chosen by the complainants interviewed (for selection of complainants see Section 2.5.3) and the broad spectrum of dispute resolution bodies and intermediaries offering support to (potential) complainants. The assessment of the extent to which complainants see these structural complexities and the intricate legal provisions as obstacles on their way to justice will be based on answers relating to the challenges they face when trying to navigate the system of access to justice.

4.1.1 Experience of complainants of structure and legislation

The complexity of the systems in the eight Member States reviewed is reflected in the many different paths chosen by the complainants interviewed (see Table 1). Complainants chose between one (Bulgaria) and seven (Austria) different paths for access to justice. The majority of the complainants had taken their cases to one dispute resolution body; about a quarter of the complainants had taken their cases to at least two different institutions.

In 70% of cases complaints were first lodged with an equality body (either promotion or tribunal-type). However, this is not surprising bearing in mind that 40% of complainants interviewed were suggested as potential interviewees by equality bodies (see Section 2.5.3 above).

Table 1 – Paths to access to justice broken down by the eight Member States (N = 213)

The case was taken to …	Number of institutions involved	Austria	Belgium	Bulgaria	Czech Republic	Finland	France	Italy	United Kingdom	Total
predominantly promotion-type equality body	1	5	14	--	3	17	11	2	--	**52**
predominantly tribunal-type equality body	1	7	--	29	--	--	--	--	--	**36**
court	1	6	--	--	8	4	--	19	--	**37**
predominantly promotion-type equality body + court	2	--	8	--	--	--	10	4	4	**26**
administrative / judicial institution	1	4	1	--	7	2	3	1	7	**25**
predominantly promotion-type equality body + administrative / judicial institution	2	--	--	--	--	--	3	--	13	**16**
administrative / judicial institution + court	2	2		--	--	1	1	--	1	**5**
predominantly promotion + tribunal-type equality body	2	3	--	--	--	2	--	--	--	**5**
predominantly promotion-type equality body + administrative / judicial institution + court	3	--	--	--	--	1	2	1	--	**4**
intermediary	1	--	1	--	1	--	--	1	--	**3**
internal grievance procedure[58]	1	--	1	--	2	--	--	--	--	**3**
predominantly tribunal-type equality body + court	2	1	--	--	--	--	--	--	--	**1**
Total	**--**	**28**	**25**	**29**	**21**	**27**	**30**	**28**	**25**	**213**

Almost 60% of the complainants in all eight Member States reviewed had at least considered alternatives to the route or routes finally chosen. About a quarter of complainants had tried to avoid lodging a formal complaint by engaging in discussions with the organisation responsible for the discrimination or by undergoing mediation or internal grievance procedures (see Table A-4.1).

Internal grievance procedures refer to dispute resolution mechanisms established within public bodies, companies or other organisations which have been accused of discrimination. Among the eight Member States studied, this kind of dispute resolution mechanism is most often applied in the United Kingdom and Italy. Most of the complainants interviewed in the United Kingdom,

[58] Internal grievance procedures refer to conflict resolution mechanisms established within public bodies, companies or other organisations which have been accused of discrimination. They aim to resolve disputes without direct external involvement of equality bodies or intermediaries.

however, found this procedure rather stressful, as the complainants had to undergo this procedure without much external support. As these internal procedures did not result in a resolution of the conflict, the complainants decided to take their cases further.

About 10% of the complainants thought about taking their case to a court, to a different court from the one to which they had originally taken their case or to another public body. Only a few complainants thought about lodging a complaint with an equality body or a different equality body from the one they had involved originally. However, in terms of other alternatives, even fewer complainants considered lodging a complaint with trade unions, the police or NGOs and contacting the media.

About one quarter of the complainants interviewed also complained to institutions other than the complaints and dispute resolution bodies they finally lodged their complaints with (see Table A-4.2). These contact points either redirected them to the paths finally chosen and / or the complainants were not successful in achieving any outcome by way of these alternative paths. Almost 30% of the complainants who had lodged a complaint somewhere else tried to get support from different public authorities, such as ministries whose policy fields were concerned (for example, education and health), municipalities or the mayors of the city allegedly responsible for the discrimination experienced by the complainants. About 15% of the complainants interviewed turned to courts, intermediaries or equality bodies which were not the ones with which they finally lodged their complaints, even fewer tried labour inspectorates or the police.

Other findings also indicate that it was quite challenging for the complainants to deal with the complexity of the various systems. For instance, about one third of the complainants had called on the services of legal experts before they lodged a complaint. Moreover, some complainants said that it would have been impossible to navigate the system successfully without legal advice.

Only a few complainants interviewed pointed to issues concerning legal provisions. Due to the complexities of the law and the difficulty of understanding how these provisions are put into practice, it was seen as disadvantageous by some complainants that they had not been provided with adequate information on the procedures available right at the beginning of a complaints procedure.

4.1.2 Views of equality bodies, “similar entities” and intermediaries on structure and legislation

In each Member State there are quite a number of dispute resolution bodies as well as intermediaries. This makes it more difficult for potential complainants to discern which body plays which role and which paths are the most appropriate.

In the sample of the eight Member States 22 interviews were conducted with representatives of equality bodies which are predominantly promotion-type bodies, seven with representatives of predominantly tribunal-type bodies and six with representatives of "similar entities" taking cases to a conclusion (see Table 2).

Table 2 – Number of interviews per equality body (promotion / tribunal) and "similar entities" (N = 35)

Member State	predominantly promotion-type body	predominantly tribunal-type body	"similar entities" taking cases to a conclusion	Total
Austria	2	2	1	5
Belgium	4	--	1	5
Bulgaria	--	4	0	4
Czech Republic	4	--	0	4
Finland	2	1	2	5
France	4	--	0	4
Italy	2	--	2	4
United Kingdom	4	--	0	4
Total	**22**	**7**	**6**	**35**

In almost all eight Member States, representatives of equality bodies or administrative / judicial institutions confirmed the view that the equal treatment legislation, as well as the paths available for gaining access to justice in discrimination cases, are complex or not transparent.

In Belgium, Italy and the United Kingdom representatives of equality bodies frequently expressed their view that amendments to legislation are needed to reduce the complexity of legal provisions. Furthermore, clarification of the concept of discrimination was seen as an issue that needed to be addressed in France and Italy. In Austria it was often said that the role of the tribunal-type equality body was rather unclear – the spectrum included a low-threshold institution as well as a judicial institution.

Complainants not only face an intricate system of dispute resolution bodies, but can choose from a broad spectrum of different kinds of intermediaries offering support in cases of discrimination (see Table 3).

Table 3 – Diversity of intermediaries (N = 95)

Intermediaries	Austria	Belgium	Bulgaria	Czech Republic	Finland	France	Italy	United Kingdom	Total

NGOs	9	3	4	3	6	2	4	2	**33**
Lawyers	3	4	5	6	1	4	3	1	**27**
Specialised lawyers	1	4	3	2	3	2	1	5	**21**
Victim support organisations	0	3	0	4	3	7	0	2	**19**
Trade unions / social partner organisation	1	0	0	0	1	0	3	1	**6**
Public bodies	0	0	0	2	1	0	1	0	**4**
Mediators	0	0	0	1	0	2	0	0	**3**
Company counsellors	0	0	0	2	0	0	0	0	**2**
Others	0	0	2	1	0	0	1	1	**5**
Total	**14**	**14**	**14**	**21**	**15**	**17**	**13**	**12**	**120**

Intermediaries in all Member States except for Bulgaria raised the issue of the complexity and fragmentation of legal provisions on equal treatment. They saw the complexity of procedures as a little less of an issue.

In Austria NGOs viewed the complexity of legislation as an obstacle to providing good legal advice. The complexity appeared primarily to be caused by non-harmonised legal provisions at the federal and provincial level as well as by the purported hierarchy of the protection of grounds. Due to the hierarchy of the protection of grounds there is no equality body responsible for supporting complainants who have experienced discrimination on the grounds of age, religion / belief and sexual orientation outside employment. Similar problems were raised in other Member States. For example, in Italy a broad spectrum of intermediaries, including lawyers, an NGO and a trade union, expressed their discontent with the complexity of the legal provisions. Legal provisions are fragmented and unclear, particularly due to the hierarchy of the protection of grounds and the different definitions of discrimination depending on which grounds are concerned. In addition, the different procedures available for gender and other grounds impede proper action in cases of multiple discrimination.

Multiple discrimination was also identified by an NGO in Austria as a cause for not directing complainants to the correct dispute resolution body, as different bodies are competent for multiple discrimination depending on whether or not it includes disability. In the United Kingdom, several intermediaries identified the complexity of both laws and procedures as obstacles for complainants. In particular legal provisions regarding disability and equal pay were seen as unclear.

4.1.3 Analysis

In all eight Member States complainants in discrimination cases can address themselves to an equality body, a court or an administrative / judicial institution.

As explained in Section 2.5.3 the majority of complainants interviewed for this study were identified on the basis of a complaint they lodged with an equality body. Therefore the majority of complainants interviewed for this study chose an

equality body as the first point of entry into the system. The complainants interviewed less often approached “similar entities” and courts.

Once the complainants have managed to enter the broader system of access to justice, they still cannot be sure that they have ended up with the most appropriate organisation or dispute resolution body to deal with their case. The experiences of complainants show that the diversity of paths available to them poses an obstacle to easy access to justice (Hypothesis 1).

The information or support given by predominantly promotion-type equality bodies should be – in addition to support given by intermediaries – essential for navigating a complex system. Some complainants said that more information on which procedures would be most suitable and most likely to result in a successful resolution of their case would have been useful in orienting themselves and gaining access to justice. These statements by complainants underpin the hypothesis that complainants perceived the complexity of institutional structures as an obstacle in gaining access to justice (Hypothesis 1).

The representatives of equality bodies, “similar entities” and intermediaries logically focused less on the intricacy of the institutional structures and options available to the complainants. They placed more emphasis on the complexity of legal provisions they face when giving legal advice and which makes access to justice for complainants more difficult.

Intermediaries saw structures as especially complicated when there are a number of equality bodies covering different grounds of discrimination. This was said to be particularly complicated in cases of multiple discrimination. The lack of, or differences in, definitions of concepts of discrimination, a hierarchy of grounds, long or open lists of grounds, and the fragmentation of legal provisions between grounds or areas of discrimination were seen as impeding access to justice. A few complainants also mentioned legal complexities as an obstacle to access to justice.

Overall, representatives of equality bodies, “similar entities” and intermediaries and complainants saw the complexity of equal treatment legislation and the diversity of paths available to complainants as making access to justice more difficult (Hypothesis 1).

4.2 Geographical access

Access to a dispute resolution body is influenced by the geographical distance between the potential complainants and the dispute resolution bodies. Physical mobility, financial resources and time available determine whether or not complainants who do not live in the vicinity of a dispute resolution body will seek access to it.

Geographical distance from the perspective of complainants can be determined by looking at the travel distances and costs as well as to the extent complainants interviewed felt geographical access was an issue. Whether representatives of equality bodies, "similar entities" or intermediaries see geographical proximity as a barrier to access to justice can be determined by identifying and assessing strategies to increase proximity to (potential) complainants.

4.2.1 Experience of complainants of geographical access

Of the complainants interviewed, about 40% lived in the same city where the dispute resolution body was located, another quarter within one hour's travel and about 25% lived more than an hour's journey away (see Table A-4.3). Fewer than 10% of the complainants interviewed had to travel for more than five hours.

Nearly 40% of the complainants interviewed had to make greater efforts to reach the organisation with which they had lodged a complaint – namely taking a journey of between one and five hours. Almost half of the complainants in the United Kingdom and the Czech Republic had to travel between one and five hours to the respective dispute resolution body. In France the same was true for about one third of the complainants, in Belgium for about one quarter and in Austria for one fifth. In Bulgaria and Finland more complainants than in the other Member States reviewed had to travel more than five hours to the respective dispute resolution body.

Geographical access does not depend only on physical mobility but also on personal and financial resources. About 35% of the complainants answered the question about their travel costs (see Table A-4.4). In most of these cases the complainants had to cover their travel costs themselves (see Table A-4.5). The travel expenses of complainants in France and Italy were not reimbursed, which is also true for the majority of cases in Austria, Bulgaria, the Czech Republic and the United Kingdom. Few complainants in Belgium and Finland answered the question on travel expenses.

Of the complainants interviewed, only a few (in Austria, France, Italy and the United Kingdom) identified a lack of geographical accessibility to legal advice and assistance as an obstacle in accessing justice. However, a complainant in Bulgaria chose to lodge their complaint with the equality body located in the capital in preference to the regional office close to their place of residence. In this case, proximity engendered a feeling of distrust and fear.

4.2.2 Views of equality bodies, "similar entities" and intermediaries on geographical access

In at least seven Member States representatives of equality bodies and “similar entities” explicitly identified outreach work as a necessity to improve proximity to the complainants. In Austria, cooperation with community organisations and NGOs was identified as a feasible way of reaching out to potential complainants. In Bulgaria, the predominantly tribunal-type body toured the areas where discrimination was most likely to occur during the first two years after it was established. The increase in cases due to this exercise made it impossible to keep up this activity. In France, the equality body has established local volunteers to heighten its proximity to potential complainants. In the United Kingdom the equality body funds 92 law centres and Citizens Advice Bureaux. However, this outreach work is threatened by budget cuts planned for 2012.

Intermediaries in almost all eight Member States except Italy raised the issue of geographical proximity to potential complainants. A representative of a community organisation in Austria saw it as a disadvantage that there were no regional offices of the promotion-type equality body with competency for grounds other than gender. A representative of an NGO in Belgium identified geographical distance as especially problematic for people with hearing impairments, as it is more difficult for them to communicate by phone. A specialised lawyer in Bulgaria would like to see more regional offices of the equality body established and suggested giving the regional bodies more powers, such as investigative powers. In Finland and Austria there are umbrella NGOs which try to increase proximity to potential complainants through their member organisations located in different regions.

Trade unions in Austria, Finland, Italy and the United Kingdom also have a relatively high proximity to potential complainants due to their network of employee and union representatives. Specialised lawyers in the United Kingdom hinted at geographical restrictions attached to funding, which means that the funds can only be used for support within the geographical boundaries specified by the funding institution. This means that complainants cannot be referred across geographical boundaries, where they might get better support unavailable within the geographical boundaries specified by the funding institution.

4.2.3 Analysis

Geographical accessibility depends on the size of the Member State and the systematic distribution of ‘first contact points’ across the territory of the eight Member States.

Although about 35% of complainants interviewed had to travel more than one hour to get to the dispute resolution body where their complaint was lodged, relatively few complainants explicitly identified lack of geographical accessibility as an obstacle in accessing justice. Nevertheless, it may be an issue, bearing in

mind the time the complainants had to spend in order to gain access to the competent dispute resolution bodies.

Many of the representatives of equality bodies mentioned proximity to (potential) complainants as a factor in promoting access to justice and referred to the development of strategies for overcoming the challenges of geographical accessibility.

Strategies aiming at closing the geographical gap include:

- the establishment of regional offices as part of the equality body;
- the funding of regional / local organisations by the equality body;
- the establishment of organisations which are not affiliated with the equality body through legal provisions;
- the cooperation of the equality body with NGOs or community organisations.

Among the intermediaries, the most effective way of increasing proximity to complainants is cooperation with NGOs and community organisations, utilising member organisations or other established networks such as trade union or employee representatives.

The development of strategies to close the geographical gap with complainants shows that equality bodies and intermediaries believe that this could be a factor impeding access to justice (Hypothesis 2), even though the complainants interviewed did not raise geographical proximity as one of the most important challenges in access to justice.

How the geographical gaps are bridged depends on the different systems which have evolved over the years in order to promote access to justice in the specific national contexts of the eight Member States. Overcoming geographical distances can be done via first contact points providing initial advice established close to where discrimination happens and by making use of existing first contact points, such as employee representatives, trade unions, lawyers and NGOs.

5 PROCEDURES

As explained in Section 2.3 on the constitutive elements of access to justice, the term 'procedures' refers to legal and non-legal processes before a court, predominantly tribunal-type equality body or "similar entities" during which cases are lodged, parties are informed, evidence is presented and facts are determined.

This chapter describes the findings of the interviews with the four groups of respondents with regard to four elements of access to justice in relation to procedures.

The four elements of access to justice analysed in this chapter are:

- fair proceedings
- the timely resolution of cases
- effective remedies and redress
- efficiency and effectiveness of procedures.

The following hypotheses set the framework for analysing the fieldwork data on support in cases of discrimination:

- Hypothesis 3: Equality of arms between the complainant and the (alleged) perpetrator of discrimination enhances access to justice.
- Hypothesis 4: Inadequate application of the shift of the burden of proof diminishes access to justice in cases of discrimination.
- Hypothesis 5: Appeal procedures in cases of discrimination are sufficiently available to ensure fair proceedings.
- Hypothesis 6: Procedures in cases of discrimination are taking too long and complainants do not know how long they may have to wait for justice, which contributes to under-reporting.
- Hypothesis 7: The range of remedies available in discrimination cases does not include sufficient remedies that reflect the aspirations of complainants.
- Hypothesis 8: The sanctions available and the compensations ordered are too low in cases of discrimination to be dissuasive and effective.
- Hypothesis 9: Giving equality bodies the power to make legally binding decisions, as other administrative and judicial institutions already have, enhances the effectiveness of remedies.
- Hypothesis 10: Innovative procedures applied by equality bodies and administrative and judicial institutions in cases of discrimination enhance the efficiency and effectiveness of procedures
- Hypothesis 11: The availability of ADR procedures has a positive effect on the efficiency and effectiveness of procedures.
- Hypothesis 12: The lack of powers, resources and limitations of independence of equality bodies undermines the efficiency and effectiveness of their procedures.

This analysis is primarily based on the experiences of the complainants interviewed with the concrete procedures they have gone through.

5.1 Fair proceedings

The following requirements relating to fair proceedings will be analysed:

- equality of arms between the complainant and the (alleged) perpetrator of discrimination;
- shift of the burden of proof;
- appeal procedures;
- victimisation;
- distrust in the justice system.

The basis for the analyses of the fieldwork data related to fair proceedings are the following three hypotheses taken from Section 3.5:

- Hypothesis 3: Equality of arms between the complainant and the (alleged) perpetrator of discrimination enhances access to justice.
- Hypothesis 4: Inadequate application of the shift of the burden of proof diminishes access to justice in cases of discrimination.
- Hypothesis 5: Appeal procedures in cases of discrimination are sufficiently available to ensure fair proceedings.

5.1.1 Experience and assessment of complainants of fairness of procedures

A few complainants in at least four of the eight Member States – namely Austria, the Czech Republic, France and the United Kingdom – perceived the defendants as much more powerful in the procedure than themselves.[59] This was either because the defendants were international or large companies or because they had more than one lawyer.

The complainants who had a less favourable opinion of the tribunal-type equality body in Bulgaria saw the body as reluctant to combat discrimination by the Orthodox Church. One complainant in the United Kingdom had the experience that the defendant managed to fill the tribunal with an audience which was on the defendant's side, which negatively impacted on the equality of arms.

Complainants obviously want their cases to be taken seriously by those intervening on their behalf or deciding on the outcome of the cases. Appreciation of the individual case is therefore important. This appreciation involves giving the complainants the opportunity to tell their stories and giving them the feeling that their stories are being heard. About 70% of the complainants said that they were able either 'mostly' or 'fully' to tell their story

[59] See section 2.2 (terminology) and glossary for a definition of the term defendant.

during the procedure (see Table A-4.8), but only 50% had the feeling that their story was “mostly” or “fully” listened to (see Table A-4.10).

Predominantly tribunal- or promotion-type equality bodies most often gave the complainants the opportunity to tell their stories and they were also more attentive in listening to these stories (see Table A-4.9, Table A-4.11) in contrast with courts. Complainants were of the opinion that judges in courts had made less room for them to tell their stories (see Table A-4.9) and were less willing to listen to them (see Table A-4.11).[60] This could be seen as a further issue related to equality of arms.

Appeal procedures were pending in 18 cases, 12 of which had been decided in favour of the complainants and were appealed by the defendants (Austria, Bulgaria, France, Italy and the United Kingdom). Six were taken to the next instance by complainants who had lost their case (Austria, Italy and the United Kingdom). Very few complainants whose cases were challenged by the defendants were of the opinion that appeal procedures should not be possible in discrimination cases.

In all eight Member States at least one complainant raised the issue of victimisation which results in intimidation of complainants. Six complainants made explicit reference to the fact that either they themselves or their family had been victimised. Another five complainants mentioned (fear of) victimisation of (potential) witnesses as problematic, as it would prevent them from testifying during the procedure. Four other complainants feared negative consequences either for their future careers because they were labelled as ‘trouble makers’ or for their legal status because they were third-country nationals.

When asked about lodging an anonymous complaint, if that were possible, as a means against victimisation of either the complainant or the complainant’s family members, about 10% of the complainants were in favour (see Table A-4.12). Three of the 21 complainants who deemed lodging an anonymous complaint to be a good idea indicated that their complaint had been an anonymous one. These were complainants from Belgium, Finland and the United Kingdom.

One complainant was anxious that his ‘foreign-sounding’ name might trigger negative attitudes among legal counsellors or judges. Furthermore, people with a migrant background and maybe an insecure residence status feared negative consequences affecting other areas of their lives.

In at least six Member States complainants raised the issue of trust in the justice system and in respective institutions as negatively influencing their perceptions of fair proceedings and as a consequence impeding access to

[60] Categories including fewer than ten cases are not analysed.

justice. Lack of trust in equality bodies was mentioned by complainants in Belgium and the Czech Republic. Complainants in Bulgaria and Italy reported distrust in courts and the judicial system.

In France one complainant was not sure of the trustworthiness of the stakeholders in the field of equal treatment. In Finland there was one complainant who mistrusted the Occupational Safety and Health Authorities and one who mistrusted the police. One complainant in Bulgaria was distrustful of the regional office of the equality body and felt more inclined to trust the one further away from their home town.

5.1.2 Views of equality bodies, "similar entities" and intermediaries on fairness of procedures

The average assessments of the situation of equality of arms in the eight Member States by representatives of equality bodies, "similar entities" and intermediaries were to a large extent congruent. Only in Finland did the intermediaries tend to be much more critical of the availability of measures guaranteeing equality of arms than the representatives of equality bodies.

Results of the fieldwork show that the majority of the representatives of promotion-type equality bodies saw some availability of measures to counter actions that diminish the equality of arms between complainant and defendant. A few representatives of promotion-type equality bodies saw equality of arms as not being guaranteed at all (see Table A-4.13) – one of them was a representative of a dispute resolution body in Italy, the other three were based in the United Kingdom.

About half of the representatives of tribunal-type equality bodies considered that equality of arms was at least to some extent guaranteed. Representatives of equality bodies do not seem to be entirely convinced that the measures currently available for guaranteeing equality of arms are sufficient. One respondent in the United Kingdom, for instance, saw employers who had allegedly perpetrated discriminatory acts threaten complainants with the costs of proceedings; there were no measures available to protect the complainant against such threats.

The intermediaries painted a more ambivalent picture of the situation concerning equality of arms than the representatives of equality bodies (see Table A-4.14), as 20% of the intermediaries saw equality of arms guaranteed to a large extent and 30% not at all. An intermediary in Austria suspected large companies accused of discrimination of blackmailing witnesses. The remaining intermediaries were of the opinion that equality of arms was guaranteed to some extent.

Reasons for inequality of arms identified by the intermediaries were first of all the imbalance of resources between complainants and defendants. The latter were usually well resourced and would sometimes even employ more than one lawyer to accompany them through the proceedings. The complainants, on the other hand, were usually not so well resourced. Yet, according to many of the representatives of equality bodies and intermediaries, legal representation was an absolute necessity for the complainants, not only in order to navigate the intricate systems of access to justice but also to achieve satisfactory outcomes.

Access to good quality legal advice and assistance was seen as essential in guaranteeing equality of arms. Only then can complainants be on an equal footing with the alleged discriminator and be in a position to utilise the powers of courts and tribunals vis-à-vis the defendant. Representatives of equality bodies and intermediaries suggested that improving the legal aid system and more funding for legal advice and representation were key factors in guaranteeing equality of arms.

Equality of arms requires that both parties provide all the necessary documents and information during a procedure.

About 70% of the representatives of promotion-type and tribunal-type equality bodies and of “similar entities” (see Table A-4.13) who answered the relevant question were of the opinion that measures guaranteeing the provision of all necessary documents were only available to some extent. The remainder saw the provision of documents as not being guaranteed at all. The intermediaries saw measures in place to ensure the provision of relevant documents and information to a slightly greater extent (see Table A-4.14).

In several Member States representatives of promotion-type and tribunal-type equality bodies saw the non-application of the shift of the burden of proof by judges as having a negative impact on the quality of the procedures and the outcomes. This was due to a lack of awareness among judges of the concept (Austria) or a lack of clarity in the law about when and how to apply it (the Czech Republic).

The quality of decisions by tribunal-type bodies were mentioned by intermediaries as an issue in Austria and Bulgaria. The quality of these decisions was seen as important in any appeal procedure that followed in court. In Austria representatives of equality bodies were of the opinion that the quality of the reasoning and the decisions of the tribunal-type body was essential so that courts which subsequently have to take the decisions into account can more easily integrate them into their reasoning.

The intermediaries in Bulgaria had divergent views on the quality of the decisions by the tribunal-type body and to what extent they were confirmed or challenged by the next instance. Confirmation of a decision by the next instance

was seen as an indicator for the quality of the work of the tribunal-type body and was said to contribute to the improvement of the standing of the body. However, it was also mentioned that judges in the court of appeal were not always aware of the concepts introduced by the EU equal treatment directives.

Intermediaries, especially in Italy and the United Kingdom, identified complainants' fear of victimisation or retaliation as a barrier to access to justice. Two lawyers (one in Finland and one in France) were, however, of the opinion that victimisation was not an issue (see Table A-4.13 and Table A-4.14).

Representatives of equality bodies in at least six of the eight Member States reviewed (Austria, Belgium, Czech Republic, Finland, Italy and the United Kingdom) and intermediaries – mostly lawyers, representatives of NGOs, victim support organisations and trade unions (Austria, Czech Republic, Finland, Italy and the United Kingdom) identified complainants' fear of victimisation as a major barrier to lodging complaints.

This was seen as particularly problematic within small professional communities. Fear of victimisation and retaliation was especially present among those complaining about discrimination in the workplace, due to a hierarchical and / or close relationship to the discriminator.

Most of the representatives of equality bodies believed that measures protecting the complainant against victimisation are to some extent in place (see Table A-4.13). Intermediaries were a little less convinced about the availability of such measures – especially trade unions, lawyers and NGOs (see Table A-4.14). Equality bodies (50%), especially tribunal-type equality bodies, are slightly more convinced than intermediaries (30%) that the measures they can take to protect the complainant against victimisation are dissuasive and effective (see Table 4.15). Representatives of NGOs, victim support organisations and trade unions are the most sceptical (see Table 4.16).

Equality bodies seldom seem to see the necessity of taking measures to protect complainants against victimisation (see Table 4.17). Equality bodies located in Austria, the Czech Republic, Finland and the United Kingdom said that they take measures to protect complainants against victimisation in between 1% and 20% of the cases they deal with. The findings of the fieldwork do not allow a conclusion to be drawn as to whether the issue is that victimisation does not occur often, so that protection against it is not necessary, or whether equality bodies do not become aware that a complainant has experienced victimisation.

Representatives of equality bodies in almost all eight Member States referred to the need for improved legal provisions to protect complainants against victimisation.

Protection for complainants against being dismissed from work in reaction to the lodging of a complaint was seen as a very challenging task by intermediaries in Belgium, especially when the defendant is a large, well-resourced company which can afford good lawyers and has a good standing vis-à-vis public institutions.

Anonymous complaints, guaranteeing confidentiality of information and having a separate hearing for complainant and defendant were also seen as useful measures to protect the complainant against victimisation (Finland and Austria). In addition to the possibility of launching anonymous complaints, legal provisions allowing for the power of investigation (Czech Republic), the adequate application of the shift of the burden of proof (Czech Republic and Finland) and class action (France) were seen as supporting the equality bodies and intermediaries to protect complainants against victimisation more effectively.

Settlement procedures were seen as an option for reducing the risk of victimisation (Austria and Belgium).

The protection of witnesses was not so much of a focus for the representatives of equality bodies and intermediaries. However, one intermediary in Bulgaria stated that protecting witnesses against victimisation was even more difficult than protecting complainants.

From the point of view of intermediaries, distrust in the legal and judicial system is another obstacle to lodging a complaint, especially for women, (undocumented) migrants, members of ethnic or religious minorities, lesbian, gay, bisexual and transgender (LGBT) people, poor and homeless people. Representatives of equality bodies, judicial / administrative institutions and of a broad range of intermediaries in almost all the eight Member States except for France identified mistrust in legislation, equality bodies or “similar entities”, public bodies in general and the judicial system as major barriers to lodging complaints.

5.1.3 Analysis

Equality of arms, the shift of the burden of proof and appeal procedures are, indeed, and emerge from this research as, essential requirements of fair proceedings.

A few complainants saw their opponents, the defendants, as much more powerful because of the resources available to them. Another aspect that seems to influence the complainants’ perception of equality of arms is the attention paid to their individual cases of discrimination. It was seen as disadvantageous by the complainants when representatives of equality bodies, “similar entities” and judges did not give them enough space to tell their stories

and / or did not pay enough attention to their stories. Tribunal and promotion-type equality bodies seemed better equipped to meet these needs of the complainants than decision-makers in courts or in “similar entities”.

Intermediaries, representatives of equality bodies and “similar entities” were mostly of the opinion that measures guaranteeing equality of arms were only in place to some extent, which means that there is room for improvement. Obliging the alleged perpetrator to provide all necessary documents and information as well as adequately applying the shift of the burden of proof are both measures that contribute to equality of arms.

It emerges from the information gained by the fieldwork that judges do not always correctly apply the shift of the burden of proof. This has a negative effect on the quality of procedures. Bad quality procedures tend to result in bad outcomes and therefore impede access to justice.

Very few complainants whose cases were challenged in appeal by the defendants were of the opinion that appeal procedures should not be possible in discrimination cases.

The analysis of the data generated by the fieldwork shows that intermediaries, representatives of equality bodies and “similar entities” and, to a lesser extent, complainants interviewed identified equality of arms between the complainant and the (alleged) perpetrator as enhancing access to justice (Hypothesis 3).

The inadequate application of the shift of the burden of proof especially by judges, which makes access to justice more difficult, was identified by representatives of equality bodies and intermediaries as a challenge (Hypothesis 4).

The findings from the fieldwork in relation to appeal do not reveal strong opinions among respondents with regard to the question of whether appeal procedures are sufficiently available in discrimination cases (Hypothesis 5).

(Fear of) victimisation and distrust in the justice system were raised both by complainants and the representatives of equality bodies and intermediaries as issues that influence the fairness of proceedings. Neither of these issues was included in the 20 working hypotheses (see Section 3.5) based on the literature review.

Nevertheless, the fear of victimisation expressed by complainants, and the views of intermediaries and equality bodies that fear of victimisation is an important factor in the decision by a complainant to lodge a complaint, justify the conclusion that real or perceived fear of victimisation are compromising fair proceedings in cases of discrimination.

Equality bodies and intermediaries identified specific groups which were more likely to be distrustful of the judicial system. The experiences of the complainants and the assessment by the equality bodies and intermediaries suggest that distrust of the justice system and of the possibility of fair proceedings is a barrier to accessing justice.

5.2 Timely resolution of disputes

One of the hypotheses is that procedures in cases of discrimination are taking (too) long and complainants do not know how long they may have to wait for justice, which contributes to under-reporting (Hypothesis 6). All respondents were asked to assess the duration of procedures.

The complainants' evaluation refers to the procedure they have gone through.

Equality bodies and "similar entities" assessed the duration of their own proceedings but also those of other relevant dispute resolution bodies. Intermediaries gave informed estimates about the duration of proceedings of various dispute resolution bodies.

5.2.1 Experience and assessment of complainants relating to the duration of procedures

About two thirds of the complainants provided information on the duration of the procedure they had gone through. On average the procedures had taken 17 months (see Table A-4.19). Most of these complainants (45%) had to wait less than a year before a final result was achieved (see Table A-4.20). About 40% navigated the system in between two and three years; 15% had to wait for the final outcome for more than three years. In most cases, the procedure took longer when complainants had taken their case to more than one dispute resolution body (see Table A-4.21).

When looking at the different stages of the procedure, the following pattern of duration can be discerned (see Table A-4.19). From lodging a formal complaint to the start of the procedure took about four months on average, another nine months passed between the start of the procedure and the first hearing and four more months went by before a final decision was reached after the first hearing.

However, it is difficult to assess the duration of procedures for all the various categories of dispute resolution bodies involved. Some of them only cover between one and four cases, which is too low a number to be included in the analysis. The duration of procedures ranged from about 12 months, when predominantly tribunal-type equality bodies or "similar entities" were involved, to more than 24 months, when promotion-type equality bodies and courts were responsible for the proceedings (see Table A-4.21). Complainants who had solely taken their case to promotion-type equality had to wait for the final

outcome of their case for 16 months; courts delivered their final decision after 18 months.

The average duration of procedures in the eight Member States reviewed ranges from about a year in Italy, Belgium, Bulgaria and Austria to about 18 months in the United Kingdom, the Czech Republic and Finland (see Table A-4.22). In France complainants had to wait for almost 36 months for the closure of their case.

The excessive length of the procedures in France compared to the other seven Member States might be explained by two factors. On the one hand, more than one dispute resolution body is more often involved in dealing with one case of discrimination than in the other Member States. On the other hand, if more than one body was part of the procedure the duration of the procedure was longer than in the other Member States involving a comparable number of bodies. In Austria the duration of proceedings ranged from two months for settlements conducted by an administrative / judicial institution to almost one year for court proceedings.

In the Czech Republic, the complainants who had taken their cases to court had to go through proceedings lasting on average 31 months. In Finland the complainants underwent a long procedure (54 months) when they took their case to a promotion-type equality body as well as a tribunal-type equality body and these procedures took longer than comparable ones in Austria. In Finland, courts as sole dispute resolution bodies and promotion-type equality bodies as sole complaints bodies were close to the average duration of these procedures in other Member States, at about 18 and 16 months respectively.

In the United Kingdom the complaints which were initially taken to a promotion-type body and then subsequently to an administrative / judicial institution took less time than in comparable cases in France. On the other hand, the involvement of a promotion-type body and a court in the United Kingdom took a little longer than in Italy and Belgium. Finally, “similar entities” addressed as sole bodies in the United Kingdom were much faster than in France.

The duration of procedures was an issue of which complainants were well aware. It was quite often referred to in answers to open questions regarding the quality of procedures. The complainants most often identified the duration of procedures as a weakness in relation to the quality of the procedures – most often in connection with court procedures, followed by promotion-type equality bodies and “similar entities”. There were a small number of complainants in Finland, France and Italy which mentioned quick procedures by promotion or tribunal-type equality bodies as an asset of these institutions.

5.2.2 Views of equality bodies, "similar entities" and intermediaries on the duration of procedures

When asked, only half of the respondents in the group of representatives of equality bodies and half of the respondents in the group of intermediaries provided information on the average duration of proceedings in their respective working and national contexts. The reasons given were that the duration of the procedure depended on the complexity of the case, on which point of entry into the broader system of access to justice had been chosen and on how many dispute resolution bodies had been involved, as well as on appeal procedures.

The duration of procedures was identified by both representatives of equality bodies (Austria, Belgium, Finland and the United Kingdom) and intermediaries (Belgium, the Czech Republic, Finland, France and Italy) as a factor influencing the willingness of complainants to take their case to a dispute resolution body, the quality of the legal advice and assistance given, the quality of the procedures and the outcome.

It is rather difficult to compare the duration of procedures of predominantly promotion-type bodies with each other, since the information from the interviews with representatives from promotion-type bodies does not specify whether their estimates included only the length of procedure before their own body or included procedures before a dispute resolution body as well (see Table A-4.23). Predominantly tribunal-type bodies indicated ten months for the average duration of their own proceedings.

Some representatives of equality bodies and intermediaries stressed the importance of informing the complainant right at the beginning of the procedure about the likely duration, no matter whether these are procedures before their own institution or court. Many saw the duration of proceedings as an obstacle to good quality procedures. Moreover, not knowing the length of procedures might lead to disappointment during the procedures and negatively affect the motivation of a complainant to continue the case.

According to a lawyer in the Czech Republic, the long duration of procedures has a negative impact on the willingness of complainants to actively involve themselves in the case. A similar view was expressed by a representative of a victim support organisation in Finland who said that complainants might give up before they achieve an outcome if the case drags on for too long. On the other hand, one of the lawyers in France saw the duration of procedures as symbolic, as it helped the complainant to come to terms with the discrimination experienced.

5.2.3 Analysis

The duration of procedures is an issue which was mentioned by more than a quarter of complainants as a weak point of the procedures they have experienced. Most often courts, promotion-type equality bodies and “similar entities” were seen as being comparatively slow. Some representatives of equality bodies, and more in the case of intermediaries, assessed the duration of procedures as an obstacle to good quality procedures. These representatives took the duration of procedures as an important criterion determining the quality of procedures.

Some equality bodies and some isolated intermediaries pointed out that it was important to inform complainants about the possible duration of proceedings right at the beginning of a procedure. They have experienced complainants giving up their case because they no longer wanted to put up with the insecurity of the duration of the procedure. This insecurity prevents cases lodged from being turned into decisions and contributes to under-reporting as assumed in Hypothesis 6.

5.3 Effective remedy or redress

This section on effective remedy and redress examines the outcomes desired by complainants, follow-up procedures undertaken by equality bodies and compensation payments. It analyses which of the remedies available in discrimination cases are most appreciated by complainants, whether the procedures chosen by the complainants match the achievements they desire from lodging a complaint and whether there are differences in the satisfaction of complainants in relation to binding or non-binding decisions of dispute resolution bodies.

In a second step, measures are examined which have been taken by equality bodies and intermediaries to assess whether the remedies and redress which have been achieved are effective. Furthermore, assessment is made of their opinions on whether the sanctions available and compensations ordered are dissuasive and effective.

This section relates to the following hypotheses from Section 3.5.

- Hypothesis 7: The range of remedies available in discrimination cases does not include sufficient remedies that reflect the aspirations of complainants.
- Hypothesis 8: The sanctions available and the compensations ordered are too low in cases of discrimination to be dissuasive and effective.
- Hypothesis 9: Giving equality bodies the power to make legally binding decisions, as other administrative and judicial institutions already have, enhances the effectiveness of remedies.

Most of the cases of the complainants interviewed resulted in a decision by a court (24%), a formal or an informal settlement (22%) or a decision by a

tribunal-type equality body (18%) (see Table 4). Formal or informal settlements were, logically, most often achieved through predominantly promotion-type bodies and "similar entities", but in a few cases also through courts. Promotion-type equality bodies and "similar entities" achieved a conclusion of the case in about 10% of the cases. For 15% of the complainants no outcome had been achieved at the time the interview was conducted, as the procedures before the first dispute resolution body invoked were still ongoing or appeal procedures were still pending. Three per cent of the complainants complained that no outcome had been achieved at all, because the complaint had to be discontinued e.g. due to withdrawal of (financial) support by the equality body or because it was dropped by a court or administrative / judicial institution. All these last cases which did not result in any outcome had initially been dealt with by promotion-type bodies.

Table 4 – Outcomes of the complaints lodged (N = 213)

Outcome	Frequencies	Valid%
decision by a court	50	23.5
formal / informal settlement	46	21.6
decision by a tribunal-type equality body	39	18.3
no outcome yet	32	15.0
conclusion by an administrative / judicial institution	20	9.4
intervention and conclusion by a promotion-type equality body	20	9.4
no outcome at all	6	2.8
Total	**213**	**100.0**

5.3.1 Experience and assessment of complainants regarding remedies and redress

Looking at effective remedies from the perspective of complainants requires linking their expectations and what they sought to achieve with their satisfaction with the outcome of their cases. The four most important goals identified by the complainants were:

- terminating discrimination (20%), which included, among other things, removal of barriers and re-integration into the complainant's former working environment;
- recognition of discrimination (16%);
- achieving a favourable change in the situation of the complainant (14%);
- prevention of discrimination to protect others in the future (11%).

Complainants who wanted to end discrimination in most of the cases received a decision from a tribunal-type equality body, arrived at a formal or an informal settlement or received a judgment from a court. Complainants wanting to achieve recognition of discrimination most often ended up with a decision by a court or a tribunal-type equality body. When a change of situation was desired the case most often resulted in a formal or an informal dispute resolution, a final decision by a court or an intervention by a promotion-type equality body.

Monetary compensation played a less important role (8%) compared to the desire for a restitution of the original situation before discrimination occurred. Even less important were an apology by the discriminator (3%) or the punishment of a discriminator (1%) (see Table 5). Not surprisingly, courts were the dispute resolution bodies which best matched the desire for monetary compensation, but quite a few of the complainants who wanted to achieve monetary compensation ended up with formal or informal settlements. Complainants seeking an apology most often received a decision by a court rather than an apology.

Table 5 – Outcome sought by complainants in lodging a complaint

The complainant wanted…	Count	% of respondents (N = 465)	% of cases (N = 212)
discrimination to be stopped	88	18.9	41.5
recognition of discrimination	73	15.7	34.4
a change in their situation	65	14.0	30.7
prevention of discrimination in order to protect others in the future	55	11.8	25.9
justice	45	9.7	21.2
monetary compensation	37	8.0	17.5
equal rights / treatment	25	5.4	11.8
more awareness of discrimination	24	5.2	11.3
an apology	14	3.0	6.6
encouragement of others to lodge a complaint (role model)	10	2.2	4.7
public / media attention	6	1.3	2.8
moral satisfaction	4	0.9	1.9
punishment of the discriminator	5	1.1	2.4
others to realise that there is an institution dealing with cases of discrimination	2	0.4	0.9
Other	12	2.6	5.7
Total	**465**	**100.0**	**219.3**

More than half of the complainants interviewed were of the opinion that they had been able almost or fully to realise the achievements desired at the outset of lodging a complaint; about 20% saw their desires only partly realised and 25% did not see them achieved at all (see Table A-4.26). On average the complainants were of the opinion that compensation was rarely awarded to them and that discrimination was seldom discontinued (see Table A-4.27). For 17% of the complainants the situation changed for the better, for 6% of the complainants the situation changed for the worse. There is a clear link between satisfaction with the outcome and the extent to which the complainants were awarded compensation, their situation changed for the better and discrimination was discontinued after the case had been closed

Complainants were most often awarded compensation payments when their case had been decided by a court or had been concluded by an administrative / judicial institution. Tribunal-type equality bodies only rarely award any compensation payments (see Table A-4.28). Decisions by courts were most likely to lead to the discontinuation of discrimination. Formal or informal settlement procedures resulted less often in discrimination stopping than court decisions. Decisions by tribunal-type bodies least often led to the discontinuation of discrimination (see Table A-4.29).

Reasons for not being satisfied with the outcome of the procedures were quite diverse, but were mostly linked to the original aims of the complainants (see Table A-4.30). Most often complainants would have preferred a binding decision rather than an opinion or recommendation, as the latter two are not enforceable and rarely lead to the termination of discrimination or a change in the situation. Some complainants insisted on getting recognition of discrimination from those responsible for the unequal treatment. Others would have been happier if the appeal they had lodged were not still pending. A few complainants would have been in favour of (higher) material or non-material compensation payments.

Defendants who had lodged an appeal that was still pending were also a cause of dissatisfaction for complainants. A few complainants who went through proceedings before a tribunal-type equality body or through ADR proceedings would have preferred to have a procedure in court

5.3.2 Views of equality bodies, “similar entities” and intermediaries on remedies and redress

Whether or not remedies or redress are effective can only be assessed if there are adequate follow-up procedures in place. Such procedures first of all entail finding out whether the complainant is satisfied with what has been achieved and what can be learned from the case for future proceedings. About 60% of the representatives of equality bodies in the eight Member States reviewed said that they engaged in follow-up procedures, especially tribunal-type bodies (see Table A-4.31). More of the equality bodies took steps to monitor the action taken by the defendant after the case had been concluded than to monitor the situation of the complainant (see Table A-4.32 and Table A-4.33). The representatives interviewed were hesitant about specifying a timeframe within which they conducted the follow-up procedures, as conducting a follow-up procedure very much depended on the outcome of the case.

Follow-up procedures do not seem to be part of the legal provisions or the mandates of the equality bodies. A few bodies said that they only did a follow-up when it was explicitly included in a settlement agreement or a decision / opinion (Austria, France, Italy and the United Kingdom) or when strategic cases were concerned (Czech Republic). The tribunal-type equality body in Bulgaria and the promotion-type equality body in Scotland said that they would call on

employers or even visit their premises in order to check on them. In Austria, representatives of the promotion-type equality body identified as challenging the integration of structural measures, which could then be followed-up on, into settlement agreements, as such a step might have negative effects on the possible inclusion of compensation payments.

Only about a quarter of the intermediaries shared the view of the equality bodies that there were follow-up procedures in place (see Table A-4.34). Victim support organisations and NGOs tended to think that such procedures were in place more often than (specialised) lawyers and trade unions. Slightly more intermediaries looked into whether defendants changed their practices than into the situation of complainants after closure of the cases (see Table A-4.35 and Table A-4.36).

Representatives of equality bodies and "similar entities" only rarely referred to compensation payments. Intermediaries more often talked about challenges with regard to compensation payments. They tended to be of the opinion that the level of compensation awarded was a quantitative criterion in determining the quality of the outcome of a procedure (Austria, Bulgaria, France and Italy). Intermediaries said that compensation payments were too low and therefore not dissuasive in Austria, Finland and Italy. A representative of an NGO supporting people with disabilities in Austria stated that compensation payments were not an adequate remedy when the complainant wished to achieve the removal of barriers, as compensation payments did not contribute to achieving the removal of barriers.

In Italy and Bulgaria intermediaries disapproved of the fact that equality bodies did not have the mandate to award compensation. In the United Kingdom the limited powers of "similar entities" to enforce payment of compensation was seen as disadvantageous, as it was often the responsibility of the complainant to monitor the transfer of the payment. In Austria an intermediary suggested introducing criteria for the courts for determining adequate levels of compensation; in Italy a representative of an NGO proposed that the equality body should be able to issue administrative sanctions and a legal expert suggested the introduction of punitive damages.

5.3.3 Analysis

The outcomes most often desired by the complainants were (in order of frequency of mentioning):

a) termination of discrimination;
b) recognition of discrimination ;
c) achieving a favourable change in the situation of the complainant;
d) prevention of discrimination to protect others in the future..

The complainants wanting to achieve discontinuation of discrimination and recognition of discrimination most often received a decision from a tribunal-type equality body or a court. Those who sought a favourable change in their situation had most often taken their cases to a court or a promotion-type equality body. Formal or informal settlement procedures were often conducted when complainants wanted to achieve discontinuation of discrimination or a favourable change to their situation. Monetary compensation played a less important role compared to the other four outcomes sought, but was most often achieved via court proceedings or formal or informal settlements.

Only about half of the complainants were satisfied with the conclusions or outcomes of their cases, because the range of remedies available did not reflect their aspirations. This was due to fact that the dispute resolution body they had invoked could not or did not terminate discrimination, recognise discrimination, achieve a favourable change in the situation of the complainant or award compensation payments (see Hypothesis 7).

Equality bodies and intermediaries could only assess whether remedies and redress are effective when they engage in follow-up procedures to evaluate whether the compensation payments have been transferred to the complainant and whether the suggested remedies have been implemented and the behaviour or practice of the defendant has changed. However, follow-up procedures do not seem to be part of the mandate of equality bodies and are therefore not regularly implemented – only under specific pre-conditions and circumstances.

Limited powers of tribunal-type equality bodies and “similar entities” – especially as regards the awarding of compensation payments, the awarding of too low compensation payments and the lack of the possibility of enforcing compensation payments – were primarily identified as drawbacks by the intermediaries. Compensation payments may not always be the adequate remedy, especially when complainants are seeking to remove barriers, but they could play an important preventive role if they were adequately dissuasive.

However, sometimes compensation payments, when awarded during settlement procedures, were deemed to be an obstacle in taking a case to its final conclusion. This is because complainants would sometimes agree to compensation payments instead of achieving a decision or judgment which would result in a precedent and might change not only the situation of the complainant for the better but also motivate others who have experienced discrimination to lodge a complaint.

Representatives of equality bodies and intermediaries raised some aspects as challenges to the efficiency and effectiveness of remedies, which can be linked to Hypotheses 7, 8 and 9. In their view compensation is sometimes too low

(Hypothesis 8) and the range of remedies available does not always reflect the aspirations of complainants (Hypothesis 7).

However, in order to determine whether sanctions and compensations are dissuasive and effective (Hypothesis 8), equality bodies would have to monitor in follow-up procedures the behaviour and practices of the convicted / sanctioned discriminators in a systematic way. The limited powers of equality bodies, especially as regards the issuing of non-binding decisions, was seen as a drawback in enhancing the effectiveness of remedies by complainants, representatives of equality bodies and intermediaries (Hypothesis 9).

5.4 Efficiency and effectiveness of procedures

The efficiency and effectiveness of procedures is influenced by innovative procedures, ADR and the power, resources and independence of equality bodies.

This section relates to the following hypotheses from Section 3.5:

- Hypothesis 10: Innovative procedures applied by equality bodies and administrative and judicial institutions in cases of discrimination enhance the efficiency and effectiveness of procedures.
- Hypothesis 11: The availability of ADR procedures has a positive effect on the efficiency and effectiveness of procedures.
- Hypothesis 12: The lack of powers, resources and limitations of independence of equality bodies undermines the efficiency and effectiveness of their procedures

5.4.1 Experience and assessment of complainants relating to the outcomes of procedures

The majority of the complainants (about 60%) were either ‘very content’ or ‘mostly content’ with the procedures they had gone through. About one quarter was ‘not entirely content’ or ‘not at all content’ and about 16% of the complainants did not want to answer the question about whether they had been satisfied with the proceedings (see Table A-4.6).

When linking the satisfaction of the complainants to the procedures they had undergone (see Table A-4.7), some trends are visible. Complainants were most content with procedures before predominantly tribunal-type equality bodies, followed by predominantly promotion-type equality bodies and by procedures involving promotion-type equality bodies and courts or “similar entities”. Complainants were least content with procedures solely carried out by “similar entities”.

Almost 75% of the complainants said that the outcome they had achieved was in their favour (see Table A-4.37). The decisions arrived at by courts, formal or

informal settlement procedures and interventions by promotion-type equality bodies most often resulted in favourable outcomes for the complainants (see Table A-4.41). Almost 90% of the formal or informal settlements were in favour of the complainants, as well as about 80% of the interventions by promotion-type equality bodies and of the decisions by courts. Tribunal-type equality bodies and "similar entities" more seldom arrived at positive outcomes for the complainants interviewed in comparison to courts and promotion-type equality bodies.

Complainants sometimes had the feeling that the counsellors and caseworkers did not have enough time to attend to their case. They could not get hold of them on the phone and / or they could not be contacted in person. Some of the delays and long duration of the procedures was attributed to the lack of time resources of counsellors, caseworkers and lawyers. These issues were most often mentioned by complainants in Belgium, France and the United Kingdom.

Counsellors of promotion-type equality bodies, commissioners of tribunal-type equality bodies and judges in courts play a decisive role in the outcome of the procedures. The complainants interviewed had a high opinion of these professionals (see Table A-4.44). The best ratings regarding their expertise, their independence, the attention they paid to the case and their empathy were achieved by representatives of promotion-type equality bodies and those involved in settlement procedures. Professionals of an administrative / judicial institution in Austria, which conducts settlement procedures, were explicitly described as supportive, prepared and solution-oriented, categories not given in the questionnaire but arrived at by the complainants themselves.

Judges were assessed in a slightly less favourable way but were still largely appreciated. Complainants interviewed listed both further positive and negative characteristics in addition to those given in the questionnaire. Judges were positively assessed as professional, persuasive, reliable, having a good attitude and being impartial. Being insensitive, prejudiced, indecisive, distant and unpleasant were the negative characteristics of judges actively listed by the complainants interviewed.

The three variables – satisfaction with legal assistance or advice received, satisfaction with the procedure and satisfaction with the outcome of the case – show a statistically significant link. Good legal assistance or advice obviously has a positive relationship with a more positive assessment of the procedure and outcome. Furthermore, it is not surprising that the more the complainant was satisfied with the procedure the greater the complainant's appreciation of the outcome.

The complainant's readiness to lodge a formal complaint again (see Table A-4.46) tended to be determined by their satisfaction with the assistance they had received than with what kind of dispute resolution body they had approached.

Those who were least content with the procedure and the outcome would obviously rather refrain from complaining in the future if they experienced discrimination again.

Formal or informal settlements were important in the interviews conducted with non-complainants in the United Kingdom. Three of them arrived at an informal settlement without directly involving any dispute resolution body. However, the complainants did engage lawyers. One of these settlements resulted in changes not only affecting the shop where the complainant had experienced discrimination, but also in other shops, and their participation in the national programme on disability etiquette and awareness-raising was agreed on. Another settlement was achieved, because the complainant no longer wanted to continue with the stressful proceedings in court.

The issue of independence as a variable influencing the quality of outcomes of a procedure was only mentioned by a few complainants. Most of them were located in Bulgaria, with one located in each of the following Member States: Finland, France and the United Kingdom.

5.4.2 Views of equality bodies, "similar entities" and intermediaries on outcomes of procedures

The views of the equality bodies on the quality of procedures reflect the procedures within their bodies, but also their experience with procedures before other dispute resolution bodies. Data from the interviews with the intermediaries display their perceptions of the quality of procedures conducted by different complaints and dispute resolution bodies.

A majority (almost 70%) of intermediaries and promotion-type equality bodies or "similar entities" (about 60%) were of the opinion that more than 50% of the cases processed by them were likely to be decided in favour of the complainants. The majority of representatives of tribunal-type bodies saw the success rate of complainants as ranging between 21% and 50%.

Representatives of equality bodies and "similar entities" in all the eight Member States were of the opinion that the skills and competences of the equality bodies as well as the knowledge and willingness of the judges to apply equal treatment legislation were essential in determining the outcome of a case.

Intermediaries in all eight Member States shared the view with representatives of equality bodies and "similar entities" that judges lacked knowledge regarding equal treatment legislation and were therefore not aware of specificities of discrimination cases. Insensitivity on the part of judges was mentioned by a mix of representatives of equality bodies and intermediaries in Austria, Belgium, the Czech Republic, France and the United Kingdom.

Sometimes court decisions were said not only to be influenced by the negative attitude of judges towards victims of discrimination but also by socio-political and budgetary considerations.

Representatives of equality bodies and intermediaries in almost all the eight Member States were of the opinion that resources within their own bodies or organisations, but also in courts or “similar entities”, do not suffice to achieve good quality outcomes.

A more strategic choice of cases was mentioned by representatives of equality bodies in the Czech Republic, Finland, Italy, the United Kingdom and by an intermediary in Bulgaria as a factor that could contribute to enhancing the quality of outcomes. However, there were intermediaries in the Czech Republic, France and Italy who shared the opinion that too few cases are taken to court in order to establish precedents.

Professionals involved in ADR or mediators were not systematically included in the fieldwork due to a lack of criteria for who would fit into these categories. Only some intermediaries talked about ADR as an advantageous mechanism in specific contexts.

Gaps in legislation were identified as rendering equality bodies less powerful and therefore less effective by representatives of equality bodies, “similar entities” and intermediaries in all the eight Member States reviewed. The following powers were identified as partly lacking:

- the power of enquiry which would support complainants in collecting evidence;
- the power to start investigations on their own initiative;
- the power to oblige defendants to provide information and cooperate;
- the power of taking a case to court.

Gathering evidence to prove discrimination was an issue that was more often brought up by intermediaries than by representatives of equality bodies and “similar entities” in connection with the quality of the outcome of proceedings. The lack of powers for bodies to issue binding decisions was identified as a barrier to good quality outcomes by intermediaries. When decisions are not enforceable, defendants cannot be obliged to comply with the decisions and therefore decisions that are not enforceable lessen the quality of outcomes.

5.4.3 Analysis

A majority of complainants stated that the outcome of the procedures was in their favour. A favourable outcome was achieved most often in the courts, formal or informal settlement procedures and interventions of promotion-type equality bodies. This view was largely shared by representatives of promotion-type equality bodies and “similar entities”. Representatives of tribunal-type

equality bodies estimated their success rate as being somewhat below the other dispute resolution bodies, as was also suggested by the complainants.

The data generated by the interviews with the complainants show that resources available to case workers and counsellors in promotion-type bodies and the quality of the legal advice and assistance provided by intermediaries were of great importance for the complainants' satisfaction with the outcome.

Representatives of equality bodies and "similar entities" added a further dimension relevant to determining the quality of the outcome of cases – namely, that the knowledge, skills and values of judges, counsellors in promotion-type equality bodies and commissioners in tribunal-type equality bodies and "similar entities" seem to play a quite decisive role in the effectiveness and efficiency of procedures. This is a new aspect highlighted by the fieldwork which has not been taken into account in the working hypotheses presented in Section 3.5.

Representatives of equality bodies and intermediaries identified a strategic choice of cases as a measure contributing to improving the efficiency and effectiveness of procedures and guaranteeing better quality outcomes. On the other hand, there were intermediaries who saw this selection of cases less favourably, as it resulted in fewer cases and therefore in fewer outcomes.

The fieldwork yielded too little information on ADR to draw any conclusions on it. Hence it can only be concluded, as suggested by the literature review, that alternative dispute resolution may be an important element for enhancing the effectiveness and efficiency of procedures (Hypothesis 11).

Representatives of equality bodies and intermediaries were of the opinion that equality bodies were not adequately equipped with powers to collect evidence, to oblige defendants to provide information and to be cooperative during proceedings, to take cases to court and to issue binding opinions / decisions. Furthermore, a lack of resources was identified as reducing the capacity and impact of the equality bodies. The same was said to apply to other dispute resolution bodies, as they were also seen as not being adequately equipped with resources.

The lack of powers and resources was highlighted as undermining the efficiency and effectiveness of procedures (Hypothesis 12).

6 SUPPORT IN CASES OF DISCRIMINATION

This chapter on support in cases of discrimination deals with four elements: legal advice and assistance, emotional, personal and moral support, awareness of rights and accommodation of diversity.

The following hypotheses set the framework for analysing the fieldwork data on support in cases of discrimination:

- Hypothesis 13: Legal aid and assistance are critical for complainants to navigate complex institutional systems and to achieve successful outcomes in cases of discrimination.
- Hypothesis 14: Emotional and personal support are important in motivating and sustaining the complainant in cases of discrimination.
- Hypothesis 15: Low levels of awareness of rights under equal treatment legislation and of how to exercise these rights is a critical barrier for access to justice in cases of discrimination.
- Hypothesis 16: Levels of awareness of rights differ for different groups covered by equal treatment legislation.
- Hypothesis 17: Equality bodies and other administrative and judicial institutions show little awareness and concrete action regarding accommodation of diversity in procedures and support for the different grounds of discrimination and / or for different groups.

The responses to the questionnaires were analysed with regard to the question about to what extent complainants have access to these four elements and how content they were with the quality of the different kinds of support they had utilised.

The data taken from the interviews with the equality bodies, “similar entities” and intermediaries shed light on the range of different kinds of support they offer to complainants. Furthermore, equality bodies and “similar entities” assess the quality of the support they offer. Intermediaries share their views on how they rate their own services but also those offered by equality bodies, “similar entities” and other intermediaries.

6.1 Legal advice and assistance

This section is about the availability and quality of legal advice and assistance.[61] Legal advice and assistance is offered by a broad range of institutions and organisations – primarily including promotion-type equality bodies and different kinds of intermediaries.

[61] See Section 2.3 and the glossary (annex) for definition of legal aid / legal advice and assistance.

The section starts out by examining the views of complainants on how easy or difficult it was for them to gain access to legal advice and assistance, what obstacles they met and to what extent legal advice and assistance contributed to making navigation of the complex institutional system easier and to achieving successful outcomes in cases of discrimination (Hypothesis 13).

The information from the interviews with the complainants was compared with the views given by representatives of equality bodies, judicial / administrative institutions and intermediaries on the availability and accessibility of the legal advice (and assistance) they offer as well as on the evaluation of the quality of this kind of support.

6.1.1 Experience and assessment of complainants of legal advice and assistance

About 75% of the complainants took advantage of some kind of legal advice or assistance; 13% said that they had not received any legal support. More than 80% of the support was provided by professionals, including lawyers (46%), equality bodies (28%) and intermediaries (8%) (see Table A-4.49). The equality bodies which provided legal advice and assistance were predominantly promotion-type equality bodies, only in Bulgaria did the tribunal-type equality body offered this service to complainants.

Among the complainants interviewed the three most important sources of information on where to get legal support were intermediaries (19%), the complainant's own research or initiative (17%) and the complainant's personal networks (13%) (see Table A-4.52). Individual research together with personal networks were among the most frequently mentioned ways of finding legal support in Austria and Bulgaria and intermediaries were most often named as valuable sources in Italy.

Another source of information that was mentioned was organisations or lawyers the complainant was familiar with. About 10% of the complainants received support in finding legal advice from a relative or friend, the equality body or the trade union or an employee representative. In the United Kingdom the equality body played the central role in passing on information about where to look for legal advice and assistance; employee representatives and trade unions played this role in Finland, France and Italy.

About one third of the complainants had called on and received the services of legal experts before they lodged a complaint (see Table A-4.54). This approach suggests that the system of justice is difficult to access and navigate without legal support. Twenty per cent of the complainants had legal advice at the time when they lodged a complaint and this was down to 14% after the institution where the complaint was lodged agreed to proceed. Another 13% of the complainants received legal support before and 10% at the hearing.

Complainants were asked an open question about the character of the legal advice they had received. In this context only one complainant referred to any specific kind of legal support after an outcome had been achieved (see Table A-4.55), although about 10% said that they had utilised legal advice when the decision was handed down or sent to them (see Table A-4.54).

About three quarters of the complainants who had received legal support said that it had been free of charge (see Table A-4.53). The remaining complainants had to pay. About 40% of those who had to pay either had to cover the costs themselves or were partly or fully compensated. Only two of the total number of complainants mentioned that the costs had been covered by their legal expenses insurance (see Table A-4.54). In Belgium, Bulgaria and the Czech Republic more than 90% of the complainants interviewed got legal support free of charge; in Finland and France the share of those not having access to free support was much higher than in the other Member States of the sample. Meanwhile, in Finland none of the complainants had to cover the costs themselves. In France, on the contrary, the costs were only covered in about 50% of cases.

Of the 13% of complainants who did not receive any legal support, most provided information on why they did not seek legal advice. Some of them thought it not necessary to have legal advice for what they wanted to achieve (they had all taken their case to a promotion-type equality body). Others had either been able to obtain enough information or had legal knowledge or enough experience with procedures / lodging a complaint themselves or did not want anybody else to take their case, as they felt so strongly that it was their case.

Almost two thirds of the complainants received legal assistance during the proceedings (see Table A-4.59). Complainants were represented in almost all the cases which were taken to court, in 80% of the cases which were concluded by an administrative or judicial institution and in almost 60% of the procedures resulting in a formal or informal settlement (see Table A-4.59). People who had lodged a complaint with a predominantly promotion (26%) or tribunal-type (39%) equality body took advantage of representation less often.

About two thirds of the complainants who decided or were recommended to have a representative were accompanied by lawyer(s), 16% by an intermediary, and roughly 10% by a representative of the equality body or the trade union (see Table A-4.60).

Lawyer(s) played a leading role in procedures before “similar entities”, in courts and before tribunal-type equality bodies, especially in Bulgaria. They were even quite important in formal or informal settlement procedures. However, representatives of equality bodies most often functioned as representatives during this kind of procedure.

The choice of these representatives was in a quarter of the cases undertaken by an intermediary (a strategy most popular in Italy and the Czech Republic) and in almost 20% of the cases by representatives of equality bodies (which selection procedure was often referred to in the United Kingdom (see Table A-4.61)). Personal resources in terms of knowing where to seek representation as well as personal networks also influenced the decision about who to select as a representative. Most often, complainants in Austria and France relied on their personal experience and knowledge.

The complainants were very content with the legal advice and assistance they had received: 70% were 'very content' and a little more than 20% 'mostly content' (see Table A-4.50). This response is confirmed by more than 90% of complainants who would recommend the legal advice and assistance they had received to a friend who had experienced discrimination (see Table A-4.51).

Three quarters of the complainants answered the question about what kind of legal advice and assistance they had received. Roughly one fifth of the answers dealt with the initial phase of lodging a complaint – namely, the period before the complainant decided whether and where to lodge a complaint (see Table A-4.55).

The legal advice received encompassed explanations and identification of alternatives for lodging a complaint, explanation of the mandate of the equality bodies and of possible outcomes from the complaint, as well as information on mediation. Furthermore, the legal advice resulted in determining the legal situation as regards the individual case as well as in determining what the complainant wanted to achieve. Another focus of this initial phase is information about where to lodge a complaint, how to lodge it, what it should contain and what the subsequent steps in the procedure are.

The complainants described receiving the information they needed, good explanations of legal jargon, as well as of the overall system of access to justice, and an outline of risks and what might happen during a procedure as being especially helpful during the initial phase of launching a complaint (see Table A-4.56).

Dissatisfaction among the complainants almost exclusively focused on the use of technical terms and legal jargon by counsellors and lawyers and failure to support the complainant in better understanding the legal situation, the different options in procedures and the possible consequences of lodging a claim (see Table A-4.57). This slight dissatisfaction about not having received enough information about the procedures might result from the fact that one third of the complainants had to find information about the procedures themselves (see Table A-4.58). Equality bodies (33%), lawyers (23%) and intermediaries (13%) were quite important sources of information about the procedures.

About one third of the responses on legal advice and assistance focused on the preparation of the case. This includes legal advice on filling in forms, preparing documents, looking for case law, providing legal arguments, giving guidance on how to document the case and collect evidence and explaining the procedures in more detail to the complainants (see Table A-4.55). Good advice on collecting evidence, the provision of well-drafted claims and other documents, as well as good advice on what to expect, how to behave and what to do before a court, specialised tribunal or tribunal-type equality body were lauded as strong points of legal advice and assistance when preparing a case (see Table A-4.56).

Complainants identified the lack of suggestions by those giving legal support on how to stop or prevent discrimination in the future as a weak point (see Table A-4.57). This might relate to the estimation of the complainants that some of the counsellors or lawyers were not experts in discrimination cases.

About one quarter of the responses on legal advice and assistance focused on support during various stages of different kinds of procedures. This legal advice and assistance included the planning for the procedure and accompaniment through the proceedings. This involves support in arranging and taking part in a mediation procedure and representation or accompaniment during other kinds of proceedings (see Table A-4.55). Another aspect of legal assistance during the procedure was the regular assessment of the proceedings and a decision on the further steps to be taken. Complainants reported good support during the procedure and well-founded legal arguments as strong points of legal assistance especially provided by lawyers (see Table A-4.56).

The complainants generally had a relatively high opinion of the expertise, the attention paid to the case, the independence and the clarity of the communication from the people who represented them (see Table A-4.62). Other important characteristics the complainants associated with representatives, without having been provided with model answers, were humanity, proficiency, efficiency and proactivity.

It was positively noted when representatives were supportive, combative, challenging, sensitive towards particular needs (for example deaf-aware, which means that the representative was aware that the complainant needed a sign language interpreter / lip reader and could not use the phone as a channel of communication), developed good strategies, kept the complainant well informed or allowed the complainant to get involved. Complainants explicitly noted the knowledge and experience of the representatives around discrimination, as well as in relation to procedural issues, and their empathy as strong points of the legal advice they had received (see Table A-4.56). When these two assets were missing, it was mentioned as a drawback (see Table A-4.57).

Easy accessibility and availability of counsellors, caseworkers and lawyers throughout the whole procedure were identified as strong points of legal support for about 10% of the responses (see Table A-4.56). These professionals should have enough time for the complainants, be reachable on the phone or even have time for face-to-face meetings, keep in touch with the complainant, as well as provide concrete answers and explanations. Almost 40% of the responses referring to weak points of legal support focused on accessibility and availability (see Table A-4.57). This observation should be noted in relation to the lack of resources experienced by equality bodies and intermediaries, which have been mentioned not only by the complainants but also by the representatives of equality bodies and intermediaries (see 5.4 Efficiency and effectiveness of procedures).

6.1.2 Views of equality bodies, "similar entities" and intermediaries on legal aid and assistance

Almost all promotion-type equality bodies provide legal advice and assistance themselves. The exception is the equality body in France which only provides information and not legal advice (see Table A-4.63). Almost 25% of the intermediaries interviewed do not offer any legal advice but just information (primarily NGOs and victim support organisations) (see Table A-4.64).

The equality body in Bulgaria is the only tribunal-type equality body in the eight Member States reviewed which provides legal advice. Promotion-type equality bodies and almost all intermediaries providing legal advice have a broad range of clients beyond (potential) complainants (see Table A-4.65 and Table A-4.66). Among these clients are NGOs supporting victims of discrimination as well as relatives of complainants. NGOs are quite often supported by (specialised) lawyers; relatives of complainants more frequently by promotion-type equality bodies, NGOs and victims support organisations.

Potential discriminators are also regular clients of equality bodies and intermediaries. Witnesses less often enjoy the support of promotion-type equality bodies and intermediaries, even less so from (specialised) lawyers. Equality bodies also offer their legal advice to public authorities and lawyers. More than half of the equality bodies and a little more than 40% of the intermediaries said that each year over 75% of the overall complainants who had approached them ended up making use of the legal advice and assistance offered by them (see Table A-4.67 and Table A-4.68).

Quite a few predominantly promotion-type equality bodies refer complainants to NGOs, while fewer refer complainants to (specialised) lawyers. Tribunal-type equality bodies only sometimes refer complainants to NGOs or lawyers (see Table A-4.63). A number of intermediaries see giving legal advice to (potential) complainants as part of their strategy to target those alleging discrimination (see

Table A-4.64). Almost all the (specialised) lawyers provide legal advice and assistance themselves.

Many victim support organisations, trade unions and social partner organisations, as well as NGOs, also offer these kinds of services.

The costs of legal advice were an important subject of discussion for the (specialised) lawyers interviewed. Many of the complainants lack financial resources and would therefore not be able to cover the costs of legal advice or assistance. Those equality bodies, trade unions, NGOs and victim support organisations offering legal advice do not charge for it.

Even the majority of (specialised) lawyers interviewed offer free legal advice (see Table A-4.71). Belgium was the only Member State where half of the intermediaries interviewed said that they would not offer free legal advice. In Bulgaria almost all the intermediaries offered free legal advice and in the remaining Member States between one and three intermediaries stated that they would not provide legal advice free of charge. Those intermediaries not offering free legal advice do not provide compensation of costs.

Legal advice was seen as an essential element for success (mentioned by intermediaries in at least three Member States (Austria, Bulgaria and the United Kingdom)), especially in court procedures and before “similar entities”. This observation was made principally by the lawyers but also by NGOs and victim support organisations. Thus access to legal aid or coverage of costs by legal expenses insurance are determining factors in promoting access to justice.

In Austria, legal expenses insurance would not cover all the costs of preparing a discrimination case, which requires more research than other cases. Furthermore, such insurance would not cover representation in proceedings before tribunal-type equality bodies and claims for non-material damages. In Finland legal expenses insurance only cover costs in criminal proceedings. In the United Kingdom neither legal expenses insurance nor legal aid would cover costs for cases outside the employment sector. Furthermore, trade unions in the United Kingdom and the social partner organisation interviewed in Austria would not cover the costs of cases outside the employment sector.

Representatives of equality bodies, “similar entities” and intermediaries identified several factors enabling good quality advice and assistance. One important factor was the standing / image of the organisation offering legal advice and support. Accessibility of the services offered and the quality of the relationship to the complainants were also seen as factors promoting the quality of legal advice and assistance. Reputation and independence were mentioned as important promotional factors, especially by NGOs and other victim support organisations.

Many of the predominantly promotion-type equality bodies, as well as NGOs, seem to offer legal advice to everybody as long as the case falls within their mandate. Representatives of equality bodies in Belgium, Bulgaria, the Czech Republic, Finland, Italy and the United Kingdom identified a few criteria on which they base their decision about whether or not to provide legal advice to (potential) complainants (see Table A-4.72).

Strategic litigation was the criterion mentioned most often. In Belgium two other criteria played a role, namely that the alleged discrimination had taken place in an area that was not much reported on and that the complainant belongs to an under-represented group. Among (specialised) lawyers, NGOs and victim support organisations, strategic litigation is the criterion most often applied in selecting complainants who are given legal advice (see Table A-4.73).

The economic situation of the complainant, as well as under-reported areas and groups less likely to report discrimination were also taken into account by intermediaries. Trade unions usually offer advice only to their members; however, in Italy the trade unions seem to have taken cases of migrants who were not members. Further criteria applied by equality bodies are the credibility of the case, chances of success, good evidence and available resources.

Furthermore, the duration of procedures influences the time available for legal advice. The more cases an individual counsellor or caseworker has to deal with, the longer it will take to achieve an outcome, which can sometimes have a negative effect on the energy and interest the complainants devote to their cases.

Representatives of equality bodies and intermediaries in all eight Member States were of the opinion that good quality legal advice could only be offered by staff members who have acquired the necessary skills. Such skills do not only encompass knowledge on legislation and the latest developments regarding case law, but also skills for providing legal advice to victims of discrimination who belong to various groups. These skills are ideally acquired by dealing with many cases of discrimination, by engaging in continuous training, by exchanging experiences among staff members within an organisation and by securing access to relevant information available from both external and internal (informal) sources.

Representatives of equality bodies, “similar entities” and intermediaries in almost all the eight Member States were of the opinion that many of the complainants did not know their rights or would not realise that they had experienced discrimination.

A further challenge in their everyday work was identified by representatives of equality bodies and intermediaries. They saw it as especially challenging to tailor the legal advice to the needs of specific groups of complainants, which

usually means formulating advice on the legal situation and on possible procedures and outcomes in an easily understandable way. Among those who pose specific challenges to the representatives of equality bodies and intermediaries were complainants who belonged to either one or more of the following groups: complainants who have a lower level of education, who do not know the local language (Austria, France, Italy and the United Kingdom), who have different cultural backgrounds (for example Italy), who have an intellectual disability or who are in a psychologically stressful situation.

6.1.3 Analysis

The majority of complainants had utilised some kind of legal assistance and advice, most often provided by lawyers followed by equality bodies and intermediaries.

Almost all the promotion-type equality bodies in the sample of the study (except for the one in France) offer legal advice to complainants. Tribunal-type equality bodies do not offer this kind of service (except for the equality body in Bulgaria).

The majority of the intermediaries interviewed offer legal advice and assistance. If they do not offer these services themselves they often have a referral policy in order to provide complainants with adequate contacts.

Most often, legal advice was used by complainants before they lodged a complaint. This leads to the assumption that the system of justice is difficult to access without legal support from the very beginning. Almost two thirds of the complainants were represented during the proceedings – most often in court but also before “similar entities” and during formal or informal settlement procedures. This fact suggests that not only accessing but also navigating the system is quite challenging and makes support necessary (Hypothesis 13).

A majority of the complainants had access to free legal advice or benefited from compensation of some costs. The costs of legal advice and assistance were especially raised as an important aspect by (specialised) lawyers who saw many complainants lacking financial resources to cover the costs of legal advice and assistance. Intermediaries therefore pointed to access to legal aid or coverage of costs by legal expenses insurance as determining factors in promoting access to justice.

A substantial majority of complainants were satisfied with the legal advice and support they had received and had a high opinion of the professionals who represented them. Essential for this satisfaction with legal advice and support was the easy accessibility and availability of counsellors, caseworkers and lawyers during the whole duration of the procedure. Representatives of promotion-type equality bodies and intermediaries were aware of these needs

on the part of complainants, but also emphasised that their resources were not adequate to meet all these needs.

About half of the promotion-type bodies and intermediaries applied some kind of strategy for selecting who was provided with legal advice and assistance. Therefore the resources of complaints and dispute resolution bodies play an important role in determining access to justice, as not all complainants who seek justice may have experienced discrimination in an under-reported area or belong to an under-represented group.

6.2 Emotional, personal and moral support

In the desk research conducted for the literature review on access to justice related to cases of discrimination, emotional, personal and moral support was not addressed in detail. In the fieldwork the basis for analysis of emotional, personal and moral support is the following hypothesis: emotional and personal supports are important in motivating and sustaining the complainant in cases of discrimination (Hypothesis 14).

The following sub-section presents the experiences of complainants with gaining access to this kind of support, to what end they sought it and whether they were eventually content with what they received.

The next sub-section describes the data generated by the interviews with representatives of equality bodies and judicial / administrative institutions and intermediaries. It sheds light on what kind of emotional, personal and moral support they offer and what they think about the quality of this kind of support offered by either their institution or the responding intermediaries themselves.

6.2.1 Experience and assessment of complainants of emotional, personal and moral support

About half of the complainants had access to emotional, personal and moral support (see Table A-4.74) and to a lesser extent psychological support. More than half of the complainants who had access to these types of support identified family, friends and (former) colleagues as the most important sources (see Table A-4.77). It included talking about what they had experienced and sometimes it was the complainant's family members or friends who identified the case as discriminatory.

Furthermore, complainants talked about the case to their family, friends and (former) colleagues, who affirmed them in their decision to lodge a complaint or kept them going during the ups and downs of a long and stressful procedure. Sometimes they provided support by drafting letters and by explaining the content of documents.

It was mentioned as a strong point of these other kinds of support that it is easier to deal with discriminatory incidents if the complainant does not feel isolated and alone (see Table A-4.78). Apart from these positive aspects, complainants also mentioned fear of victimisation in the workplace or fear of victimisation of their families as reasons for not sharing their stories and concerns with their colleagues and family (see Table A-4.79). In a few cases the family was not supportive, either because they were afraid of negative consequences or because they were of the opinion that the complainant should not have lodged a claim. A few complainants mentioned that they might look for other kinds of support outside their family if they lodged a complaint again, in order not to expose family members to all the stress and anxieties.

Access to these types of support tends to be informal, as most of it is not institutionalised. In most of the institutions which provide this personal support it is not part and parcel of the services they offer and provision very much depends on the individual staff member's capacities and skills. The equality bodies in Bulgaria, Belgium and the United Kingdom, as well as intermediaries in Austria, the Czech Republic and Finland, were most often mentioned as providing other types of support. As these types of support were assessed as helpful, complainants said that they should be explicitly offered and that psychologists and other health professionals should be trained in discrimination issues.

The respondents were very satisfied with the emotional, personal and moral support they had received. Almost 90% were either 'very' or 'mostly' content (see Table A-4.75). Almost 65% of the complainants would recommend this type of support to a friend in a similar situation (see Table A-4.76).

About one fifth of the complainants identified empathy either from an intermediary or from an equality body as a source of personal, moral and emotional support (see Table A-4.80). The respondents had the feeling that their stories were listened to, believed and understood and that the professionals had a supportive attitude towards the complainants.

Those complainants who had lodged their complaint together with others affected by discrimination particularly valued peer support. They listened to each other, took steps to prepare the case together and encouraged each other to go on with the procedure. Almost all the complainants said they would like to make use of emotional, personal and / or moral support next time they launched a complaint (see Table A-4.81).

6.2.2 Views of equality bodies, "similar entities" and intermediaries on emotional, personal and moral support

Very few of the equality bodies and "similar entities" offer emotional, personal and / or moral support to the complainants (see Table A-4.82). Most of those

which do are promotion-type equality bodies located in Austria, Belgium, the Czech Republic, Finland and France. Some “similar entities” also offer this kind of support. Intermediaries more often provide emotional, personal and / or moral support to their complainants than equality bodies (see Table A-4.83).

Typically this kind of support is offered by victim support organisations and NGOs, but also quite a few (specialised) lawyers see these additional kinds of support as part and parcel of their services. All the intermediaries which offer this kind of support provide moral support and quite a lot of them emotional and personal support (see Table A-4.85). Some of the promotion-type equality bodies which do not offer these kinds of support themselves refer complainants to other organisations able to offer these kinds of support (see Table A-4.86). Only a few intermediaries do referrals if they offer these kinds of support themselves. More intermediaries not offering these kinds of support than equality bodies refer their complainants to other organisations (see Table A-4.87).

Quite a broad range of activities is classified as falling within ‘other kinds of support’ more often by intermediaries than by equality bodies. It includes adequate explanations of the procedural possibilities and choosing the best solution for each individual case, the duration of the procedures and the expected outcomes, as well as possibilities of accessing legal aid.

In particular regarding the outcomes, complainants were said by intermediaries to be rather badly prepared for outcomes which were not in their favour and the negative consequences (Czech Republic). However, the services described should really be categorised as legal advice, which is maybe evidence that the concept of emotional, personal and moral support is not totally clear to all professionals involved in giving support to complainants.

A few lawyers explicitly stated that they saw offering moral or emotional support as part of their duty (Austria and Bulgaria) and necessary in order to motivate the complainants to continue with their cases.

Keeping complainants informed about their cases and enquiring about their current emotional situation was seen as important by representatives of victim support organisation in Belgium. Other elements of these kinds of support were:

- face-to-face contact, which does not always seem to be guaranteed either because of lack of resources or non-proximity to the complainants;
- active listening, as complainants want to tell their stories;
- motivating complainants to come back for further support;
- activities not related to legal proceedings such as developing non-legal strategies to cope with multi-layered problems of the complainants also including discrimination issues.

Psychological elements of support focused on the empowerment of complainants, in particular around leaving the role of the victim (France) and gaining self-confidence or coming out (e.g. Austria and Italy), face-to face or online peer groups and peer counselling (Austria, Bulgaria, Finland, France and the United Kingdom).

Representatives of equality bodies and intermediaries identified factors – without being given predefined answers – enabling the provision of good quality moral, emotional and personal support. Among these factors were adequate resources and skills of staff, enabling them to have enough time to attend to the complainants and acquire the necessary skills.

Another issue raised by representatives of equality bodies and intermediaries was the relationship between legal advice and these other kinds of support – whether they should be provided at the same time or separately. Furthermore, outreach to organisations that provide these other kinds of support were seen as a promotional factor in order to be able to refer complainants to competent organisations if special kinds of emotional, personal or moral support are needed.

As resources already seem to be scarce for providing legal support, the provision of these kinds of support appear to pose an even greater problem to equality bodies and intermediaries. This problem is not just to do with the scarce resources but, with regard to equality bodies, the provision of these kinds of support is not part of their mandate. The promotion-type equality body in the Czech Republic is an exception to some extent, in that it at least employs a psychologist.

Face-to-face contacts help to establish a relationship of trust between complainant and counsellor or lawyer. Intermediaries in at least six Member States identified empathy, active listening and showing the clients that their case is unique and important as key for building confidence. These aspects go somewhat beyond core legal advice and assistance and include elements of personal and emotional support. However, it is rather difficult to keep these elements separate, when trying to offer good quality legal advice.

Some of the complainants have quite high expectations which cannot be fulfilled (Belgium and Finland) and it should be clarified before the start of the procedure what may be possible and what realistic expectations may be. Personal support requires different qualifications of staff members from legal advice. Interdisciplinarity in teams as well as diversity among the staff, in order to accommodate for diversity, were seen as essential assets in guaranteeing good quality in these kinds of support (for example Austria, Czech Republic, Finland and the United Kingdom).

There was no agreement among the representatives of equality bodies and intermediaries about whether it was better to keep legal advice and other kinds of support apart (favoured by equality bodies) or to integrate them and have a good balance of empathy and legal advice (favoured by intermediaries).

Offering moral, emotional and personal support was seen as risky by intermediaries. This was especially so if staff were not well trained in these areas, as it could result in self-exploitation by staff members (Austria, Bulgaria and the Czech Republic), complainants asking for more and more support (Italy) and in staff members not knowing how to deal with certain problems and where to refer complainants (Finland).

6.2.3 Analysis

Insofar as emotional, personal and / or moral support was offered, a large majority of the complainants was very satisfied with this support. They deemed the support they received as necessary in order not to feel isolated and alone when coping with the incident of discrimination. A few lawyers mentioned that emotional support influences the motivation of complainants to go on with their case (Hypothesis 14).

Complainants rated empathy as an important source of emotional, personal and moral support, which gave them the feeling that their stories were listened to, believed and understood and that the professionals had a positive attitude towards the complainants and their case. Peer support was identified as a further promotional factor in keeping up the morale of complainants during proceedings. The danger of relying on these kinds of support from family, friends and (former) colleagues was fear of victimisation of family members or of colleagues. People preferred to receive emotional, personal and / or moral support from professionals in an institutional context.

Promotion-type equality bodies and intermediaries do not always seem to have a totally clear view of what kind of services fall, on the one hand, within legal advice and, on the other, within emotional, personal and / or moral support. Their insecurity about the categorisation of support indicates that emotional, personal and / or moral support is not always defined as a fixed set of services offered by these organisations.

Representatives of promotion-type equality bodies, “similar entities” and intermediaries point to resources and skills as factors influencing to what extent they are able to give complainants support that motivates them to pursue their cases to their conclusion.

The findings of the interviews show that the experiences of complainants and intermediaries to some extent confirm the idea that emotional, personal and

moral support are important in motivating and sustaining the complainant in cases of discrimination.

6.3 Awareness of rights

This section on awareness of rights focuses on the availability and quality of measures aimed at awareness-raising. The basis of the analysis is formed by the following hypotheses:

- Low levels of awareness of rights under equal treatment legislation and of how to exercise these rights is a critical barrier to access to justice in cases of discrimination (Hypothesis 15)
- Levels of awareness of rights differ for different groups covered by equal treatment legislation (Hypothesis 16)

This section examines the measures explicitly targeting (potential) complainants, seeking to inform them about:

- their rights under equality legislation;
- the existence, character and tasks of equality bodies;
- how a complaint can be lodged;
- what procedures are in place.

The section also examines the complainants' satisfaction with the information they gained from the different sources. Next a description is given of the measures taken primarily by promotion-type equality bodies and intermediaries in order to raise awareness among complainants, potential complainants and the general public, and their assessment of whether their information, communication and outreach policies result in an effective targeting of (potential) complainants.

6.3.1 Awareness of rights of complainants

Complainants had acquired knowledge about their rights under equality legislation in several different ways (see Table A-4.88). Almost 50% of the responses show that the complainants interviewed were well equipped with personal resources. They had learned about their rights either in school or at university or knew about their rights because this knowledge is part of a common culture. They had the ability to do research, in order to obtain and assess the wealth of information available on the internet. They were able to acquire legal knowledge and gain expertise on discrimination issues e.g. by having already lodged previous claims. They had family and friends who knew about their rights. Some just knew that they had been wronged and something had to be done about it. Some had sufficient time and resources to be (politically) active and to inform themselves about their rights.

Almost 20% of the responses concentrate on the complainants' working environment and personal networks. This means that the complainants work in

jobs or environments in which knowledge of equality legislation is either expert knowledge necessary for the job or common culture. Other complainants have been members of or have been active in organisations dealing with anti-discrimination issues, such as trade unions and NGOs working on, for example, gender, racism or disability issues. A little more than 20% of the responses indicate institutional support in gaining knowledge about their rights.

When complainants were explicitly asked about the sources of information about their rights under equality legislation, they connected the search for this information more specifically with their concrete case. This approach used by the complainants points to the importance of competent institutions and media publishing model judgments and related information about legal provisions. Sixteen per cent of the complainants interviewed had gained their knowledge from the media and another 16% from an equality body (see Table A-4-89).

Lawyers were identified as sources in more than 12% of the answers given, while 11% referred to the internet and another 11% to family or friends. About 9% referred to an intermediary (especially trade unions and NGOs), 8% personal resources of the complainants, another 9% to the working environment and 8% to personal networks of the complainants.

On average more complainants gained this kind of information from the respective equality bodies in Austria, Belgium and the United Kingdom, whereas none of the complainants mentioned equality bodies as a source of information in the Czech Republic and almost none in Italy and France.

In Italy this gap seems to be filled, at least to some extent, by lawyers, in the Czech Republic by the media and lawyers. In France the media play quite a relevant role in disseminating this kind of information, which might be connected to the fact that the president of the equality body used to appear regularly on the radio. The internet seems to be most often used by complainants interviewed in Bulgaria.

Personal resources played a more important role in Finland and the working environment in Austria, Bulgaria, France and the United Kingdom. Brochures and leaflets only play a minor role as sources of information about rights. Only two complainants based in France mentioned that knowing one's rights under equality legislation was part of common knowledge or culture.

More than 80% of the complainants were of the opinion that accessing the information about their rights was not difficult (see Table A-4.92). Sixteen per cent of the complainants with tertiary (largely university) education, 22% with secondary education (largely schools with school leaving certificates) and none of the complainants with primary (compulsory) education deemed access to information difficult. Overall the complainants interviewed were very well educated, as about 60% had achieved a university degree (see Section 2.5.3).

This outcome may result from some of the better educated and informed complainants who mentioned that, although it might have been fairly easy for them to obtain this information, it could be more difficult for others who are less well educated and have not had the opportunity to acquire specialised knowledge.

Easy access to information is to a large extent explicable by the resources available to the complainants interviewed (see Table A-4.93). These include education, the option and ability to search the internet, personal knowledge about discrimination (either acquired through work or by having lodged a previous complaint) or access to networks sharing relevant knowledge with the complainant. Other factors facilitating access to information were peer support by complainants who were either lodging a complaint in a similar case or were part of a class action and the provision of information about similar cases. Obstacles in gaining information were difficulties in assessing the information found, lacking knowledge about where to seek information and not finding information matching the particular situation of the complainant (see Table A-4.94).

The most useful information on the existence, character and tasks of the equality bodies seems to be found in the media (21%) (see Table A-4.90). The media seem to play a more important role in promoting the equality bodies than in disseminating knowledge about the equal treatment legislation (see above). A little more than 10% of the responses referred to the working environment and networks or lawyers as sources for information on the equality bodies. Family and friends, personal resources and the internet were useful in slightly fewer than 10% of the answers given. Equality bodies, intermediaries and community organisations were mentioned less often. However, once the complainants had found their way to equality bodies (23%), lawyers (19%) or intermediaries (11%), they gained somewhat in importance as a source of information advising the complainants about how to lodge a complaint with an equality body in comparison to non-institutionalised sources (see Table A-4.91).

This leaves slightly fewer than 50% of the complainants without any institutional support in relation to how they can lodge a complaint. Of the complainants who had taken their case to a promotion-type equality body, still only 34% of the responses referred to the equality body as a source of information on how to lodge a complaint. When complainants took cases to a court, they were primarily informed by lawyers and by intermediaries and when they lodged a complaint with a tribunal-type equality body their most important sources of information were lawyers and other equality bodies.

The social environment of the complainants does not seem to be very well acquainted with the existence, character and tasks of the equality bodies. About 40% of the complainants interviewed were not advised by anybody to lodge a

complaint with an equality body, instead they themselves took steps to trace the relevant information on the equality bodies (see Table A-4.125). Family and friends or people at work did not play a decisive role in promoting equality bodies.

Once complainants have learned about their rights and the existence of an equality body, it is easier for them to find an entry point into the broader system of access to justice. When complainants looked for concrete information on procedures, equality bodies were logically their primary source of information (see Table A-4.101). About one quarter of the responses from complainants referred to themselves as a source of information on the procedures as well as to lawyers.

Somewhat more than 10% of the responses pointed to intermediaries as a source of information on procedures in place. In Belgium, Bulgaria, Finland and the United Kingdom equality bodies were the primary sources of information on the procedures. In Austria intermediaries and the equality body played the most important role, in Italy this role was taken by lawyers and in France by complainants themselves. In the Czech Republic both lawyers and complainants ranked highest as sources of information on procedures.

Based on the data from the interviews with the complainants, a triangle, which is to a large extent built on family, friends and colleagues, intermediaries and equality bodies (see Table A-4.124), can be identified as being responsible for building complainants' confidence in order to take the decision to launch a complaint. However, over 60% of the complainants said that they had relied on their own judgment and conviction for taking action against discrimination. Many of them were convinced that they had been treated wrongly and that it was their right to challenge those who had done them wrong in order achieve justice. Some of the complainants interviewed identified themselves as activists for whom it was not possible to quietly endure discrimination. Furthermore, they were angry or shocked by the discrimination they had experienced and therefore wanted to stand up for their rights. A few said that they had good evidence or were influenced by similar cases which had successfully been taken to dispute resolution bodies.

Intermediaries and equality bodies together played a role for about one quarter of the complainants in gaining confidence to lodge a claim. Not only their reputation and expertise and the support offered, but also their encouragement of the complainants to take their case, were identified as promotional factors. Some complainants said that the intermediaries they had contacted were so convinced that their case could not be lost that this prompted them to take action.

Almost 90% of the complainants considered the information on rights under equality legislation adequate and accurate (see Table A-4.95). Complainants in

Finland were less often content with the adequacy and accuracy of the information than in the other seven Member States, whereas all the complainants in Bulgaria and almost all the complainants in Belgium, the Czech Republic, France and Italy had received adequate and accurate information.

The media, lawyers, the internet, family and friends, personal resources and community organisations were seen as the most reliable sources of information on rights under equal treatment legislation (see Table A-4.96). The resources of the complainants played an important role in gaining precise information (legal expertise, research on the web, experience with complaints and being able to understand the information provided). Proper and satisfactory information was also gained by way of information about similar cases (see Table A-4.97). Obstacles to obtaining correct and appropriate information were the absence or inadequacy of information about where to lodge a complaint and about further steps which could be taken, as well as the complexity and technicality of the legal language used (see Table A-4.98).

In general the complainants interviewed were reasonably content with the information they had obtained about the equality body, about lodging a complaint and about the procedures (see Table A-4.99). There are no significant differences in the levels of satisfaction with the information received depending on whether the complainants had informed themselves or were informed by an equality body, a lawyer or an intermediary.

When looking at the remaining questions the complainants had after they had received legal advice, they highlight the following critical points in relation to the different stages of the procedures (see Table A.4-102):

- Questions relevant before lodging a complaint related to:
    - the role and the mandate of the equality body;
    - how and where to launch a procedure;
    - what is needed for starting proceedings;
    - what procedures look like;
    - how long they take;
    - what they cost and what can be achieved;
    - where to find legal support.
- Questions relevant during the preparatory phase of a procedure related to:
    - the drafting of a complaint;
    - the collection of evidence.
- Questions relevant during the procedures related to:
    - how to behave;
    - what to expect from courts, “similar entities” or tribunal-type equality bodies.
- Questions relevant during the follow-up phase after a case had been concluded related to:
    - what happens after the conclusion of the case;

- what can be done when nothing changes even though the outcome has been in favour of the complainant.

6.3.2 Views of equality bodies, "similar entities" and intermediaries on awareness of rights

Equality bodies and intermediaries in all eight Member States of the sample use quite different channels of communication for offering information about what kind of services they provide (see Table A-4.69 and Table A-4.70). Promotion-type equality bodies primarily offer information via their websites and brochures / flyers and they engage in networking. It is rather difficult to assess the priorities of tribunal-type bodies or "similar entities" in advertising their services (see Table A-4.69).

Intermediaries rely to a large extent on word of mouth. Like promotion-type equality bodies, they engage intensively in networking, which includes promoting their services via other NGOs which do not necessarily focus on equal treatment and anti-discrimination issues. Although brochures are used by intermediaries, they are clearly less often mentioned as a central tool in promoting services than the internet or networking.

Intermediaries as well as equality bodies use the internet as a central communication tool; social networks like Facebook and Twitter are starting to emerge as possible channels of communication. The mass media, which are easily accessible for all (potential) complainants, are used by intermediaries primarily to promote successful cases.

Most of the equality bodies – both promotion and tribunal-type – have developed communication strategies concerning rights under the relevant equality legislation, the existence, character and tasks of their body and how to lodge a complaint (see Table A-4.104). Representatives of one and the same equality bodies did not always agree on whether the body had a strategy or not, therefore it is difficult to pick out those bodies which do not have a strategy at all. Fewer promotion-type equality bodies employ a strategy to inform (potential) complainants about possible procedures.

Intermediaries seem to have developed communication strategies to a lesser extent than equality bodies (see Table A-4.105). It should be kept in mind, however, that quite a lot of intermediaries perceive legal advice as a strategy for targeting (potential) complainants. This leads to a focus on providing information to those who have already recognised that they have been treated unfairly. More than 50% of the intermediaries were actively targeting complainants; (specialised) lawyers were less active in this regard (see Table A-4.106).

Representative of equality bodies in Austria, Finland and Italy explicitly stated that they would not market their services as they could not serve more complainants than those already making use of their services.

Those equality bodies which have a communication strategy seem to focus their resources on four broad strategies aimed at raising awareness among (potential) complainants.

First, they directly target (potential) complainants by tailoring the information material to the needs of certain target groups, e.g. by providing easy-to-read material or information material in different languages, and by providing model cases in order to motivate potential complainants to take action (Austria, Belgium, Bulgaria, France and Italy).

Next, an indirect strategy is to do outreach work and increase their proximity to potential complainants (Austria, Belgium, Bulgaria, Finland, Italy and the United Kingdom), especially where equality bodies do not have any regional offices, by cooperating with community organisations who have expert knowledge on how to reach their specific target groups.

Furthermore, they undertake networking with and / or provide workshops to victim support organisations, NGOs, municipalities and other public bodies, lawyers and the police, in order raise their awareness of the fact that some of their clients might have been affected by discrimination and might not have recognised the discrimination as such (Austria, Belgium, Bulgaria and Czech Republic).

Last but not least, training events are held to empower persons to recognise discrimination and may result in participants actually bringing forward cases.

Factors enhancing the effective targeting of (potential) complainants which have been indicated by representative of equality bodies and intermediaries interviewed encompass the following:

- The standing / image of the organisation (Austria, Belgium, Bulgaria, Finland, France and the United Kingdom).
- Financial and human resources (in all eight Member States).
- Accessibility of the information offered (Austria, Bulgaria, Finland, France and the United Kingdom), as well as (access to) knowledge about what communication channels should be utilised and what the information should look like, in order really to reach and appeal to different groups potentially affected by discrimination. This is often achieved by way of networking and outreach work (Austria, Belgium, Finland, France, Italy and the United Kingdom).
- The proximity of an organisation to (potential) complainants is of relevance (a factor identified in all eight Member States reviewed), as it contributes to determining whether the information provided will be trusted, especially by

socially marginalised groups (for example Roma, Travellers, people living in poverty and homeless people) and whether potential complainants will eventually approach the organisation in order to get support.

Intermediaries assessed which means of providing information to (potential) complainants were most successful in terms of reaching the target group (see Table A-4.128). Brochures were seen as least effective, followed by phone or help desks. More impact was associated with websites and networking. Among further means mentioned were word of mouth, direct contact with (potential) complainants, mass media, workshops / lectures, social media, outreach via member organisations / representatives, press conferences / releases and media targeted at (potential) complainants.

Additional skills are required of the staff members of equality bodies and intermediaries, since the information provided has to be easily accessible and tailored to the needs of different target groups. This is an even greater challenge for organisations offering support on different grounds and in various fields of discrimination. Some of them have developed communication strategies which focus on specific issues of discrimination, such as in relation to wearing religious symbols (i.e. headscarves) or sexual orientation, as a more comprehensive approach does not seem to work with potential complainants (for example Austria, Belgium and Finland).

Proximity to potential complainants can be achieved by quite a broad range of strategies. Outreach work (Austria, Belgium, Finland, France, Italy and the United Kingdom), especially together with community organisations, does not only enhance access to various potential complainants (by overcoming language and cultural barriers and accommodating needs of people with different kinds of disabilities, etc.), but also increases knowledge about what communication channels work well to access these communities.

Complainants are reached in their own context or through community organisations or NGOs which know better how to contact complainants who have been affected by a specific ground of discrimination or who have certain socio-demographic characteristics (for example, age, social origin or education) (Belgium, the Czech Republic, Finland and Italy). Social media like Facebook and Twitter are seen by a small number of intermediaries as especially important for targeting young people.

A representative of a community organisation in Austria was of the opinion that information about rights and the possibilities of taking action against discrimination was especially effective when given by peers, i.e. people who have themselves experienced discrimination. Trade unions in the United Kingdom have set up equality networks for various groups of people potentially affected by discrimination, which also provide the opportunity for peer support. Offering free legal advice on a regular basis in places close to potential

complainants, as well as providing advice without the necessity of making an appointment, lower the threshold for accessing information (for example, Austria and France).

Equality bodies try to establish networks with NGOs, community organisations, trade unions and public authorities. Intermediaries tend to establish networks among themselves, including specialised lawyers, NGOs and community organisations, to expand their outreach. According to intermediaries in Austria, Belgium, France and the United Kingdom, the processing of model cases in an easily understandable way required good teamwork by legal and public relations experts and good relationships with the media were necessary in order to get these cases published, even when complainants wanted to remain anonymous, which quite often seems to be the case. According to intermediaries, promotional factors for enhancing the capacity of organisations to target (potential) complainants effectively would be more support from public bodies (Belgium), more attention paid by the media to the issue of discrimination (Belgium) and strong support in public discourse for equality and non-discrimination (Austria).

6.3.3 Analysis

The section on awareness-raising shows that it is essential for acquiring knowledge about rights under equal treatment legislation and how to exercise these rights. If (potential) complainants do not know their rights, they will not realise that they have experienced discrimination. Complainants have pursued diverse processes for acquiring knowledge about their rights under equality legislation. Many of them utilised personal resources or resources related to their working environment. Institutional support played a less important role in the process of acquiring knowledge about rights.

Complainants who have realised that they have been discriminated against need to know where to go in order to be able to report their case. The media were the primary source of information for complainants on the existence, character and tasks of equality bodies; other sources used were the working environment, networks and lawyers. However, it seems to be the case that complainants do not always find their way to the most competent complaints and dispute resolution bodies and intermediaries for getting advice on lodging a complaint or on procedures in place. Not knowing where to take a case has a negative impact on the number of cases reported.

As soon as complainants have found their way to a complaints and / or dispute resolution body, it is important for them to get information on how to lodge a complaint. Almost half of the complainants said that they were not provided with any institutional support on how to lodge a complaint and about one quarter had to inform themselves about the procedures. Taking into account the diversity of complaints and dispute resolution bodies and of paths to access to justice in

discrimination cases, guidance on the issue of how to lodge a complaint and on the procedures available would contribute to enhancing access to justice.

After the complainants have gained information on how they can lodge a complaint, they have to decide whether they want to continue with their case. Adequate information and support for taking this decision is needed. For building confidence among the complainants to decide whether they want to launch a complaint or not a triangle, which to a large extent comprises family, friends and colleagues, intermediaries and equality bodies, was of relevance. However, more than 60% of the complainants had to rely on their own resources and on themselves to finally take the decision on whether or not to lodge a complaint. The more complainants decide to lodge a complaint, the more access to justice is guaranteed by the mechanisms in place, increasing complainants' confidence.

A majority of the complainants interviewed assessed the information gained on their rights under the equality legislation as adequate and accurate and the complainants were largely content with the information they had gained about the existence, character and tasks of the equality bodies, about how to lodge a complainant and about the procedures.

Complainants were more satisfied with the information when they had gained knowledge from different sources of information. In addition to lodging a complaint and obtaining information on the procedures, the complainants identified some additional areas they labelled as important in order to have adequate information on the proceedings: the possible duration of proceedings, the costs of proceedings, the collection of evidence, what to expect of procedures in courts, before "similar entities" or tribunal-type equality bodies and what can be done after the closure of the case when no change has been achieved.

Once the complainants gained access to the appropriate body and had received information on lodging a complaint and on the procedures, the intermediaries and dispute resolution bodies were seen as experts who could provide adequate and accurate information. The quality of the information is essential in convincing complainants to bring their case.

Based on the data collected, it is difficult to assess to what extent low levels of awareness of rights under the equal treatment legislation and about how to exercise these rights is a critical barrier to access to justice in cases of discrimination, as a great majority of the complainants interviewed at least had some knowledge about the right not to be discriminated against.

However, the strategies and measures developed by primarily promotion-type equality bodies and intermediaries suggest that they see a link between specifically targeting (potential) complainants with information (about their

rights, the existence, character and tasks of the equality bodies, how to lodge a complaint and the procedures in place) and the possibility of enhancing awareness among potential complainants by way of these strategies and measures and of increasing the number of cases that are reported. These strategies and measures undertaken by promotion-type equality bodies and intermediaries provide some evidence that low levels of awareness of rights and how to exercise these rights are seen as a critical barrier for access to justice (Hypothesis 15).

Promotion-type equality bodies and intermediaries have developed strategies to increase the proximity to different groups of potential complainants. The development of these strategies seems to be largely based on experiences gained by providing legal advice to various groups who have different levels of awareness of their rights (Hypothesis 16). In order to be able to tailor the strategies aimed at increasing proximity to potential complainants to the needs of these groups, both equality bodies and intermediaries involve themselves in outreach work.

The knowledge about what information channels work with which target groups and how information strategies and policies can be developed needs further resources and skills and most of the promotion-type equality bodies and intermediaries do not have adequate resources for this. Further development in this area is important in order to make different groups of (potential) complainants aware of their rights under equality legislation and to provide them with information about how to proceed if they experience discrimination.

6.4 Accommodation of diversity

This section on accommodating diversity analyses the availability and the quality of the measures taken to accommodate diversity. The basis for this analysis is the following hypothesis: equality bodies and other administrative and judicial institutions show little awareness and concrete action regarding accommodation of diversity in procedures and support for the different grounds of discrimination and / or for different groups (Hypothesis 17).

The section examines to what extent the complainants interviewed had particular needs in order to be able to lodge a complaint or to participate in procedures and whether and how these needs are met.

The needs of the complainants are set against the awareness of particular needs of the equality bodies, “similar entities” and intermediaries at the level of the individual complainant, of different groups of complaints and of complainants discriminated against on a particular ground of discrimination. Furthermore, strategies to accommodate for diversity at these different levels employed by equality bodies, “similar entities” and intermediaries are examined. The assessment of the quality of these strategies by the equality bodies,

"similar entities" and intermediaries is linked to the perceptions of the complainants.

6.4.1 Experience and assessment of complainants of accommodation of diversity

The complainants interviewed are quite diverse with regard to their gender, age, ethnicity and the grounds on which they have experienced discrimination: 25% on race / ethnic origin, 23% on gender, 21% on disability, 8% on religion or belief, 7% on age and 6% on sexual orientation.

About one third of the complainants interviewed were either nationals of other EU Member States or countries outside the EU, or had a different ethnic background than the majority population in the Member State in which the interview was held (see Table A-4.107). Fourteen per cent of the complainants were not informed about lodging a complaint and about the procedures in their native language but in the language of their country of residence (see Table A-4.108). Three complainants residing in Member States with national languages other than English had been informed about how to lodge a complaint and about the procedures in place in English. Almost all complainants (with only one exception) stated that they mastered the language in which they had been informed (see Table A-4.109).

About 10% of the complainants said that they had particular needs vis-à-vis the people who supported them (see Table A-4.110). These particular needs most often included the need to meet their supporters in accessible premises (i.e. without physical barriers) or accommodation for various communication needs, such as the provision of information in Braille, sign language interpreters or lip readers and communication in English (in Member States with national languages other than English). The latter kind of accommodation was also most often needed during the proceedings (see Table A-4.111). Others needed more support with drafting their complaints, either because they had difficulties with the language as it was not their native one or because it was too difficult for them to formulate the complaint. Mostly the complainants voiced these particular needs themselves, in a number of cases they were expressed by the intermediaries (see Table A-4.112).

The assessment of whether the complainants had been satisfied with the fulfilment of their particular needs and whether their needs had been met in time was quite ambivalent (see Table A-4.113). The number of complainants who were fully content equalled those who were not at all content. Complainants were least content in Austria and the Czech Republic and most content in Finland and the United Kingdom.

In order to improve awareness of particular needs, complainants suggested that the staff of the equality bodies as well as the courts should reflect the diversity

of society. Further suggestions for improvements related to various stages in the procedure. First, information should be provided in a way that is easy to read and understand, without any other barriers as well as in different languages, not only before lodging a complaint but also during the proceedings. It was mentioned by one complainant that there were no lawyers available speaking Sami, one of the minority languages in Finland. The premises of equality bodies, intermediaries, courts or tribunals should be made physically accessible.

Staff of the courts and tribunals should be more aware of particular needs during the proceedings. Two complainants suggested developing checklists, which enumerate all the particular needs and available remedies to accommodate for these needs. These checklists could be gone through before each procedure, in order to make sure that all the equipment needed is available and working and arrangements have been made for, for instance, sign language interpreters or lip readers. Another improvement suggested related to cases aimed at the removal of barriers: negotiations of this kind could be conducted at the premises under review, as, firstly, suggestions for proper improvements are easier to make and, secondly, when the changes have been implemented it is easier to check whether they really comply with the provisions for accessibility.

6.4.2 Views of equality bodies, "similar entities" and intermediaries on accommodation of diversity

Almost all equality bodies deploy some strategies to provide information to specific groups (see Table A-4.114). The strategies most often used are provision of information via accessible websites, easy-to-read brochures and in different languages. A promotion-type equality body in Finland seems to allow for contact in any language and to arrange interpreting free of charge. Sign language, audio files, brochures in Braille and information targeting people who cannot read or write are less often available

In comparison with the equality bodies, only about 70% of the intermediaries included in the sample stated that they used distinct strategies to provide specific groups with information on their services (see Table A-4.115). The probability that intermediaries have developed specific strategies is higher when they actually target specific groups with information on their services. Trade unions, victim support organisations and NGOs are more likely to have information material on accommodation of diversity than specialised lawyers; the latter employ such strategies more often than general lawyers. They are most often employed in Austria, Finland and the United Kingdom, least often in Bulgaria.

Although most of the equality bodies use different approaches to inform (potential) complainants associated with each of the different grounds, they less

often adapt the services they offer, such as legal advice or moral, emotional and personal support, to the needs of different target groups (see Table A-4.116). The promotion-type equality body in Austria would for instance not allow translation by a spouse in a case of gender discrimination. The equality body in the United Kingdom would be flexible where the access needs of complainants were concerned and would also meet the complainants in premises other than its own. Few of the equality bodies had a formal procedure in place to assess and respond to the needs of each individual complainant in relation to the way in which legal support is provided and even fewer for assessing and responding to the needs of individuals from different groups.

Quite a few equality bodies and "similar entities" use different approaches to assess particular needs in relation to adjusting procedures. In Bulgaria and Italy they use rather *ad hoc* approaches. The tribunal-type equality body in Austria has accessible rooms, offers interpreters, can hold separate hearings for the complainant and defendant in cases of sexual harassment and has participated in a training event aimed at enhancing its skills when questioning traumatised young people. In the United Kingdom "similar entities" are said to respond to the particular needs indicated in special forms by intermediaries. In Bulgaria public hearings of the equality body can be held in camera or the complainant and defendant can be questioned separately in cases of sexual harassment. Few bodies use different approaches to guarantee good quality of outcomes on the different grounds of discrimination; most adaptations are done with regard to disability (France and the United Kingdom) and Travellers (the United Kingdom).

The intermediaries involve themselves to a lesser extent in strategies relating to accommodation of diversity (see Table A-4.117). Most often they employ such a strategy with regard to informing (potential) complainants associated with each of the different grounds, offering legal advice and assistance for different grounds and responding to the needs of each individual complainant in relation to the way in which legal support is provided.

Legal advice is adapted by offering low threshold support without appointments (Austria), by employing counsellors speaking different languages (Austria and Finland), by utilising intermediaries for communication (Bulgaria), by not meeting complainants in the premises of the organisation but where they prefer to meet (Italy) or by taking more time to offer support to specific groups in order to be able to explain the situation in a more understandable way (Finland). In France it was explicitly mentioned that drop-in law clinics could best deal with multiple discrimination. In Bulgaria one intermediary mentioned that the approach for other kinds of support depended on the severity of the discrimination. No examples were mentioned by intermediaries as regards the adaptation of procedures to various needs.

Experiences of the representatives of equality bodies and intermediaries show that different groups need different approaches. For example, foreign residents or people with mental health problems need more support than other complainants, women who have experienced sexual harassment prefer legal advice and support from a woman. Identifying individual needs when providing face-to-face support is often mentioned as a strategy to respond to the needs of individuals. In order to achieve this aim, counsellors or lawyers need specific social skills.

Accessibility of premises was also mentioned by equality bodies, “similar entities” and intermediaries as a promotional factor targeting specific groups of (potential) complainants. Altogether it is difficult to say whether the ground, the severity of discrimination experienced or the individual needs of a complainant determine the way in which the support is given, or whether it is a combination of all these factors which is influenced by individual characteristics such as gender, age, education, social status and knowledge about rights.

6.4.3 Analysis

Very few of the complainants interviewed declared that they had particular needs in relation to the person who had supported them, even fewer said that they had particular needs during procedures.

When comparing these numbers to the overall diversity of the sample of complainants interviewed, it may be that not all complainants made their particular needs known. The needs articulated focused on accommodating for physical barriers concerning both premises and documents and on accommodating various communication needs. Most of the time the complainants voiced their particular needs themselves, but in several cases they were expressed by intermediaries supporting the complainants.

Almost all the promotion-type equality bodies employ some strategies to provide information to groups with particular needs, however, they seek less often to adapt their procedures to the different needs of the complainants. Tribunal-type equality bodies and “similar entities” more often adapted their procedures to suit particular needs. Intermediaries more often adapted their information policy to meet the needs of different groups of complainants, but less often accommodated diversity of needs when providing legal advice and assistance.

Among equality bodies and intermediaries an individual approach to complainants seems to be more common than an approach based on the needs of different groups or grounds of discrimination. Identifying individual needs while giving support to complainants was seen as a strategy to adapt to these individual needs. This approach demands the development of specific social skills that can either be acquired through networking with community organisations or by employing diversity policies within the organisations.

It is difficult to assess, on the basis of the answers given by representatives of equality bodies and of “similar entities” and intermediaries, which factors are primarily seen as determining the way in which the complainants are given support. It is not clear whether giving support is more likely to be determined by the ground, the severity of discrimination experienced or the individual needs of a complainant or by individual characteristics of the complainant, such as gender, age, education, social status and knowledge about rights.

With regard to the quality of services in terms of how the complainants’ diverse needs were taken into account, the assessment of the complainants’ interviewed was mixed: since as many complainants were content with them as were not. It was seen as disadvantageous that information was not provided in an accessible way, that premises including courts, equality bodies and intermediaries were not accessible, that lawyers belonging to minority groups were not available and that the staff of equality bodies and courts did not reflect society, which would make it easier for them to accommodate particular needs.

On the basis of the observations of the complainants it can be assumed that equality bodies and “similar entities” have relatively low awareness of accommodating diversity in their procedures and in their support in relation to the different grounds of discrimination and / or for different groups (Hypothesis 17).

This assumption is confirmed by the description of the strategies employed by the representatives of equality bodies, “similar entities” and intermediaries. They have started to develop strategies relating to accommodation of diversity to differing extents in some areas, such as informing complainants about their services (primarily promotion-type equality bodies and intermediaries), offering legal advice and assistance (especially intermediaries) and assessing the needs of individual complainants during proceedings (primarily tribunal-type equality bodies and “similar entities”). However, there is significant room for development, as suggested by some of the complainants.

7 ACCESS TO JUSTICE BEYOND THE INDIVIDUAL CASE

Access to justice beyond the individual case includes legal certainty and the promotion of the culture of rights. Legal certainty is important for enabling those professionals providing legal advice and assistance to give the complainants a realistic estimation of the outcome of a case and for motivating complainants to lodge complaints, as has been demonstrated in previous sections. Enforcement models, such as class action or *amicus curiae*, which allow for strategies that no longer make an individual complainant responsible for combating discrimination, could further contribute to enhancing access to justice.

Developing awareness and a positive attitude to equality and the right to non-discrimination is important for establishing a culture of rights among the general population, which stimulates and encourages people to report incidents of discrimination.

The examination of the fieldwork data is based on the following three hypotheses.

- Hypothesis 18: Enforcement models beyond the individual rights strategy enhance access to justice.
- Hypothesis 19: Uncertainty among complainants about the possible outcome of a case is a factor in under-reporting.
- Hypothesis 20: A culture of rights within the general population stimulates and encourages people to report incidents of discrimination.

This section first analyses to what extent enforcement models beyond the individual rights strategy are appreciated as enhancing access to justice and how far legal certainty is identified as a promotional factor for reporting cases. The second part looks into whether the complainants perceive the social environment as supportive or hostile. It also examines what equality bodies and intermediaries do to encourage the general public to develop a positive attitude towards equal treatment.

7.1 Legal certainty

This section covers two aspects of legal certainty: class action and strategic litigation. The chapter focuses on the complainants' experiences with and opinions on class action as an example of an enforcement model that goes beyond the individual rights strategy. The views of the equality bodies and intermediaries will shed light on their possible contributions to developing legal certainty and whether they see a link between the uncertainty about the possible outcome of a case and under-reporting.

7.1.1 Perceptions of complainants of legal certainty

About a quarter of the complainants stated that their expectations of achievements with the complaint went beyond the impact at an individual level. The complainants expressed their desire to protect other potential victims against discrimination in the future, to establish equal treatment and equal rights and raise awareness of discrimination and of the institutions dealing with cases of discrimination. A few complainants interviewed (about 5% of the sample) perceived themselves as role models and by taking action and fighting discrimination they wanted to encourage others to lodge a complaint if they experienced discrimination.

More than 80% of the complainants would have liked to lodge their complaint as part of a class action (see Table A-4.118). Thirteen complainants stated that their claim had been part of class action (in Austria, Bulgaria and Italy). The main arguments favouring class action concentrated around the possibility of raising a complaint above the level of the individual in order to show more power and strength, which would result in achieving more impact as well as encouraging others to fight discrimination as a group of complainants and alleviate the fears associated with complaining as an individual (see Table A-4.119).

According to complainants who had experience with peer support, it was helpful in the preparatory phase of a case and for getting through the procedure. A group of people would be able to gather more evidence and they would be able to share both the costs and the risks of such a procedure. Class action was seen as a more adequate route to justice for eliminating structural discrimination and the greater visibility and publicity of such cases could result in raising societal awareness for the problem of (structural) discrimination.

The few counter arguments focused on the challenges of convincing victims of discrimination to take part in class action and on organisational issues necessary for establishing an aim and a common strategy (see Table A-4.119).

7.1.2 Views of equality bodies, “similar entities” and intermediaries on legal certainty

Among equality bodies and “similar entities” class action was hardly mentioned at all during the interviews. One representative of an equality body in Austria mentioned that class action on the basis of equal treatment legislation should be introduced. Intermediaries more often referred to class action or *amicus curiae*.

In Austria, Belgium, Finland and Italy different intermediaries – NGOs, victim support organisations and specialised lawyers – called for the introduction of class action, in Italy particularly for class action based on the ground of nationality. A trade union representative in the United Kingdom suggested improving class action procedures in courts in order to enhance the quality of

procedures. A victim support organisation in Belgium was also of the opinion that class action could contribute to better quality procedures. A similar organisation in the United Kingdom saw it contributing to equality of arms, since in discrimination cases vulnerable individuals often faced large organisations as opponents. In France class action was seen as protection against victimisation and an NGO in the United Kingdom wanted to utilise class action more and move to hypothetical comparators. Hypothetical comparators are necessary as it is not always possible to identify an actual individual whose relevant circumstances can be exactly compared to those of the person who has been discriminated against.

A number of promotion-type equality bodies said that the possibility of undertaking strategic litigation was one of the criteria they used for deciding whether to offer legal advice and assistance to a complainant (see Table A-4.72). This selection criterion was mentioned most often in Belgium. However, the strategic choice of cases was not only seen as a necessity in Belgium, but also in France and the United Kingdom. A representative of an NGO in the United Kingdom also stated that they could only support strategic cases and not all cases reported to them, due to restricted resources. In Austria the equality body suggested that strategic litigation would be necessary as the tribunal-type equality body could no longer deal with the large number of gender cases lodged with the body. In Finland strategic litigation was seen as an instrument for generating precedents which are currently comparatively rare. The equality body in the Czech Republic wanted more involvement in strategic litigation, as it only engaged in follow-up activities where strategic cases were concerned.

About 30% of the intermediaries referred to the criterion of the possibility of undertaking strategic litigation as a basis for selecting which complainants are provided with legal advice and assistance (see Table A-4.73). A few intermediaries offer free legal advice but, when they do, strategic litigation plays quite an important role – especially among trade unions – in determining which cases should be supported free of charge (see Table A-7-128). Intermediaries in Belgium, Bulgaria, Finland and Italy saw strategic litigation as a tool to establish precedents and therefore model cases which could contribute to motivating other potential complainants to lodge a complaint if they experienced similar situations. In Bulgaria one NGO was of the opinion that the equality body should be more strategic in its choice of cases. Intermediaries in Italy and Bulgaria said that selecting the right cases was important for ensuring good quality legal advice and procedures, also with a view to which cases could be taken to the ECtHR (Bulgaria).

The uncertainty of outcomes was addressed in relation to making the provision of legal advice more difficult. Intermediaries in Belgium and Italy saw it as an obstacle to good quality legal advice, as complainants would ask for guarantees on the outcome in order to decide whether to lodge a complaint or not.

7.1.3 Analysis

The enhancement of legal certainty partly depends on the number of cases that are lodged and that finally result in precedents. Such a demonstration of how legal provisions are applied in practice can give complainants confidence to take similar cases to a court or other dispute resolution body.

About one quarter of the complainants interviewed wanted to achieve a broader impact by taking their case to a dispute resolution body. Among the expected achievements were protecting others from discrimination who might experience similar situations in the future and raising awareness both of discrimination in general as well as of the institutions dealing with cases of discrimination. By trying to achieve such aims, complainants indirectly support the development of legal certainty, as such achievements could motivate further people to lodge complaints and therefore contribute to the body of case law.

Class action as a strategy to raise complaints above the level of the individual was identified as important by a large number of complainants and by a few intermediaries. Representatives of equality bodies and “similar entities” seldom referred to this enforcement model. Class action was seen by complainants as a possibility of achieving better quality procedures: the more often class action is applied as a successful strategy to go beyond an individual rights strategy the more such precedents could contribute to enhancing access to justice. These perceptions suggest that class actions, as an example of enforcement models beyond the individual rights strategy, can be valuable in enabling access to justice (Hypothesis 18).

The strategic choice of cases was identified by equality bodies and intermediaries as essential in generating model cases and therefore precedents, which would again result in enhanced legal certainty and motivate more complainants to report their cases. Very few intermediaries explicitly mentioned the uncertainty of outcomes as an obstacle to complainants deciding whether or not they would actually lodge a complaint (Hypothesis 19).

7.2 Promoting a culture of rights

This section examines measures aimed at developing awareness of and a positive attitude towards equality and rights to non-discrimination among the general public. It shows how complainants experience the attitudes of both family and friends and the general public towards taking action in cases of discrimination and whether these perceptions influence their decisions. It provides an overview of how equality bodies and intermediaries perceive the current social and political climate towards issues of equal treatment and non-discrimination and what they do to support the development of a positive attitude towards equality and the right to non-discrimination among the general public. Furthermore, the section attempts to assess to what extent these

measures result in stimulating and encouraging people to report incidents of discrimination.

7.2.1 Perceptions of complainants of the culture of rights

As stated in Section 6.2.1, family and friends were seen by complainants interviewed as the most supportive in not tacitly accepting discrimination (see Table A-4.120). Colleagues were seen as less supportive of action taken by those affected by discrimination. Even less positive were attitudes towards complainants from society at large. About 80% of the complainants were of the opinion that society did 'not at all' or 'not entirely' expect people who have experienced discrimination to take action against discrimination. Regarding the expectations of society in the different Member States reviewed, they are lowest in the Czech Republic, Austria and Bulgaria and highest in the United Kingdom (see Table A-4.121).

In the context of this difficult picture of the status of a culture of rights, somewhat more than half of the complainants said that it had been 'very easy' for them to decide to lodge a claim, about 20% judged their decisions as 'mostly easy' and almost one quarter rated the decision as 'not entirely' or 'not at all' easy (see Table A-4.122). The rather high number of complainants who deemed it not all difficult to lodge a complaint should be placed in the context of the sample composition and therefore the personal resources available to the complainants. Among those most often giving confidence to the complainants to lodge a complaint were intermediaries, family / friends and equality bodies (see Table A-4.129) – either people close to the complainant or highly competent in the field of discrimination. About 30% of the complainants either relied on themselves or said that nobody had given them confidence to lodge a complaint.

7.2.2 Views of equality bodies, "similar entities" and intermediaries on the culture of rights

Almost all the promotion-type equality bodies have a strategy to support the development of awareness of and positive attitudes towards equality and rights to non-discrimination among the general public (see Table A-4.126).

About three quarters of the intermediaries work to support the promotion of a culture of rights (see Table A-4.127). NGOs, trade unions and victim support organisations are more often involved in such activities than (specialised) lawyers. Specialised lawyers seem to tend to concentrate their activities on the promotion of successful cases, through press conferences, press releases or blogs (for example Austria, Belgium and France). They also focus on networking (Austria, France, Italy and the United Kingdom) and on organising training events or doing workshops with various target groups (Belgium, Italy and the United Kingdom). Such training events or workshops sometimes seem

to result in an increase in cases reported to lawyers (for example Bulgaria and Italy). A lawyer in the United Kingdom stated that widely publicising model cases on age discrimination resulted in quite a lot of enquiries.

NGOs and victim support organisations use a variety of channels, such as the internet (Austria, Belgium, Bulgaria and the Czech Republic), social media (Bulgaria and Finland), the mass media (e.g. Belgium, the Czech Republic, Finland and France) as well as campaigning (e.g. Belgium and France) in order to raise awareness of equality and non-discrimination issues in general.

Many of the equality bodies and intermediaries said that they lacked the resources to employ staff skilled in public relations; resources were identified as an issue in all the eight Member States of the sample. Some intermediaries therefore engage in networking in order to strengthen their public relations capacity (Austria, Finland, France, Italy and the United Kingdom).

Trade unions make use of their networks of representatives in order to provide their members with information on equality and non-discrimination issues related to employment. Intermediaries also try to participate in working or advisory groups to highlight equality and non-discrimination as important issues on the political agenda of decision-makers and opinion leaders (Finland and Italy). They also seek to influence decision-makers by sharing with them their experiences of how legal provisions are implemented and various dispute resolution mechanisms work and what needs to be changed in order to make access to justice easier and more effective for complainants (Austria, Czech Republic, Finland, France and the United Kingdom).

In almost all the eight Member States intermediaries described the political and social climate as hostile towards the issue of combating discrimination or towards certain groups which are more likely to be discriminated against (e.g. Roma, religious minorities, people with intellectual disabilities and LGBT people). Furthermore, it was highlighted that public bodies would not function as role models regarding the development of anti-discrimination practices (e.g. Austria and Belgium) and would therefore not be supportive of the development of a culture of rights.

Promotion-type equality bodies do sometimes seem to have difficulties in separating the strategies they employ for targeting (potential) complainants and the general public. In Austria the equality body explicitly stated that its priority was giving legal advice to complainants and not informing the general public. Nevertheless, the equality body – like promotion-type equality bodies in the other Member States as well – does target the general public.

Presence in the media was stressed by several equality bodies as essential in targeting the general public (Austria, Finland, France and the United Kingdom).

They try to publicise strategic and successful cases via the media and to include information on legal provisions as well as on the mandate of the body.

Factors supporting the public relations work of equality bodies and intermediaries relate to:
- the image and standing of the respective organisations;
- the financial and human resources;
- the skills and competences of the staff;
- the development of a communication strategy;
- good knowledge about the target groups in order to design the messages in the right way and select the appropriate communication channels;
- networking in order to diversify and enhance the resources available for public relations.

Well-reasoned communication without pathos or emotions (Bulgaria and United Kingdom), the use of non-legal and non-expert language (Bulgaria and Italy) and a rights-based approach (Austria) were seen by intermediaries as positively influencing the promotion of a culture of rights. Therefore, establishing good cooperation with the media and supporting the development of knowledge and of a more sensitive approach to news on equal treatment and non-discrimination was identified as an important element in promoting a culture of rights (Austria, Finland and Italy). A proactive approach to the media was seen as advantageous by some equality bodies and intermediaries, because then the attention of the media could be re-directed to the cases and issues assessed as relevant by the professionals working in equality bodies, law firms, trade unions and civil society organisations.

Intermediaries particularly mentioned that the media would sometimes present information on minorities or on discrimination in a distorted or biased way, especially with regard to the situation of Roma, LGBT people and Muslims (Bulgaria, the Czech Republic, Finland and the United Kingdom), as some journalists have not yet developed sufficient knowledge on issues related to minorities and discrimination. A challenge identified in Austria was that the media were rather reluctant to publicise cases if the complainant wanted to remain anonymous.

Promotion-type equality bodies in Austria, the Czech Republic, Finland, Italy and the United Kingdom have developed specific approaches for targeting particular sections of the population. Intermediaries have also developed strategies to inform specific sections of the general public (see Table A-4.117).

Training events or workshops seem to be the method most often applied with relevant stakeholders in the field, such as labour inspectors or trade union representatives, as well as works council members and employee representatives (Austria, the Czech Republic and Finland), public authorities (the Czech Republic and Italy) and organisations offering different kinds of

social services (the Czech Republic), the police, lawyers and judges, nursing staff and doctors (e.g. Austria) and journalists (the Czech Republic). The equality board in Italy tries to target young people, including pupils and students, by using innovative language and social media / networks.

Intermediaries seek to target the public administration and members of the parliament via lobbying activities and advocacy work (e.g. the Czech Republic, France and Italy). This is based on the experience gained from working with the legal provisions in place, supporting different target groups in gaining access to justice, accompanying or representing complainants in different procedures and seeing the impact of the outcomes both on the individual complainant and also on defendants and discriminatory practices and structures.

Some intermediaries and equality bodies explicitly target different groups of potential discriminators, such as employers, managers (e.g. the Czech Republic, France and the United Kingdom) or service providers (e.g. Austria). Some organisations focusing on disability issues offered support to or offered workshops for publishers and web designers in order to make them aware of barriers and develop strategies to overcome them for different kinds of disabilities (Austria and the United Kingdom).

7.2.3 Analysis

Complainants were of the opinion that the general public was quite hostile towards people who have experienced discrimination and would to a great extent not expect them to take action against discrimination. Family and friends were perceived as much more supportive. They, together with intermediaries and equality bodies, were seen as those who had given the complainants most confidence in deciding whether or not to take action and lodge a complaint.

However, most of these complainants have already undertaken the important first step of reporting the incident of discrimination they have experienced to some kind of institution. Whether they would continue and actually lodge a complaint was then most often influenced by highly competent institutions in the field of discrimination or by the immediate social environment of the complainants. The data does not allow for conclusions to be drawn on whether the attitude of the general public made it more or less difficult for the complainants to decide initially whether to report the incident of discrimination experienced (Hypothesis 20).

Almost all the promotion-type equality bodies and a majority of intermediaries have developed measures to support the development of awareness of and positive attitudes towards equality and rights to non-discrimination. Intermediaries and especially promotion-type equality bodies put efforts into promoting a culture of rights. However, to what extent these efforts really have a positive effect on the reporting of incidents cannot be assessed. The fact that

equality bodies and intermediaries engage in different strategies aimed at informing the general public about the existence of equality bodies, equal treatment legislation and concrete cases shows that they presume that there is a link between the promotion of a culture of rights and the reporting of incidents of discrimination.

8 OVERALL CONCLUSIONS AND RECOMMENDATIONS

8.1 Introduction

In order to provide an analytical framework for this study, ten elements for access to justice in cases of discrimination were identified. These were: the right of effective access to a dispute resolution body; the right to fair proceedings; the right to timely resolution of disputes; the right to adequate redress; conformity with the principles of efficiency and effectiveness; support to complainants in bringing forward a case (including legal support and personal support); awareness of rights and confidence among potential complainants; accommodation of diversity of complainants and the groups covered by equal treatment legislation; processes to secure legal certainty; and favourable context with regard to the principle of non-discrimination and a culture of rights.

A literature review on access to justice in cases of discrimination was conducted by national experts in the eight countries selected for this research. This was supplemented with material gathered in seven further EU Member States and at a wider international level. The research team prepared a background report that brought together and analysed this material.

Twenty hypotheses were developed, based on the findings of the literature review and the preparatory work for the field research. These hypotheses were tested and further developed against the findings of the field research.

The field research was carried out by national experts in the eight selected countries on the basis of interviews with complainants, a small number of non-complainants, intermediaries and representatives of equality bodies and similar entities. Separate questionnaires were developed for each group of respondents with a view to exploring the experience of complainants and non-complainants and the role and perspective of intermediaries, equality bodies and other similar entities. The research team conducted quality checks on the interviews being conducted and developed the analysis of the field research findings.

The number of non-complainants interviewed was very small. The sample of complainants was, by definition, drawn from those who had reported and taken forward a case of discrimination. This reflects a small minority of those who experience discrimination and draws from a group likely to have greater personal resources and support than others who experience discrimination. The sample of complainants is not representative of the whole body of complainants, given that 42% of those interviewed were identified by the equality bodies and 60% of those interviewed came from capital cities. It is important therefore to note that the field research does not purport to provide a comprehensive picture of how discrimination is being addressed. Nonetheless

the experience of this particular group of complainants does provide significant learning on access to justice in cases of discrimination.

The results of the literature review and the preliminary findings of the field research were presented for peer review at a meeting of the national experts, representatives of equality bodies and intermediaries and representatives of the FRA.

Conclusions and recommendations have been developed on the basis of this process. It is important to point out that these conclusions and recommendations reflect the learning from the experience of one particular sample of complainants.

8.2 Access to a dispute resolution body

Two hypotheses were developed in relation to the first element for access to justice: access to a dispute resolution body.

The first hypothesis is that the complexity of institutional structures, equal treatment legislation and the diversity of paths available to complainants pose obstacles to access to justice.

The second hypothesis is that the geographical distance between potential complainants and dispute resolution bodies impedes access to justice. The two hypotheses are supported by the findings of both the literature review and the field research.

The diversity of paths taken by complainants interviewed ranged from one single path used by all complainants in Bulgaria to seven different paths used by the complainants in Austria. Equality bodies emerge as important actors, being involved in 68% of the paths chosen by the complainants in this particular sample. The courts, too, proved to be important actors, with 18% of the complainants interviewed using the courts as their entry point. A broad spectrum of intermediaries were interviewed in the field research – in particular lawyers, NGOs and victim support organisation and to a lesser extent trade unions.

Nearly 40% of the complainants in the particular sample interviewed had to make a journey of between one and five hours to reach a dispute resolution body. Many were also distant from sources of legal advice and representation.

Obstacles to access to justice which were identified in relation to this element of access to a dispute resolution body were:

- The complainant's difficulty in establishing which path to follow for access to justice and which institution to address one's complaint to as an entry point.

- The lack of institutions with a mandate in relation to some of the grounds covered by the equal treatment legislation and the actual hierarchy between grounds in the provisions of this legislation.
- The complexity of the definitions and the provisions in equal treatment legislation.
- The lack of harmonisation between equal treatment legislation at the federal level and at the provincial level in Member States with such governance structures.

Enabling factors for access to justice which were identified in relation to this element of access to a dispute resolution body were:
- Access to legal advice prior to lodging a complaint to enable an effective navigation of the justice system and identification of best entry point.
- Cooperation agreements and cross referral systems between institutions to support complainants in navigating the justice system.
- Outreach services by equality bodies through regional offices, own initiative or cooperation with intermediaries to establish contact points close to potential complainants.

8.3 Procedures

Four of the elements for access to justice identified for this research relate to procedures. These are fair proceedings, timely resolution of disputes, adequate redress and efficiency and effectiveness of procedures.

8.3.1 Fair procedures

Three hypotheses were developed in relation to this second element for access to justice: fair procedures.

The first hypothesis is that equality of arms between the complainant and the alleged perpetrator of discrimination enhances access to justice.

The second hypothesis is that inadequate application of the shift of the burden of proof diminishes access to justice in cases of discrimination.

The third hypothesis is that appeal procedures in cases of discrimination are sufficiently available to ensure fair proceedings.

The first two hypotheses emerging from the literature review are supported by the field research. The third hypothesis emerging from the literature review did not feature significantly in the interviews for the field research.

Two further hypotheses emerge from the field research. The first of these is that fair procedures are compromised in cases of discrimination by victimisation and

the fear of victimisation. The second is that distrust of the justice system and in the possibility of fair proceedings is a barrier to access to justice.

Only half of the complainants from the particular sample interviewed felt that their story was 'mostly' or 'fully' listened to. Equality bodies emerge as the best performers in this regard. Representatives of equality bodies and intermediaries raised issues in relation to equality of arms, with intermediaries particularly critical.

A number of representatives of equality bodies and intermediaries noted that, in some instances, the shift in the burden of proof is not being applied in the courts or that judges do not apply it correctly. Some intermediaries also expressed concern about the correct application of the shift of the burden of proof in tribunal-type equality bodies.

Appeals procedures were not directly examined in the interviews for the field research. The literature review found that appeals against decisions of tribunal-type equality bodies and "similar entities" are not possible in many instances. This is understandable, bearing in mind that their decisions are non-binding in nature.

Victimisation is found to be a barrier to access to justice and fair proceedings. Approximately one third of the respondents from equality bodies and intermediaries criticised the lack of measures to take account of the vulnerability of complainants to being subjected to victimisation.

Complainants interviewed in six of the eight countries noted distrust of the justice system and its institutions. This negatively influenced their perceptions of the fairness of procedures.

Obstacles to access to justice which were identified in relation to this element of fair procedures were:
- Limited guarantees in relation to equality of arms for complainants.
- Limitations in the application, by judges, of the shift in the burden of proof.
- The lack of protection of complainants and witnesses from victimisation.
- The distrust of complainants of equality bodies, the courts, "similar entities", public bodies in general and the judicial system.

Enabling factors for access to justice which were identified in relation to this element of fair procedures were:
- A legal requirement on tribunal-type equality bodies and "similar entities" to ensure that the parties are on an equal footing.
- Adequate and affordable (free) provision of high-quality legal advice and assistance to complainants.

- A right of access for complainants to relevant information and documentation held by the person against whom the claim of discrimination is made.
- Support to judges in understanding and applying the shift in the burden of proof.
- Legal and other protections against victimisation and the provision of information to all complainants about their rights in this regard.
- The possibility to make anonymous complainants and the attribution of sufficient powers of investigation to equality bodies and similar entities.

8.3.2 Timely resolution of disputes

One hypothesis was developed in relation to this third element for access to justice: timely resolution of disputes. This hypothesis is that procedures in cases of discrimination are taking too long and complainants do not know how long they may have to wait for justice, which contributes to under-reporting. This hypothesis is supported in the field research.

Two thirds of the complainants in the particular sample interviewed gave details of the duration of their cases. While the duration was less than a year for 45% of them, it was between two and three years for 40% and more than three years for 15%. Representatives of equality bodies, “similar entities” and intermediaries pointed out that duration can be influenced by the complexity of the case, the path chosen and any appeals procedure. They reported that the duration of the procedure was a factor that influenced people’s willingness to lodge a complaint, the quality of legal support provided, the quality of the procedures and the outcomes. Victim support organisations, NGOs and trade unions were the most critical of the duration of the proceedings.

Obstacles to access to justice which were identified in relation to this element of timely resolution were:
- Undue delays in the procedures of the various institutions in the system of justice.
- Lack of clarity about the length of the procedure to be expected by the complainant.

Enabling factors for access to justice which were identified in relation to this element of timely resolution were:
- Legal provisions that establish a complainant’s right to a speedy resolution of their case.
- The use of simplified procedures to enable a speedy hearing in courts of first instance.
- Adequate resourcing of the relevant institutions in the justice system to avoid backlogs.
- The provision of information to the complainant at an early stage in the process as to how long the case will take.

8.3.3 Effective remedy or redress

Three hypotheses were developed in relation to this fourth element for access to justice: effective remedy or redress.

The first hypothesis is that the range of remedies available in discrimination cases does not include sufficient remedies that reflect the aspirations of the complainants. The outcomes most often desired by the complainants were termination of discrimination, recognition of discrimination, a favourable change in the situation and prevention of discrimination (see below). This hypothesis reflects an apparent gap between the type of remedies being sought by many complainants and the range of remedies currently available from the justice system.

The second hypothesis is that the sanctions available and the compensations ordered are too low in cases of discrimination to be dissuasive and effective.

The third hypothesis is that giving equality bodies the power to make legally binding decisions, as some “similar entities” have, enhances the effectiveness of remedies. These hypotheses are supported in the literature review and the field research.

Complainants in the particular sample interviewed identified their priority goals as being the termination of discrimination (20%), the recognition that they were discriminated against (16%), change in their situation (14%) and the prevention of discrimination to protect others in the future (11%). Only 8% highlighted monetary compensation as their goal. Twenty-five per cent of the complainants interviewed said they did not achieve their desired outcomes and 20% felt their desired outcomes were only partially realised, while more than half felt that largely they had been.

Representatives of intermediaries interviewed, and to a lesser extent representatives of equality bodies, reported that the levels of compensation were too low to be dissuasive. Representative of intermediaries interviewed pointed to the importance of decision-making bodies being able to enforce compensation payments.

Obstacles to access to justice which were identified in relation to this element of effective remedy or redress were:

- The lack of powers of tribunal-type equality bodies and “similar entities” to make legally binding decisions.
- The absence of sufficient means to reinstate people who have experienced discrimination into the situation they had prior to that discrimination.

- A lack of provisions which would enable the issuing of decisions or judgements beyond forms of financial compensation.
- Low levels of compensation awarded and limitations on the compensation which can be awarded.
- Institutional deficiencies in enforcing decisions and judgements once procedures are finalised.

Enabling factors for access to justice which were identified in relation to this element of effective remedy or redress were:

- Effective follow-up procedures by equality bodies and "similar entities" with complainants and with perpetrators after a case has been decided.
- Legislation which enables tribunal-type equality bodies and "similar entities" to make legally binding decisions and ensures compensation is awarded which is proportionate, dissuasive and effective and that these bodies can make an order on those found to have discriminated to undertake an appropriate course of action.

8.3.4 Efficiency and effectiveness of procedures

Three hypotheses were developed in relation to this fifth element for access to justice: efficiency and effectiveness of procedures.

The first hypothesis is that innovative procedures applied by equality bodies and "similar entities" in cases of discrimination enhance the efficiency and effectiveness of procedures.

The second hypothesis is that the availability of ADR procedures has a positive effect on the efficiency and effectiveness of procedures.

The third hypothesis is that the lack of powers, resources and the level of independence of equality bodies undermines the efficiency and effectiveness of their procedures.

The first two hypotheses emerging from the literature review were not directly examined in the fieldwork.

The third hypothesis is partially supported in the field research. It emerged from the literature review on the basis of the EU Commission study on equality bodies.

A fourth hypothesis emerges from the field research. This is that the knowledge, skills and values of judges in the courts, counsellors in the promotion-type equality bodies and commissioners in the tribunal-type equality bodies and the "similar entities" are important for the effectiveness and efficiency of the procedures of these bodies.

Respondents from equality bodies, “similar entities” and intermediaries identified the importance of a strategic choice of cases by the relevant institutions. Respondents from these bodies in three countries noted that too few cases were being taken. Strategic litigation needs to be accompanied by a critical mass of cases. Further innovation in procedures identified in the literature review includes injunction procedures to put an end to ongoing discrimination and investigation under an equality body’s own name in cases where there is lack of evidence

ADR procedures are not directly examined in the field research and get little mention. Two intermediaries in two countries highlight their importance in workplace cases. The literature review identifies the availability of such procedures in all eight countries covered by the research and points to their contribution to faster and better outcomes.

Respondents from equality bodies, “similar entities” and intermediaries highlight gaps in the powers available to equality bodies. These include the lack of powers to make binding decisions, to conduct inquiries and to oblige defendants to cooperate and to provide information.

Complainants in the particular sample interviewed highlight limitations in the time that counsellors from promotion-type equality bodies were able to give them. In part this could be due to unrealistic expectations. However, respondents from promotion-type equality bodies, “similar entities” and intermediaries in almost all eight countries covered by this research point out that the resources of equality bodies are insufficient to achieve good quality outcomes.

Complainants interviewed note the independence of counsellors of promotion-type equality bodies. Other than this, the independence of equality bodies does not emerge from the field research as a factor in access to justice. The literature review quotes a study which found that a high level of de facto independence is an important basis for equality bodies to carry out their tasks effectively.

Complainants interviewed reported a high opinion of the professionalism of judges, counsellors and commissioners. Strong negative perceptions of judges were also reported by complainants interviewed. Respondents from equality bodies, “similar entities” and intermediaries noted that the skills and knowledge of judges and counsellors were important for quality outcomes. In five countries these respondents noted that judges lacked sufficient knowledge of equal treatment legislation and held negative attitudes towards people experiencing discrimination.

Obstacles to access to justice which were identified in relation to this element of efficiency and effectiveness were:

- Limited evidence of innovation being used in the procedures for cases of discrimination.
- Limitations in the powers accorded and inadequate resources for equality bodies.
- Insufficient knowledge of and negative attitudes held by judges.

Enabling factors for access to justice which were identified in relation to this element of efficiency and effectiveness were:

- Legislation which adequately empowers equality bodies and secures their independence.
- Adequate provision of resources to equality bodies.

8.4 Support in cases of discrimination

Three of the elements for access to justice identified for this research relate to support in cases of discrimination. These are the provision of support, awareness of rights and accommodation of diversity.

8.4.1 Provision of support

The provision of support covers legal advice and representation and emotional, personal and moral support. Two hypotheses were developed in relation to this sixth element for access to justice: provision of support.

The first hypothesis is that legal advice and assistance are critical for complainants to navigate complex institutional systems and to achieve successful outcomes in cases of discrimination.

The second hypothesis is that emotional and personal support are important in motivating and sustaining the complainant in cases of discrimination.

Both of these hypotheses are found to be supported in the field research.

Three quarters of the complainants in the particular sample interviewed had access to some kind of legal advice and assistance. Legal support was being utilised at all stages of the process – prior to lodging the case to navigate the system (about 33%), while lodging the case to ensure it is prepared to best effect (about 20%) and prior to and during the hearing to ensure that adequate legal arguments are presented (about 23%). Very few complainants reported having legal support after securing a decision in their case, to enable any further steps required.

Complainants in the particular sample interviewed were ‘very content’ (70%) or ‘mostly content’ (20%) with the support they received. The independence, clarity, humanity, proficiency, efficiency and proactivity of the person providing

the support were highlighted as key characteristics. Some 10% of complainants highlighted the importance of easy accessibility to and availability of the person providing support as important. Forty per cent of complainants identified this as a weak point in the support they received.

Many of the equality bodies and the NGOs interviewed appear to offer legal advice and assistance to all who seek such support, provided their case falls within the mandate of the organisations. Other equality bodies and NGOs apply a varying range of criteria to effectively ration this service. The criteria mentioned by respondents include strategic litigation, cases being in under-reported areas, cases being from under-represented groups, the economic situation of the complainant, membership by complainant of a particular organisation (trade union), chances of success and availability of resources.

Obstacles to access to justice which were identified in relation to this element of support were:

- Limitations in human, financial and time resources of those providing legal advice and assistance.
- Costs of legal advice and assistance which cannot be recouped by the complainant and strict and excluding criteria governing legal aid.
- Limited accessibility to and availability of the counsellor / lawyer providing the legal advice and assistance

Enabling factors for access to justice which were identified in relation to this element of support were:

- Availability and accessibility of legal advice and assistance at all stages of the process from navigating the system to dealing with a decision on the case.
- Systems of cross-referral between organisations providing legal support.
- Face-to-face counselling.
- Qualifications of staff providing legal support and skills which encompass legal knowledge, case law and capacity to engage with the diversity of people experiencing discrimination.
- Quality of the relationship developed by the counsellor / lawyer with the complainant.

About half of the complainants in the particular sample interviewed had some access to emotional, personal and moral support. More than half of them received this support from family, friends or work colleagues. Promotion-type equality bodies and intermediaries also played roles in this regard. The provision of these supports was largely on an informal basis. Almost all the complainants interviewed said that they would like to make use of personal, emotional and moral support if they launched a further claim.

There appears to be a very broad interpretation of personal support among some equality bodies and intermediaries which suggests a lack of understanding as to what exactly is involved in such support. Other equality

bodies and intermediaries identified these supports more accurately as supporting empowerment and stimulating the self-confidence of the complainant and involving peer support, face-to-face work, motivation and active listening.

Obstacles to access to justice which were identified in relation to this element of support were:

- Scarce resources which limit the potential of equality bodies and intermediaries.
- Lack of understanding of what is involved in personal, moral and emotional support.
- Absence of formal provision of personal, moral and emotional support.
- The risks of self-exploitation and burn-out in providing personal, moral and emotional support where staff are not adequately trained and supported.

Enabling factors for access to justice which were identified in relation to this element of support were:

- An explicit provision of moral, emotional and personal support to complainants by equality bodies or intermediaries.
- Cross-referral with and outreach to organisations which provide personal, emotional and moral support.
- Staff qualifications in this field including employment of a diverse staff and use of inter-disciplinary teams.

8.4.2 Awareness of rights

Two hypotheses were developed in relation to this seventh element for access to justice: awareness of rights.

The first hypothesis is that low levels of awareness of rights under equal treatment legislation and of how to exercise these rights is a critical barrier for access to justice in cases of discrimination.

The second hypothesis is that levels of awareness of rights differ for different groups covered by equal treatment legislation.

The field research provides indirect support for these hypotheses.

The complainants in the particular sample interviewed reflect significant capacity in their ability to depend on their own resources to access information on their rights. Forty per cent of the complainants interviewed stated that they depended on their own resources to access necessary information. More than 80% of the complainants interviewed felt that it was not difficult to gain access to information on their rights. This contrasts with the literature review which found that a lack of rights awareness is one of the main factors in under-

reporting, suggesting that access to information is a difficulty for most of those who experience discrimination.

The media and equality bodies are named by this particular sample of complainants as the most important source of information on equal treatment legislation, followed closely by the internet and legal counsellors. The media is identified as the primary source of information on equality bodies and equality bodies are identified as the primary source of information on procedures.

It is not clear to what extent equality bodies have communication strategies as in some instances representatives of the same equality body gave different answers to this question when interviewed. The communication work of equality bodies is reported by respondents to include targeting particular groups and tailoring information to their specific needs. This reflects the finding in the literature review that significant differences in levels of awareness of rights persist between different groups in society.

The communication work of equality bodies is also reported by respondents to include outreach initiatives to increase their proximity to target groups, networking with NGOs and others to build their awareness and training activities to empower people to recognise discrimination. Intermediaries interviewed reported that they are less likely to have communication strategies and tend to target individuals who have already recognised their experience as discrimination.

Obstacles to access to justice which were identified in relation to this element of rights awareness were:

- Limited skills available among staff of the relevant organisations in relation to public relations and communication work.
- The use of technical legal jargon in the information available.
- Lack of knowledge as to where to go for relevant information.
- The means to assess the information available.
- Inadequate information on where to lodge a complaint.
- Lack of information matching the particular circumstances of a complainant.

Enabling factors for access to justice which were identified in relation to this element of rights awareness were:

- The good standing or image of the institutions involved in the justice system.
- The existence and quality of the communication strategy of the relevant institutions.
- Adequate financial and human resources for the relevant institutions.
- Accessibility of the information, including different languages and formats and absence of legal jargon.

- Knowledge about the most effective and appropriate channels of communication for different groups which are protected under the equal treatment legislation.
- Achieving proximity to these groups through local offices, regular presence of representatives of relevant organisation or cooperation with NGOs.

8.4.3 Accommodation of diversity

One hypothesis was developed in relation to this eighth element for access to justice: accommodation of diversity.

This hypothesis is that equality bodies and "similar entities" show little awareness and concrete action regarding accommodation of diversity in their procedures and in their supports for the different grounds of discrimination and / or different groups. This hypothesis is supported in the field research.

Only 10% of the complainants of the particular sample interviewed said that they had particular needs in relation to the people who supported them in their cases. The particular needs referred to by respondents related to language diversity and disability diversity and were limited in their focus to accessible premises and means of communication. This could reflect the particular resources of these complainants, a lack of awareness of diversity and how it might be accommodated by relevant organisations or the absence of needs in this area.

Almost all equality bodies use different strategies to provide information to complainants from different groups. Few responded that they adapt the support services they provide to take account of diversity. Not many responded that they have procedures to assess and respond to the needs of people from different groups in relation to the legal services they provide.

Intermediaries interviewed were less likely to have taken steps to accommodate diversity than equality bodies; 70% of intermediaries interviewed reported steps to take account of difference in the information they provide. In general, both equality bodies and intermediaries are more likely to take an individual approach in meeting a complainant's needs than an approach which also takes account of the complainant's group membership.

The accommodation of diversity reported by equality bodies and intermediaries is limited to translation work in responding to different languages used by complainants, addressing the physical access and communication needs of people with disabilities, responding to the vulnerability of women in sexual harassment claims and taking account of individual socio-economic circumstances. Respondents demonstrated little awareness of the need for steps to be taken to adjust for the diversity of all grounds covered by the EU

equal treatment directives and to further develop steps already being taken to take full account of the practical implications of diversity on the gender, age and racial / ethnic origin grounds.

Obstacles to access to justice which were identified in relation to this element of accommodating diversity were:

- The absence of formal procedures to identify and respond to needs in relation to accommodation of diversity in communication, provision of support and procedures.
- The lack of evidence of a response to diversity that embraces all groups.
- The lack of any research reported on diversity to enable a better understanding of the practical implications of this diversity and of how to respond to these implications.

Enabling factors for access to justice which were identified in relation to this element of accommodating diversity were:

- Staff composition in the relevant institutions which reflects the diversity in society.
- The provision of accessible information in a variety of languages and formats.
- The use of physically accessible venues and websites.
- Staff awareness of diversity and competence to respond to diversity.
- Checklists of steps to be taken to accommodate diversity.
- Networking by relevant institutions with NGOs representing different groups.
- Formal procedures to engage with complainants to assess their needs and how best to respond to them.

8.5 Beyond the individual case

Two of the elements for access to justice identified for this research go beyond the individual case. These are legal certainty and culture of rights.

8.5.1 Legal certainty

Two hypotheses were developed in relation to this ninth element for access to justice: legal certainty.

The first hypothesis is that enforcement models beyond the individual rights strategy enhance access to justice.

The second hypothesis is that uncertainty among complainants about the possible outcome of a case is a factor in under-reporting.

The first hypothesis is supported in the field research. A supporting hypothesis emerges from the field research that class actions are valuable in enabling access to justice.

The second hypothesis stems more from the literature review rather than being supported in the field research.

Strategic litigation is reported by equality bodies and intermediaries as a means of enhancing legal certainty by securing legal precedents. Strategic litigation was one criterion for deciding which cases to support for a significant number of promotion-type equality bodies. About 30% of intermediaries interviewed also referred to the use of this criterion – most particularly when free legal advice and assistance is being provided.

More than 80% of the particular sample of complainants interviewed would have wished to lodge their complaints as part of a class action. The rationale given referred to the additional power, strength and impact of such an approach, to the potential for such cases to encourage others to be active against discrimination and to alleviate the fears in taking a case on your own. Intermediaries in four countries called for the introduction of legal provisions to allow for class actions to be taken in cases of discrimination.

Obstacles to access to justice which were identified in relation to this element of legal certainty were:

- The absence of legal provisions to allow for class actions to be taken.
- A lack of information about case law made available to the public.

Enabling factors for access to justice which were identified in relation to this element of legal certainty were:

- Strategic litigation used as a tool to establish legal precedents.
- Publication of case law.

8.5.2 Culture of rights

One hypothesis was developed in relation to this tenth element for access to justice: culture of rights. This hypothesis is that a culture of rights within the general population stimulates and encourages people to report incidents of discrimination. This hypothesis is supported in the field research.

Family and friends were identified by the complainants in the particular sample interviewed as most supportive of their decision to take a case, with work colleagues being identified as less supportive. About 80% of complainants interviewed said that society did ‘not at all’ or ‘not entirely’ expect people who have experienced discrimination to take action in response to this. In almost all eight countries covered in the research intermediaries described the political

and social climate as hostile towards combating discrimination and towards certain groups experiencing discrimination.

Promotion-type equality bodies tended to have a strategy for supporting a positive attitude to equality and rights within the general public. These equality bodies tended to use brochures, websites, awareness campaigns, media presence and training workshops. Some 75% of intermediaries also have strategies to promote a positive attitude to equality and rights within the general public. Intermediaries tended to use the internet, social media, mass media, public campaigns and workshops.

Obstacles to access to justice which were identified in relation to this element of culture of rights were:

- The failure of public bodies to serve as role models of good practice in promoting equality and combating discrimination.
- Political hostility to combating discrimination and to certain groups.
- A failure by equality bodies to distinguish between strategies to inform potential complainants of their rights and strategies to support a culture of rights among the general public. This results in limited responses by equality bodies to the challenge to build a culture of rights.
- The lack of resources available to equality bodies and intermediaries for this work of promoting a positive disposition to equality and rights among the general public.
- Hostility to discrimination issues and to minority groups being given expression in media reports.

Enabling factors for access to justice which were identified in relation to this element of culture of rights were:

- The public standing of the relevant institutions.
- Development of a communication strategy.
- Staff skills in public education and communication.
- Use of a variety of channels to communicate with different publics.
- Networking with like-minded organisations to strengthen public relations capacity.
- Use of feedback from those who experience discrimination to inform campaigns.
- Developing cooperation with and supporting a build-up of knowledge within the media.

8.6 Recommendations

Recommendations are directed towards EU Institutions and Member States, as well as equality bodies and “similar entities”.

The recommendations are organised along the four sets of elements for access to justice which have been identified for this research – Access to a dispute

resolution body (right of effective access to a dispute resolution body), Procedures (fair proceedings, timely resolution of dispute, adequate redress, principles of effectiveness and efficiency), Support (legal support and personal support, awareness of rights, and accommodation of diversity), Access to justice beyond the individual case (legal certainty and culture of rights).

8.6.1 Access to a dispute resolution body

It is recommended that the EU institutions:

- Develop, monitor and provide a legal underpinning to standards in relation to the overall architecture, establishment and operation of equality bodies and other institutions involved in the justice system in cases of discrimination.

It is recommended that the public authorities in the Member States

- Review the overall architecture of the justice system for cases of discrimination and modify where necessary to minimise complexity, maximise accessibility, ensure efficiency and effectiveness and secure coverage of all grounds.
- Recognise and support the role of intermediaries, in particular NGOs, in the justice system for cases of discrimination and, in particular, ensure an adequate resourcing of these bodies.
- Support NGOs to develop and implement campaigns to monitor the accessibility of the justice system for cases of discrimination and to seek greater access to justice for those who experience discrimination.

It is recommended that equality bodies:

- Develop a competent and capable regional / local presence for their services and processes, including through supporting, networking and cooperation with local organisations as well as local offices.
- Stimulate the emergence of a strong infrastructure to support access to justice, including enabling a broad range of providers of support to complainants in cases of discrimination, and of providers of information to potential complainants on their rights.
- Lead processes of networking, collaboration and cross-referral between the various organisations and institutions involved in the justice system for cases of discrimination.

8.6.2 Procedures

It is recommended that the EU institutions:

- Progress a further development of equal treatment legislation to include provisions to enhance access to justice, particularly with regard to equality of arms, adequate redress, timely resolution of disputes, legally binding decisions of tribunal-type equality bodies and “similar entities” and powers of inquiry for tribunal-type equality bodies and promotion-type equality bodies.

- Continue and further develop training provision for judges and other legal professionals in relation to equal treatment law, the shift in the burden of proof and issues of discrimination and diversity.

It is recommended that the public authorities in the Member States:
- Review the implementation of equal treatment legislation with a view to enhancing access to justice in cases of discrimination and introduce provisions, where necessary, for the removal of hierarchies between grounds, for tribunal-type equality bodies and "similar entities" to have powers to make legally binding decisions, for tribunal-type equality bodies and promotion-type equality bodies to have powers of inquiry and to ensure adequate remedies and timely resolution of disputes.
- Review training provided to judges and ensure the provisions of equal treatment legislation and awareness-raising about discrimination and diversity are included as part of this training.

It is recommended that equality bodies:
- Ensure the provision of easy-to-understand information on options, duration and possible outcomes in cases of discrimination for to complainants at the outset of the process of taking a case.
- Implement follow-up procedures after cases of discrimination have been decided to ensure that recommendations made in relation to the cases are implemented.

It is recommended that "similar entities":
- Monitor and review the accessibility of their procedures and ensure an adequate provision of information on these to potential complainants.
- Implement follow-up procedures after cases of discrimination have been decided to ensure that recommendations made in relation to the cases are implemented.
- Establish procedures for ensuring an equality of arms in cases of discrimination

8.6.3 Support

It is recommended that the EU institutions:
- Develop and implement initiatives to support knowledge of what is required to support an effective response to the diversity of complainants in the provision of information, in the support provided and in procedures followed in cases of discrimination. These initiatives should enable good practice in accommodating diversity of complainants within justice systems dealing with cases of discrimination.

It is recommended that the public authorities in the Member States:

- Develop a means to assess the resources required by the various institutions in the justice system for cases of discrimination and ensure that adequate resources are made available.
- Stimulate and support the development and formal provision of emotional, personal and moral support to complainants in cases of discrimination.
- Support and enhance the capacity of intermediaries to take initiatives to build awareness among potential complainants of their rights and to provide effective legal and personal support to complainants in cases of discrimination.

It is recommended that equality bodies:
- Establish procedures for assessing and responding to the practical implications of the diversity of complainants in their provision of information, in the legal and personal support they provide and in their procedures.

It is recommended that "similar entities":
- Establish procedures for assessing and responding to the practical implications of the diversity of complainants in their provision of information and in their procedures.

8.6.4 Access to justice beyond the individual case

It is recommended that the EU institutions:
- Develop a process of documentation of case law in the field of non-discrimination and ensure that this case law is accessible and made widely available.

It is recommended that the public authorities in the Member States
- Introduce provisions in legislation, where necessary, for enforceable duties on public bodies to have due regard to equality in carrying out their functions, and for complainants, NGOs and equality bodies to be able to take class actions.
- Include awareness-raising about discrimination and diversity as part of all education provision and provision of vocational training.
- Support and enhance the capacity of intermediaries, in particular NGOs, to develop and implement initiatives to build a culture of rights in the general population.

It is recommended that equality bodies:
- Develop strategic litigation processes to enhance legal certainty alongside dealing with a critical mass of cases sufficient to ensure a culture of compliance among employers and service providers.
- Develop and implement strategic approaches to building a culture of rights and a positive attitude in society to diversity and to those who exercise their rights, including particular initiatives that target key influencers.

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Annex – Glossary of terms used in desk research and questionnaires

1. Access to justice

Effective access to judicial and non-judicial means of obtaining redress.

2. Accommodation of diversity

Adjustments made in response to difference and different needs, in relation to factors such as language, physical impairment or disability, financial resources, age, religious, cultural, ethnic, social, political and educational backgrounds, gender, sex and / or sexual orientation. These needs arise from specific experience (relationship of people with the majority population and the institutions of society), situation (people's economic, political and social status) and identity (the norms and values that shape people's attitudes and behaviours) of groups which experience inequality.

In the broader context of human rights, over time diversity has demanded the development of instruments with a specific focus on women, racial or ethnic origin, migrants and people with disabilities, alongside the undifferentiated approach to the issue of equality and non-discrimination which is commonly applied to human rights.

Diversity and the accommodation of diversity have therefore evolved as a key additional element in international human rights instruments and in human rights law in the field of discrimination. However, the accommodation of diversity is currently only explicitly mentioned in the EU equal treatment directives in relation to the ground of disability.

This focus on accommodation of diversity is also reflected in the importance given to the different situations of complainants in the case law of the Court of Justice of the European Union. For instance, in Case (C-279/93) Finanzamt Köln-Altstadt v Schumacker [1995] ECR 1-225, the Court held that it is settled law that discrimination can arise not only through the application of different rules to comparable situations but also by the application of the same rule to different situations. Different situations can arise due to diversity where different needs, experiences and situations have a bearing on the case.

3. Adequate redress

The situation of the victim is changed for the better or the damage is compensated for in a way which is proportional to the level of damage done. The outcome is satisfactory from the perspective of the victim.

The general principle in international law that victims of human rights violations are entitled to redress for the damage caused to them is safeguarded by a variety of international human rights instruments.[63]

In the European Convention on Human Rights in particular Article 13 on the right to an effective remedy is relevant. It states that:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*[64]

4. Alternative dispute resolution

Alternative dispute resolution (ADR) encompasses all extra-judicial methods for the settlement of disputes, resulting in either binding or non-binding decisions or settlements in civil or commercial matters, conciliation and / or other proceedings. ADR includes forms of mediation, which in some EU countries is subject to formal regulation, while in other countries it is not.

The understanding of what should be understood by ADR differs from country to country. At a European level there have been some initiatives to provide guidance for ADR methods, in particular mediation.[65]

In 2004, there was a proposal for a Directive of the European Parliament and the Council on certain aspects of mediation in civil and commercial matters.[66] It was stated that promoting access to adequate dispute resolution processes for individuals and business, and not just access to the judicial system, is part of a key objective of EU policy.

Furthermore, a European Code of Conduct for Mediators was developed by a group of stakeholders in 2004 with the assistance of the European Commission.[67] In addition, in 2007 the Council of Europe European Commission for the Efficiency of Justice (CEPEJ) issued guidelines for a

[63] Universal Declaration of Human Rights (Article 8); the International Covenant on Civil and Political Rights (Articles 2 (3), 9(5) and 14(6)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the Convention of the Rights of the Child (Article 39); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), the Rome Statute of the International Criminal Court (Article 75) and the Convention for the Protection of All Persons from Enforced Disappearance (Article 24); the American Convention on Human Rights (Articles 25, 63(1), 68 and 68 63(1)); and the African Charter on Human and Peoples' Rights (Article 21(2)).
[64] Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13.
[65] For further information, see: http://ec.europa.eu/civiljustice/adr/adr_int_en.htm
[66] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004PC0718:EN:NOT
[67] Available at: http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm

better implementation of the existing recommendation concerning family mediation and mediation in civil matters.[68]

There has been no further development of common ground in relation to the issue of ADR in Europe. However, additional guidance can be found in the jurisprudence of the ECtHR. It is to be understood that where ADR has been initiated as a consequence of legislation, states must meet the obligations of Article 6 of the ECHR in full. The ECtHR has reaffirmed that, whatever method of dispute resolution is used – compulsory or not – if it is binding on the parties, the essence of the Convention must not be lost.[69]

5. Awareness of rights

Knowledge about the existence of rights, the availability of mechanisms and institutions for the protection or vindication of rights, as well as on how to use these mechanisms and institutions for seeking redress for rights violations.

6. Class action

Claim presented by an interest group or organisation in the general interest of a group, seeking justice beyond the individual case.

7. Complainant

A complainant is the person who experiences discrimination and decides to take action. Complainants in this report are the people who lodged, successfully or not, a complaint about discrimination with an equality body, court or administrative / judicial institution. Non-complainants are people who experienced discrimination, but did not lodge a complaint about their discrimination experience with an equality body, court or administrative / judicial institution.

8. Culture of rights

Culture within the general population which is aware of discrimination and inequality and is supportive of equality and the case for a more equal society, diversity and the different groups which make up society, rights and the importance of people exercising rights, and equality legislation and the institutions established to implement this legislation.

9. Defendant

[68] Available at: http://ec.europa.eu/civiljustice/adr/adr_int_en.htm

[69] Schiavetta, S. (2004) 'The relationship between e-ADR and Article 6 of the European Convention of Human Rights pursuant to the case law of the European Court of Human Rights, Chapter 5, Conclusions' in *Electronic law journal*. Last accessed: 29 April 2011 via: www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_1/schiavetta/

The defendant in this report is the institution or individual at whom the complaint is directed and who is (allegedly) the perpetrator(s) of the discrimination which is the subject of the complaint and is the defendant in the procedures before an equality body, court or administrative / judicial institution.

10. Discrimination

This study relates to the following grounds of discrimination: gender, race or ethnic origin, religion or belief, disability, age or sexual orientation.

'Direct discrimination' shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on one of the grounds of discrimination.

'Indirect discrimination' shall be taken to occur where an apparently neutral provision, criterion or practice would, based on one of the grounds of discrimination, 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.[70]

11. Efficiency and effectiveness

The issue of efficiency has been addressed by the Committee of Ministers of the Council of Europe and defined as "...the delivery of quality decisions within a reasonable time following a fair consideration of issues".[71] In the same recommendation the Committee stated that,

> *"The efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 [right to fair trial] of the [European] Convention [on Human Rights], legal certainty and public confidence in the rule of law."*

This thereby clearly identifies efficiency as a fair trial principle. The Committee also linked the principle of efficiency to the availability of resources:

> *"The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality."*[72]

[70] See Council Directive 2000/43/EC, OJ 2000 L 180, Article 2.
[71] Recommendation CM/Rec (2010) 12 of the Council of Europe Committee of Ministers of 17 November 2010, Chapter V .31, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1707137&Site=COE
[72] Recommendation CM/Rec (2010) 12 of the Council of Europe Committee of Ministers of 17 November 2010, Chapter V .31, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1707137&Site=COE

The principle of effectiveness means, according to the Court of Justice of the European Union (CJEU), that the application of national procedural rules cannot render the exercise of rights conferred by international human rights in European Union law virtually impossible or excessively difficult.[73]

In an opinion from the Council of Europe Commissioner for Human Rights on national structures for promoting equality, the issue of effectiveness is approached differently and relates to the impact of the national structures for promoting equality.[74]

Yet another approach was used for the 'Study on equality bodies', where effectiveness was defined from the perspective of the complainant: "Reaching solutions as close as possible to the aims defined" was identified as an indicator for effectiveness. [75]

Here we refer to effectiveness in the sense intended by the CJEU: application of national procedural rules should not render the exercise of the right of an individual virtually impossible or excessively difficult.

12. Equality of arms

Balance of powers and (procedural) equality between the conflicting parties.

Some explanation regarding the notion of 'equality of arms' has been set out by the UN Human Rights Committee, which stated that:

> *"The notion of equality of arms is an essential feature of a fair trial, and is an expression of the balance that must exist 'between the prosecution and the defence'."*[76]

The European Court of Human Rights has explained the principle of 'quality of arms' as "one of the features of the wider concept of a fair trial" as understood by Article 6(1) of the European Convention, which implies that "each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent". In this context, "Importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice".[77]

13. Fair proceedings

[73] FRA (2011), p. 18, citing various decisions.
[74] https://wcd.coe.int/wcd/ViewDoc.jsp?id=1761031#P256_40626
[75] Ammer *et al* (2010).
[76] Communication No. 307/1988, J. Campbell v. Jamaica (Views adopted on 24 March 1993), in UN doc. GAOR, A/48/40 (vol. II), p. 44, para. 6.4.
[77] ECtHR, Bulut v. Austria, judgment of 22 February 1996, Reports 1996-II, p. 359, para. 47.

Based on the principles of a fair trial, and supplemented by the specific requirements for discrimination cases, fair proceedings respect the principle of equality of arms, provide for a sharing of the burden of proof and allow for appeal against decisions made.

14. Fair trial
The principles of a fair trial include the right to be heard, ensuring equality of arms, independence of the judge and of the tribunal, access to legal aid and timely resolution of disputes.

15. Good practices
Laws, regulations, policies, procedures or practices which facilitate and / or improve access to justice.

16. Grounds of discrimination
Premises for discrimination; for the purpose of this study we refer to the six grounds specified in the legal basis of the equal treatment directives, Article 19 of the Treaty on the Functioning of the European Union (TFEU): gender, age, racial or ethnic origin, religion or belief, disability and sexual orientation.

17. Intermediary
Any public institution, organisation or person which functions as an intermediate link between the complainant / victim and their securing justice, by playing roles in providing information on rights and how to make a claim, providing legal advice and assistance and other support to victims of discrimination, and building a positive attitude to equality and rights to non-discrimination.

Potential intermediaries are NGOs, victim support organisations, trade unions and lawyers and other professionals (e.g. mediator, company counsellor etc.).

18. Legal advice and assistance
Support to victims / complainants in bringing forward a case; legal advice services as well as support in the form of representation and securing access to court and / or tribunal systems (legal assistance).

19. Legal aid
Financial means / resources made available to support victims in covering the economic costs of seeking access to justice (e.g. costs of pre-legal advice, representation in court / lawyers' fees, as well as the cost of the legal proceedings themselves).

Direct forms of legal aid are: free legal advice services, the appointment of a lawyer by the state or free legal insurance, or any other type of legal assistance provided free of charge by the state.

20. Legal certainty
The principle of legal certainty encompasses clarity and predictability of, and the absence of gaps in, the law and its interpretation.

21. Multiple / intersectional discrimination
Discrimination simultaneously on more than one ground or discrimination on a combination of grounds.

22. Obstacles (barriers)
Anything making access to justice difficult; impediments or barriers related to or as a result of availability of support measures, lack of trust, procedures, resources / cost risks, level of independence, competency / powers, quality of information, low levels of awareness, etc.

23. Principle of non-discrimination
Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.[78]

24. Promotion-type equality body
These equality bodies, established by law under equal treatment legislation, spend the bulk of their time and resources on a broader mix of activities that encompass supporting good practice in organisations, raising awareness of rights, developing a knowledge base on equality and non-discrimination and providing legal advice and assistance to individual victims of discrimination.[79]

25. Strategic litigation
Strategic litigation uses the justice system to create social change. By filing lawsuits it aims to create lasting effects beyond the individual case. The chief focus is law or public policy reform rather than the individual client's interest (as is the case in ordinary litigation), although these may both be an objective.[80]

26. "Similar entities"

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[78] See General Comment No. 18, in United Nations Compilation of General Comments, p. 134, para. 1
[79] See Ammer et al (2010).
[80] ERRC/Interights/MPG (2004).
www.migpolgroup.com/public/docs/57.StrategicLitigationofRaceDiscriminationinEurope-fromPrinciplestoPractice_2004.pdf

"Similar entities" are for the purpose of this report administrative / judicial institutions which deal with cases of discrimination: they can be approached by complainants and can bring the case to a formal conclusion. These institutions include national human rights institutions, ombudsmen, labour inspectorates and specialised tribunals. In bringing discrimination cases to a conclusion these institutions function as "similar entities" to predominantly tribunal-type equality bodies. Predominantly tribunal-type equality bodies could fall within this category but, for the purpose of this research, they are dealt with as a separate category.

27. System of protection
Structure of laws, institutions (consecutive and / or parallel), procedures, alternatives and interaction.

28. Timely resolution of disputes
Disputes are tackled with and solved within an adequate and appropriate period of time.

29. Tribunal-type equality body
These equality bodies, established by statute under equal treatment legislation, spend the bulk of their time and resources hearing, investigating and deciding on individual instances of discrimination brought before them.

30. Under-reporting
Discrepancy between actual and reported experiences and instances of discrimination, generally resulting from: inability and / or unwillingness of complainants to file a case, inadequacy of support infrastructure or inaccessibility of legal system, or hostile societal context within which to bring forward a complaint.

31. Victimisation or retaliation
Any adverse treatment or adverse consequence for a victim of discrimination as a reaction to making a complaint about it or due to being involved in proceedings aimed at enforcing compliance with the principle of equal treatment.[81]

32. Vulnerable groups
Groups at (increased) risk of discrimination or for which extra obstacles exist to lodging a complaint against discrimination.

[81] See, among others, Council Directive 2000/43/EC, OJ 2000 L 180, Article 9.