

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

EXAMPLES OF GOOD PRACTICES:  
Specialised bodies to combat  
racism, xenophobia, antisemitism  
and intolerance at national level

January 2006



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## INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) is a mechanism established by the first Summit of Heads of State and Government of the member States of the Council of Europe, held in Vienna on 9 October 1993.

The European Conference against Racism, held in Strasbourg in October 2000, called for the strengthening of ECRI's action. On 13 June 2002, the Committee of Ministers adopted a new Statute for ECRI, consolidating its role as an independent human rights monitoring body on issues related to racism and racial discrimination. The third Summit of Heads of State and Government of the member States of the Council of Europe, held on 16 -17 May 2005 in Warsaw, decided to further intensify the fight against racism, discrimination and every form of intolerance, by giving ECRI the means to carry out its work, in close co-operation with national authorities and institutions as well as civil society.

ECRI's task is to combat racism, xenophobia, antisemitism and intolerance at the level of greater Europe and from the perspective of the protection of human rights. ECRI's action covers all necessary measures to combat violence, discrimination and prejudice faced by persons or groups of persons, notably on grounds of "race", colour, language, religion, nationality and national or ethnic origin.

ECRI has long been convinced that specialised commissions, ombudsmen or other institutions, whose mandates cover racism and racial discrimination, play an extremely important role in combating racism and intolerance at national level. ECRI has therefore always promoted the creation of such bodies in countries where they do not exist or their strengthening in countries where they exist already, as reflected in its country-specific reports and in its General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level (see Appendix I).

In its General Policy Recommendation N° 2, ECRI expresses its profound conviction that national specialised bodies can make a very concrete contribution to protecting individuals and groups against racism and racial discrimination, through, *inter alia*: helping to ensure the full implementation of national legislation and policies intended to combat racism and racial discrimination; raising public awareness of these issues; protecting and promoting the rights of individuals belonging to minority groups and providing advice and information to national authorities. This Recommendation sets out basic principles concerning what the statute, form, functions, responsibility, administration and functioning of such bodies could be, with an emphasis on independence and accessibility, to serve as guidelines and a source of inspiration to member States.

ECRI's General Policy Recommendation N° 2 takes into account and is in harmony with other Council of Europe work in this field. The Council of Europe attaches great importance to the establishment and promotion of effective independent national human rights institutions and Ombudsmen to promote and protect human rights, as reflected in the Recommendations and Resolutions adopted on this subject and the regular round tables organised to bring together representatives of such bodies.

General Policy Recommendation N° 2 also takes into account the "Paris Principles" – internationally accepted minimum standards concerning the status and functioning of national institutions for the protection and promotion of human rights, drawn up at the first International Meeting of the National Institutions for the Promotion and Protection of

Human Rights, held in Paris in October 1991, and subsequently endorsed by the United Nations Commission on Human Rights and the General Assembly.

The European Conference against Racism, organised by the Council of Europe in 2000, underlined the essential contribution of independent specialised bodies at national level in promoting equal treatment irrespective of racial or ethnic origin or religious background and called upon participating States to establish such independent specialised bodies, or, in countries where these exist, review and reinforce their effectiveness, while providing them with the adequate financial resources, competence and capacity to ensure their effective functioning. The Declaration and Programme of Action adopted by the United Nations World Conference against Racism, held in Durban in 2001, also recognised the important role that independent national human rights institutions can play in the fight against racism and intolerance, and urged States to establish or strengthen such institutions and to provide them with the necessary competence, capacity and resources to combat racism and racial discrimination.

At European Union level, efforts have also been undertaken to strengthen the role of national specialised bodies. The European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin requests member States to designate bodies to promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, emphasising the need for national specialised bodies whose key role is to provide assistance to victims of discrimination.

ECRI's most recent General Policy Recommendation, General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination (adopted on 13 December 2002), reiterates in its Chapter V on "Common Provisions" the important role of national specialised bodies in ensuring the implementation of national legislation to combat racism and racial discrimination. This Recommendation states that national laws should provide for the establishment of independent specialised bodies to combat racism and racial discrimination at national level and sets out what the competences of such a body should be. (See Appendix II).

More recently, ECRI has also started to organise regular seminars with national specialised bodies in order to strengthen its working relations with them and to provide them with a platform for the exchange of good practices on important issues such as mediation and other forms of dispute resolution, ethnic data collection and how best to implement legislation to combat racism and racial discrimination.

This publication contains short descriptions of some specialised bodies of this type which already exist at national level, including their role, functions and legal status. It may serve as a source of ideas and inspiration for those involved in promoting the creation or strengthening of such bodies in the various member States of the Council of Europe.

ECRI stresses that this publication covers only those bodies which are **specialised, or have particular expertise**, in dealing with the problems of racism and racial discrimination. Many more general human rights commissions or similar bodies exist in the various member States of the Council of Europe which also have competence in this field.

### **Background**

The legislative basis of Austria's Equal Treatment Commission is the amended Equal Treatment Act, BGBl. Nr. 66/2004, which came into force on 1 July 2004. The specialised bodies provided for in this legal act are the Equal Treatment Commission and the Office for Equal Opportunities. The chairperson of the Equal Treatment Commission and his/her substitute are independent in their functions.

The Equal Treatment Act covers provisions against discrimination on the grounds of racial or ethnic origin in employment and occupation, such as:

- access to employment and self-employment, including contracts of employment;
- establishing rates and conditions of remuneration;
- guaranteeing voluntary social contributions where there is no remuneration;
- measures with regard to training, further education and retraining;
- other working conditions;
- termination of employment;
- vocational training, training, further education and life-long learning outside employment, membership of and involvement in an organisation of workers, employers or other professionals, including the benefits provided for by such organisations,

and in areas other than employment and occupation, such as:

- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

### **Structure and internal organisation of the specialised body**

From 1979, the Equal Treatment Commission dealt with gender discrimination in employment and occupation, until its mandate was extended on 1 July 2004. It now comprises three sections, each covering a different area. The first section is responsible for the equal treatment of women and men in employment and occupation, the second for equal treatment irrespective of racial or ethnic origin, religion or belief, age or sexual orientation in employment and occupation and the third for equal treatment irrespective of racial or ethnic origin in areas other than employment and occupation. The Equal Treatment Commission is situated at the Federal Ministry for Health and Women's Issues and consists of representatives of the social partners (organisations of workers

and employers) and of ministries. The chairperson of the Commission has to be a civil servant.

### **Functions of the Equal Treatment Commission**

The main tasks of the Equal Treatment Commission in the areas mentioned above are to draw up expert opinions, surveys and recommendations. The Commission is mandated to propose expert opinions on general questions and examine the existence of discrimination in individual cases. The Equal Treatment Commission is a conciliation board and it may help parties to achieve an agreement as rapidly and unbureaucratically as possible. However, its rulings have no binding effect on the courts.

### **Complaints procedure**

The Equal Treatment Commission deals with all issues concerning discrimination according to the Equal Treatment Act. The law provides for two different procedures, according to the nature of the issue:

With regard to antidiscrimination legislation and policy, the Commission has to publish its findings on questions of violations of the Equal Treatment Act. This concerns in particular rulings on collective acts of law (collective agreements, company agreements), when these are requested by one of the interest groups represented in the Commission or by the Office for Equal Opportunities.

With regard to individual cases, the Commission has to consider, on the request of an employee, an employer, a works' council or one of the interest groups represented in the Commission, whether there is a violation of the Equal Treatment Act or not. If the Commission concludes in an individual case that there is a violation of the Equal Treatment Act, it provides the employer with a written suggestion for achieving equal treatment and calls on it to end discrimination. In the case of non-compliance with this request, any of the interest groups represented in the Commission can take legal action based on the Equal Treatment Act.

### **Contact details:**

#### **Equal Treatment Commission**

#### ***Gleichbehandlungskommission***

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### **Background**

The "Gleichbehandlungsanwaltschaft" (Office for Equal Opportunities) was established in 1991 to assist the government in its duty to implement the right to equal treatment between women and men. Its legal basis is to be found in the Equal Treatment Act.

In 2005 the mandate of the Office for Equal Opportunities was extended through the implementation of the European Council Directives 2000/43/EC and 2000/78/EC. Since then the mandate of the institution does not only cover equal treatment on the ground of gender, but also on the grounds of ethnic origin, religion, belief, age and sexual orientation. The new functions are carried out by the Ombudsman for Ethnic Equality in Goods and Services and the Ombudsman for Equality in Employment.

Although the Office for Equal Opportunities is part of the Ministry for Health and Women, it functions independently.

### **Internal Organisation**

The Office for Equal Opportunities consists of three sections with different fields of competence. Namely the Ombudsman for Equal Opportunities for Women and Men in Employment, which also coordinates the work of the institution, the Ombudsman for Equality in Employment on the grounds of ethnic origin, religion or belief, age and sexual orientation and the Ombudsman for Ethnic Equality in Goods and Services.

### **Mandate**

The Office for Equal Opportunities is mandated to carry out the following tasks:

- assist and provide information and advice in cases of suspected discrimination;
- accompany and represent victims of discrimination during the examination of cases by the Equal Treatment Commission;
- work on raising public awareness and shaping opinions;
- inform the public through lectures and other educational means;
- undertake independent enquiries;
- publish independent reports;
- make recommendations concerning the issue of discrimination.

## **Main Activity**

The main activities of the Office for Equal Opportunities include counselling and supporting persons who feel discriminated against within the scope of the Equal Treatment Act and informing the public about discrimination, especially about the Equal Treatment Act. Therefore the Office provides personal and confidential legal counselling free of charge.

In cases where an intervention is requested, the Ombudsman has the competence to ask the person(s) suspected to have violated the law to provide information about the case.

Moreover, in cases of discrimination the Ombudsman can establish contact with the perpetrator(s) and the victim(s) and mediate the case. S/he can also support problem solving initiatives undertaken by the parties themselves or submit the case to the Equal Treatment Commission. The Ombudsman accompanies and represents the victims of discrimination during the examination of cases by the Equal Treatment Commission.

### **Contact details:**

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#### **Ombudsman for Ethnic Equality in Goods and Services *Anwältin für die Gleichbehandlung ohne Unterschied der ethnischen Zugehörigkeit in sonstigen Bereichen***

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## CENTRE FOR EQUAL OPPORTUNITIES AND THE FIGHT AGAINST RACISM, BELGIUM

### Background

This Centre was set up by law in 1993 with Parliament and Government backing and following proposals by the Royal Commissariat for Immigration Policy (*Commissariat royal à la politique des immigrés*).

Its aim is to promote equality and to combat all forms of discrimination, exclusion, restriction or preference based on race, colour, descent, origin or nationality. The Centre is of a judicial character and carries out its functions impartially and independently. According to the law on combating discrimination of 25 February 2003, the duties of the Centre have been extended to cover other grounds of discrimination such as marital status, sexual orientation, birth, fortune, age, religion or belief, current or future state of health, a disability or other physical characteristic.

### Mandate

Its mandate, as set out in the law of 15 February 1993, is defined as follows:



- to carry out all studies and research necessary for the performance of its functions;
- to address opinions and recommendations to the public authorities for the improvement of the regulations in force in this field;
- to address recommendations to the public authorities and to private individuals and institutions based on the results of the studies and research it has carried out;
- to help any person consulting the Centre on his/her rights and obligations. This assistance should help the person to obtain information and advice on how to ensure his/her rights are respected;
- to initiate legal proceedings in cases relating to the application of the following laws:
  - the law of 30 July 1981 concerning the prohibition of certain acts motivated by racism or xenophobia;
  - the law of 23 March 1995 punishing the denial, minimisation, justification or approval of the genocide perpetrated by the German National Socialist Regime during the Second World War;
  - the law of 25 February 2003 on combating discrimination;
- to give support and guidance to institutions, organisations and those providing legal assistance to victims of discrimination;
- to produce and make available any documentation relevant to its work;

- to carry out any other tasks entrusted to it by any public authority.

The law setting up the Centre specifies that the Ministers and Secretaries of State concerned should provide the Centre with all necessary information for the fulfilment of its tasks. In addition, it can request the opinion of the Communities, Regions, local and provincial authorities and any other public body on matters relating to its tasks.

The Centre is also required to submit an annual report on its activities to the Prime Minister, who must transmit a copy to the Chamber of Representatives and the Senate in Parliament and ensure its publication.

The Centre is also responsible for producing the report presented every two years to the Committee for the Elimination of Racial Discrimination of the United Nations, in accordance with Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. This report summarises the legislative, judicial, administrative and other measures adopted for the fulfilment of the dispositions of this Convention.

## Activities

The Centre's main activities are listed below:

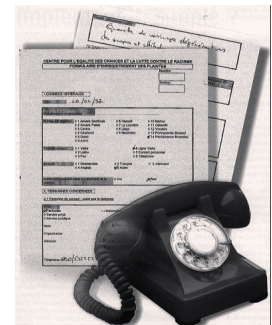
### ➤ **Creation of local networks**

The Centre has set up a unit whose task is to establish local groups comprising all local bodies concerned (local authorities, associations, neighbourhood committees etc.). This network aims to support the actions of such associations and to encourage contacts and mutual co-operation. In order to create as wide a network as possible, the unit initiates contacts with associations involved in the fight against racism and discrimination in order to learn from their experience and local knowledge and to carry out joint ventures.

Local field offices dealing with local authorities, associations, and neighbourhood committees, have been set up to evaluate and anticipate problems at the local level.

### ➤ **Information service for the general public**

The Centre places great importance on contacts with the general public. It has established a freephone number which provides information to the public about the 1981 Law on the suppression of racism and xenophobia and the law of 25 February 2003 on combating discrimination, answers any questions concerning these subjects and directs people to the appropriate service for help. This form of dialogue with the public also provides an important source of information for the Centre.



➤ **Monitoring the situation**

On the basis of information collected through contacts with local organisations and with the public, the Centre can:

- form a complete and clear picture of the development of the situation in respect to racism and discrimination;
- determine the most appropriate actions for responding to the problems highlighted (e.g. surveys, local interventions, conciliation);
- have recourse to the law as and when necessary.

➤ **Monitoring legislation**

The Centre monitors the enforcement of certain legislative provisions, in particular the Law of 30 July 1981 on the suppression of racially-motivated acts and the law of 25 February 2003 on combating discrimination. It carries out studies and surveys on the effectiveness of the law and highlights any loopholes.

➤ **Mediation and legal assistance**

The Centre is competent to assist associations or individuals who are victims or witnesses of racist acts or racial discrimination. Social workers and lawyers are available to give information, register complaints, analyse the situation, direct people to other services, act as mediator or consider possible legal recourse.

➤ **Awareness-raising and training**

The Centre runs a project aimed at creating a dialogue and mutual understanding between the immigrant population and the personnel of law and order institutions, penitentiaries, civil servants, and firemen. The Centre also organises education programmes in schools or training centres for personnel entering these professions in close collaboration with instructors and teachers.

In addition the Centre organises wide ranging public awareness-raising campaigns, for example about discrimination in recruitment.

➤ **Promotion of equal opportunities**

In view of the growing popularity of extremist xenophobic movements, the Centre is carrying out studies into situations of poverty and precariousness and how this relates to racist and xenophobic feelings in the community. It pays particular attention to the poorer areas of large cities.

➤ **Promoting the integration of persons of foreign origin**

The Centre continues and extends the activities previously carried out by the Royal Commissariat on Immigration Policy, particularly in the fields of employment, housing, education, youth, health, the situation of immigrant women, the European dimension and co-operation and development.

➤ **Observatory on immigration policies**

With regard to migration, the Centre is responsible for assessing the nature and size of migration flows and for formulating proposals for certain specific problems. Such proposals are generally based on concrete cases calling for urgent structural solutions.

➤ **Specific tasks entrusted to the Centre by the public authorities**

The public authorities have entrusted the Centre with several specific tasks, for which it performs a role of co-ordination, technical assistance and follow-up, namely the co-ordination for combating international traffic in humans and the management of the “*Fonds d'Impulsion*” (“Impulse Fund”), an aspect of immigration policy that supports projects aimed at reinforcing the integration of persons of immigrant origin into Belgian society.

➤ **Documentation service**

The Centre includes a documentation service specialising in the field of racism and immigration policy, which is accessible to associations, local authorities and the general public (teachers, students, researchers).

**Contact details:**

**Centre for Equal Opportunities and the Fight against Racism (CECLR)**  
***Le Centre pour l'égalité des chances et la lutte contre le racisme (CECLR)***

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### **Background**

The Office of the Commissioner for Administration (Ombudsman) was set up on 18 January 1991 under the Commissioner of Administration Law.

### **Mandate**

The Ombudsman is an independent public official who exercises control over decisions and actions taken by public administrative authorities.

The Commissioner for Administration or Ombudsman is appointed by the President of the Republic on the recommendation of the Council of Ministers and with the prior consent of a majority of Members of Parliament. The Ombudsman serves for a six-year term and may be re-appointed.

In April 2003, the Government of Cyprus decided to designate the Ombudsman as the independent national body to combat discrimination. Since 1 May 2004, according to Law 42(I)/2004, the Ombudsman's mandate has been extended to combat the forms of discrimination referred to in European Council Directives 2000/43/EC and 2000/78/EC, as well as other forms of discrimination forbidden by the Constitution or other national laws, such as Law 205(I) 2002 forbidding discrimination between men and women in employment, and to cover discrimination in the private sector.

The Ombudsman is responsible for the promotion of equal treatment of all persons in relation to discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation and gender. These grounds are covered in the field of employment. Racial and ethnic origin is also covered in the fields of social welfare, medical treatment, training and access to goods and services.

The Ombudsman also has the power to investigate complaints of violations of human rights brought against the public sector and its officers. The Ombudsman produces a report in each case, which may conclude that there has been injury or injustice. If so the report will contain recommendations for reparation to the competent authority involved. If the recommendations are not given effect, the Ombudsman may submit a special report to the Parliament.

### **Internal Organisation**

The Commissioner for Administration is the head of the Body against Discrimination on the basis of racial and ethnic origin (implementing Directive 2000/43) and Head of the Body for Equality (implementing Directive 2000/78).

The Office of the Commissioner for Administration has a staff of 33 people, comprising 20 officers and 13 administrative staff.

## **Activities**

The Ombudsman's activities include the following:

- investigating complaints about discrimination;
- conducting independent surveys;
- providing assistance to victims of discrimination;
- publishing reports and making recommendations on issues relating to discrimination;
- ensuring the compliance of individuals and organisations in both the private and public sectors with anti-discrimination legislation;
- imposing fines on individuals/organisations who do not comply with the Ombudsman's recommendations.

## **Contact details:**

### **Commissioner for Administration**

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### Background

The Danish Institute for Human Rights (DIHR) was established on 1 January 2003, by Act No. 411 of 6 June 2002 on the Establishment of a Centre for International Studies and Human Rights. Prior to that date, the DIHR was called the Danish Centre for Human Rights, established by a parliamentary decision of 5 May 1987.

### Mandate

The DIHR is an independent national human rights institution in accordance with the UN Paris Principles, with a mandate to promote and protect human rights in Denmark. Furthermore, the DIHR is a specialised equality body and is entrusted with the specific task of safeguarding effective protection against discrimination and the promotion of equal treatment.

In accordance with Act No. 374 of May 2003 on Equal Treatment Irrespective of Ethnic Origin, the DIHR is mandated to provide independent assistance to victims of discrimination on the grounds of race and ethnic origin, to conduct independent surveys concerning discrimination and to make recommendations on issues relating to equal treatment on the above-mentioned grounds.

### Internal organisation

The DIHR is comprised of a National Department, a Research Department, an International Department and an Information Department. Activities in Denmark are planned and carried out primarily by three teams in the National Department: namely the Anti-discrimination Team, the Diversity Team and the Rights and Democracy Team.

### Activities

- **Monitoring:** the DIHR monitors Denmark's implementation of equal treatment and non-discrimination principles and compiles different types of reports, such as the annual Status Report on Human Rights in Denmark, supplementary reports to the UN treaty bodies and reports submitted to different EU agencies, the Council of Europe and the OSCE.
- **Information and education:** the DIHR provides education and training activities in human rights and equal treatment targeting civil society, NGOs and public authorities. Furthermore, the DIHR provides information through an interactive website: [www.menneskeret.dk](http://www.menneskeret.dk)
- **Investigation and decision making:** on an annual basis the DIHR conducts several studies, research and development projects on different issues in the field of discrimination and equal treatment. Furthermore, the DIHR gives

advice to the Government and Parliament on new or pending legislation and policies.

### **Complaints Committee on Ethnic Equal Treatment:**

The Complaints Committee for Ethnic Equal Treatment is responsible for addressing complaints about discrimination concerning violations of the prohibition of direct and indirect differential treatment, harassment and instructions to differential treatment on the grounds of race and ethnic origin. The Complaints Committee can only express non-binding opinions on issues related to the labour market, social protection, including social security and healthcare; social advantages; education; access to and supply of good and services which are available to the public, including housing; and membership of and involvement in an organisation or association, including the benefits provided for by such organisations or associations. The Complaints Committee can recommend that legal aid should be granted in cases where the Committee deems that there has been a violation of the prohibition of differential treatment on the grounds of race and ethnic origin.

### **Contact Details**

#### **The Danish Institute for Human Rights Institut for Menneskerettigheder**

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### **Background**

The Chancellor of Justice is an independent public official, who supervises the guaranteeing of constitutional rights and freedoms of individuals by state agencies and reviews the conformity of legislative acts with the Constitution and the laws.

The institution of the Chancellor of Justice was established in 1992, when the Constitution was adopted by referendum. The Constitution and the Chancellor of Justice Act form the legal bases of the Chancellor of Justice's activities. The Chancellor of Justice is appointed by the Riigikogu (the Parliament) at the proposal of the President of the Republic, for a term of seven years. Once a year, the Chancellor of Justice presents an overview of his activities to the parliament.

### **Mandate and activities**

#### **a) Review of the constitutionality of legal acts**

According to the Constitution, the Chancellor of Justice is above all a public official, independent in his/her activities, who reviews the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws. If the Chancellor of Justice finds that legislation passed by the legislative or executive powers or by a local government is in conflict with the Constitution or a higher level law, he/she shall propose to the body which passed the legislation to bring the legislation into conformity with the applicable law. If the body which passed the legislation does not follow the Chancellor of Justice's proposal, the latter can file an application to the Constitutional Review Chamber of the Supreme Court to declare the legislation invalid.

#### **b) Ombudsman proceedings**

According to the Chancellor of Justice Act of 1999, the Chancellor of Justice also carries out the functions of an ombudsman. In this context, the Chancellor of Justice checks whether a government agency observes the fundamental rights and freedoms of individuals and good administrative practice. The Riigikogu (the Parliament) extended the functions of the Chancellor of Justice with the amendment to the Act which came into effect on 1 January 2004, which brought local governments, legal persons governed by public law and persons governed by private law who perform public duties under the control of the Chancellor of Justice. Anyone who feels that he has been treated unlawfully or unfairly – contrary to good administrative practice – has the right of recourse to the Chancellor of Justice. Upon receiving the respective petition, the Chancellor of Justice conducts a thorough and independent investigation, in the course of which s/he can gather information and documents related to the matter. At the end of the investigation, the

Chancellor of Justice draws up a position paper, in which s/he can make recommendations to the offending agency for the elimination of the violation. Although such recommendations are not legally binding, the memoranda of the Chancellor of Justice are almost always observed.

The Chancellor of Justice also has the right to initiate proceedings if he/she regards it necessary in order to secure the protection of the rights of individuals or to guarantee the constitutional order.

**c) Power to initiate disciplinary proceedings**

The Chancellor of Justice also has the power to initiate disciplinary proceedings against a judge.

**d) Conciliation proceedings in discrimination disputes**

From January 2004 the field of competence of the Chancellor of Justice was extended, giving her/him the power to resolve discrimination disputes between private parties. Accordingly, anyone has the right of recourse to the Chancellor of Justice for conciliation proceedings if he or she finds that a private person has discriminated against him or her on the basis of sex, race, nationality (ethnic origin), colour, language, origin, religion or religious beliefs, political or other opinion, property of social status, age, disability, sexual orientation or other attributes specified by law. Conciliation proceedings are voluntary and confidential. Either party can terminate it at any time. However, the agreement approved by the Chancellor of Justice is binding for the parties of the proceedings.

**e) Application of the principles of equality and equal treatment**

The Chancellor of Justice Act also carries out the following activities to ensure the application of the principles of equality and equal treatment:

- i. analyses the effect of the implementation of legislation on the general public;
- ii. informs the Riigikogu (the Parliament), the Government of the Republic, governmental agencies, local government agencies and bodies, other interested persons and the public about the application of the principles of equality and equal treatment;
- iii. makes proposals for the amendment of legislation to the Riigikogu, the Government of the Republic, governmental agencies, local government agencies, local government bodies and employers;
- iv. promotes, in the interests of adherence to the principles of equality and equal treatment, the development of national and international co-operation between individuals, legal persons and agencies;
- v. promotes, in co-operation with others, the principles of equality and equal treatment.

## Co-operation with civil society

The Chancellor of Justice has also greatly welcomed co-operation with civil society in raising awareness about the principles of non-discrimination and equal treatment. For example, in 2004 a round table meeting with the representatives of different NGOs was organised. Representatives of women's organisations, people with disabilities, the gay and lesbian union and national minorities participated in the meeting. The purpose of the meeting was to present the functions of the Chancellor of Justice, particularly that of conciliation in discrimination disputes, and to exchange information about the issues related to the application of the principle of non-discrimination in practice.

## Internal Organisation of the Office of the Chancellor of Justice

The Office of the Chancellor of Justice comprises three departments, whose competences are divided according to the policy areas of the different ministries. In addition, a general department carries out the administrative functions of the office. The questions concerning equal treatment and discrimination complaints can fall within the competences of any of the departments depending on the subject matter, but are mainly handled by the first (employment relations and gender equality) and third department (general anti-discrimination issues). The third department also deals with complaints related to the legal status of resident, because it also deals with all matters which according to law are the responsibility of the Ministry of Internal Affairs and its subordinate agencies.

### Contact details:

#### Office of the Chancellor of Justice

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### Background

The Office of the Ombudsman for Minorities is an independent authority established by law on 1 September 2001, replacing the previous Office of the Ombudsman for Foreigners. The Office of the Ombudsman for Minorities works in connection with the Ministry of Labour and employs six senior officers and a secretary.

### Mandate

The main task of the Ombudsman for Minorities is to promote the status and legal protection of ethnic minorities and foreigners; the principles of equality and non-discrimination and good ethnic relations in Finland.

The jurisdiction of the Ombudsman only covers the supervision of *ethnic* discrimination: it does *not* cover discrimination based on language, sexual orientation, ideology or disability, which are the responsibility of other authorities in Finland.

The year 2004 brought forth legislative amendments: namely the new Equality Act and the overall revision of the Aliens Act. The Equality Act clarified the division of duties between the different authorities, entrusted the Ombudsman with a new, wide-ranging monitoring duty and essentially consolidated action against discrimination, adding to the possibilities of intervening in discrimination directed against ethnic minorities and to promoting equality in general. The Equality Act includes the shared burden of proof and makes it possible to bring cases before the Discrimination Board or courts for investigation, offering significant new possibilities for investigation alongside police investigation.

### Activities

The grounds of discrimination covered by the Ombudsman for Minorities are racial and ethnic origin, which includes both traditional and new ethnic minorities in Finland. The duties of the Ombudsman include:

- promoting good ethnic relations;
- monitoring and improving the status and rights of ethnic minorities, foreigners and immigrants in society and safeguarding their rights;
- monitoring the implementation of equality;
- supervising the prohibition of discrimination according to ethnic origin and implementing the principle of equal treatment regardless of ethnic background;
- taking initiatives, drawing up reports, proposals and recommendations and issuing public statements on discrimination based on ethnicity and the status and rights of foreigners and ethnic minorities in Finland;

- developing co-operation between public authorities and organisations working in the field of combating and preventing ethnic discrimination.

For further information, a copy of the Annual Report 2004 in PDF format can be ordered via e-mail at [vahemmistovaltuutetun.toimisto@mol.fi](mailto:vahemmistovaltuutetun.toimisto@mol.fi)

### **Independent counselling, legal advice and assistance to victims of discrimination**

The Office of the Ombudsman gives information and advice to the general public and the authorities on any matter falling within its mandate. Questions from the public cover a wide range of issues such as perceived discrimination in employment; the availability of social services; the application of the Alien's Act.

The Ombudsman provides independent counselling and advice to victims of discrimination. The Ombudsman can provide both legal advice and assist the victim in reporting the incident to the appropriate authorities. If the Ombudsman considers a complaint as being of major importance for the prevention of discrimination on the grounds of ethnic origin, he can help the victim by providing legal assistance.

#### **Contact details:**

##### **Office of the Ombudsman for Minorities Vähemmistövaltuutetun toimisto**

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**VÄHEMMISTÖVALTUUTETTU**



## **NATIONAL DISCRIMINATION TRIBUNAL, FINLAND**

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### **Background**

The National Discrimination Tribunal of Finland was created and empowered under the Non-Discrimination Act, which came into force on 1 February 2004 in order to implement the Council Directives 2000/43/EC and 2000/78/EC. The National Discrimination Tribunal of Finland was appointed to its duty on 19 February 2004.

### **Mandate**

The National Discrimination Tribunal of Finland supervises the implementation of the principle of equality, jointly with the Ombudsman for Minorities.

The Non-Discrimination Act prohibits discrimination for example on the basis of ethnic or national origin. The Act also prohibits reprisals. Nobody must be disadvantaged or subject to negative consequences as a result of any appeal or other action taken in order to secure equality.

The National Discrimination Tribunal of Finland is a permanent and independent body promoting legal protection. Like the judgments of courts of law, the decisions of the Tribunal have a binding effect. The Government of Finland has appointed the judges of the Tribunal.

The National Discrimination Tribunal of Finland may confirm conciliated settlements between parties or prohibit any continued or repeated behaviour that infringes the prohibition of discrimination or reprisals. The Tribunal may also impose conditional fines to enforce compliance with its decisions, and order payment of fines.

Decisions of the Tribunal may be appealed to an administrative court. The competent administrative court is the one in the judicial district of which the person allegedly discriminated against resides.

The Tribunal may examine cases of discrimination based on ethnic origin, except those involving supervision of the prohibition of discrimination in employment and public service. Recruitment grounds, working conditions, terms of employment, traineeships and career advancement are beyond the scope of the Tribunal. Matters of discrimination in employment and public service should be referred to the local occupational safety and health inspectorate.

The National Discrimination Tribunal does not replace existing legal remedies or review tribunals. The Tribunal is not empowered to revise the decisions of other public authorities.

## **Internal Organisation**

The Judges of the National Discrimination Tribunal of Finland are headed by a Chair, a Vice Chair, the District Prosecutor of the Helsinki Prosecution Unit and a Judge-Rapporteur. In addition, five judges and six deputy judges make up the Tribunal.

## **Activities**

### ➤ **Advice**

A petitioner is entitled to send the petition to the National Discrimination Tribunal by post or by e-mail. The Tribunal gives counselling concerning the proceedings of the Tribunal. Petitioners can have juridical counselling from the Office of the Ombudsman for Minorities or from a legal aid office.

### ➤ **Opinions**

Courts, the Ombudsman for Minorities, other public authorities or voluntary associations may request an opinion from the National Discrimination Tribunal concerning the interpretation of the Non-Discrimination Act on matters concerning ethnic discrimination.

## **Contact details:**

### **National Discrimination Tribunal**

#### ***Syrjintälautakunta***

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## **NATIONAL AUTHORITY FOR COMBATING DISCRIMINATION AND PROMOTING EQUALITY (H.A.L.D.E.), FRANCE**

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### **Background**

The National Authority for Combating Discrimination and Promoting Equality (HALDE) was established by an Act of 30 December 2004 as an independent administrative body.

### **Functions**

The National Authority deals with all types of direct or indirect discrimination prohibited by French legislation or international treaties to which France is a party.

It is empowered to examine any direct or indirect illegal difference in treatment on grounds such as origin, gender, family status, physical appearance, name, state of health, disability, genetic characteristics, morals, sexual orientation, age, political opinions, trade union activities, or genuine or alleged membership or non-membership of a given ethnic group, nation, race or religion.

Its aims are to identify discriminatory practices, combat them and propose practical solutions to the problems they pose.

It helps victims to gather evidence of discrimination and choose an appropriate response. It deals with complaints and informs people about their rights. It may investigate on its own initiative any discriminatory practice that comes to its notice and put an end to it.

It takes any action it considers necessary to promote equality, particularly genuine equality of opportunities.

### **Internal organisation**

The National Authority is directed by Mr Louis Schweitzer and is made up of a Panel of 11 members appointed for five years by presidential decree and an advisory board, made up of 18 qualified specialists appointed by the Panel for three years.

The Panel's decisions are implemented under the authority of a Director General by administrative departments including a Legal Services Directorate, which is responsible for processing individual complaints and a Directorate for the Promotion of Equality.

## **Activities**

### ➤ **Processing complaints**

Anyone who feels he or she is a victim of discrimination may contact the National Authority by telephone on 08 1000 5000. During this first contact, the person is informed of the procedure for making an official application to the National Authority. If the person's situation falls outside the National Authority's remit, he or she is redirected to the relevant body or institution.

Applications to the National Authority may be made by any individual person, directly or through the intermediary of a member of the French Parliament or Senate, French member of the European Parliament, or an association registered for five years or more on the date of the incident or one of whose statutory aims is to combat discrimination. The National Authority may also conduct an investigation of its own motion if a case of discrimination comes to its attention, provided that the victim does not object.

Firstly, the National Authority provides applicants with all the relevant information on procedures suited to their situation and helps them to assemble their case.

With a view to reaching an out-of-court settlement of the case, the National Authority may propose mediation and, with the consent of the parties, appoint a mediator.

If legal proceedings are brought, the applicant is informed of the possible judicial procedures and remedies and may ask the National Authority to make submissions to the relevant court.

It has the power to conduct inquiries to gather evidence of discrimination. It can organise hearings and on-site checks and order the communication of any information it requires. In the event of refusal, it may, having issued a notice to comply, refer the case to the urgent applications judge.

The National Authority is required to report to the public prosecutor when facts that amount to a crime or a major offence are brought to its attention.

### ➤ **Promoting equality**

The National Authority conducts awareness-raising and information activities to change mentalities.

It is entitled to use all available means (hall-marks, advertising) to promote good practices and it may also publicise any shortcomings that come to its attention.

It uses training activities to raise awareness.

It co-ordinates research conducted to find out more about discriminatory practices and propose new policy instruments.

It submits a yearly report on its activities to the President of the Republic, the parliament and the prime minister.

It is entitled to make recommendations and approach the authorities directly. It is consulted by the government on any bill aimed at fighting discrimination and promoting equality. It can also propose an amendment to a law or regulation of its own accord and express views about ways of rectifying or preventing discriminatory practices.

**Contact details:**

**National Authority for Combating Discrimination and Promoting Equality**  
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## **PARLIAMENTARY COMMISSIONER FOR NATIONAL AND ETHNIC MINORITY RIGHTS, HUNGARY**

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### **Background**

In 1995, the Hungarian Parliament elected the Parliamentary Commissioner for National and Ethnic Minority Rights, who is exclusively responsible to Parliament, in order to safeguard the protection of national and ethnic minority rights.

The Commissioner is, in effect, a parliamentary Ombudsman, independent of both the executive and judicial power. The Commissioner is appointed by the Hungarian Parliament and reports to Parliament. The institution's independence from executive power is undoubtedly in line with the three conditions specified in ECRI's General Policy Recommendation No. 2: The Commissioner is independent in terms of budget; performs tasks without state intervention, i.e. enjoys autonomy in terms of the appointment of employees, the management of resources and in forming opinions; and finally has personal autonomy because the Act on the Parliamentary Commissioner contains guarantees with respect to the appointment and withdrawal of the Ombudsman.

The Ombudsman's institution assumes an important role in the formulation of anti-discrimination policies in Hungary. The Ombudsman actively participates in the assessment of the implementation of anti-discrimination measures as well as in the continued development and transformation of the legal framework. All of the official assessments, audits and investigations of the Ombudsman are completed by the institution's formulation of various recommendations and proposals to the relevant ministries concerning the modernisation of the legal framework. Most of the recommendations concerning the continued development of the legal framework have been formulated in relation to the investigation of concrete complaints.

Finally, the Parliamentary Commissioner for Minorities participates in both the legislative and the political decision making processes. His opinion is sought for in relation to each new act or amendment that has an influence on his institution or in respect of all issues falling within his institution's mandate, including, amongst other things, anti-discrimination regulations and legislation.

### **Mandate**

#### **1. Scope**

According to the law, the Parliamentary Commissioner for National and Ethnic Minority Rights functions along the lines of the traditional Ombudsman institution in that it is only mandated to conduct investigations concerning the public sector.

The institution aims to resolve this recognised shortcoming by indirect action, as follows. The State is in charge of licensing private enterprises, enforcing contracts and supervising the legality of a number of operations, most of which are private-sector activities carried out in the public sector. In such an indirect

way the Ombudsman's authority may be extended to cover human rights violations that are committed in certain areas of the private sector.

One of the main areas where manifestations of racial discrimination are identified is private enterprise, i.e. the business sector. Through their employment and recruitment policies and the selection of customers, private enterprises may discriminate against members of disadvantaged ethnic groups. Certain indirect measures to combat discrimination may be taken in the areas of employment and services offered in the private sector.

## **2. Functions**

### *a. Political decision making and legislative functions*

The Ombudsman for Minorities takes a broad interpretation of the legislative and political decision making functions provided for by law. He reviews relevant laws and other legal regulations on a regular basis. This comprehensive analysis is concluded by the elaboration of recommendations concerning amendments to the laws in effect, along with the drafting of proposals concerning new laws and amendments. In the analysis of concrete complaints the recommendations are sometimes focused on the modification of local decrees only, but even in such cases the Ombudsman's office often makes recommendations to the relevant ministries concerning the review of national-level legal regulations, particularly in cases where problems occur repeatedly or in cases raising problems of institutional discrimination.

A certain practice has evolved during recent years in the preparation of drafts of new acts of law, whereby Ministries ask for comments by the Ombudsman during the process of the preparation of laws.

### *b. Enforcement*

The Commissioner also carries out the execution of anti-discrimination regulations. As regards concrete cases, complaints may be submitted by victims, any non-governmental organisation or any other organisation. The Office has launched investigations into many cases on the basis of news published by the media. The procedure of submitting complaints is highly informal: the complainant may submit his/her complaint in writing or orally, in which case an Office employee will draft the request. Complaints may also be made to the office by telephone. The Ombudsman carries out on the spot investigations, visiting institutions against which complaints have been submitted and interviewing eye witnesses and others involved in the case.

One major advantage of the institution is the possibility of carrying out onsite investigations. This enables a thorough analysis of the cases and the collection of the largest amount of information concerning the issues in hand. Investigations carried out at the scenes of incidents of discrimination have always proven to be highly useful.

In order to investigate cases of discrimination, the Commissioner can use the following techniques:



- mediation;
- conciliation;
- persuasion;
- publicity.

In the area of strategic powers the Ombudsman also has complete competence. In certain concrete cases he can initiate investigations *ex officio*, in a way where there is no need for the victim to file a complaint. In order to promote the implementation of strategic goals a number of more general official investigations have also been carried out.

c. *Information, education and awareness-raising*

The third group of functions of the institution of the Ombudsman for Minorities are information and educational activities. The Ombudsman's mandate concerning information includes, in accordance with the ECRI recommendation, the provision of information and consultative support for the bodies and institutions concerned. The Ombudsman's office can provide consultative support in the following areas:

- concerning the norms of anti-discrimination practices;
- participation in the training of the various relevant groups of society in issues of tolerance, anti-racism and anti-discrimination;
- the communication of discrimination issues to the general public, including the compiling and dissemination of information and other documents;
- and co-operation with organisations working for the same objectives.

The Office has so far published a manual in order to promote cooperation between minority self-governments and local governments concerning the legal frameworks of their operations, including descriptions of concrete relevant cases. The Ombudsman delivers presentations on a regular basis and he contributes to conferences, consultations and discussions across the country. The institution has participated in the preparation and implementation of various specialised training courses for - *inter alia* - members of minority self-governments, mayors and local civil servants.

The institution also carries out its educational and training function in an indirect way, by developing recommendations for various authorities, using persuasion to solve problems and preparing and submitting annual reports to Parliament.

**Contact details:**

**Parliamentary Commissioner for the Rights of National and Ethnic Minorities**  
***a nemzeti és etnikai kisebbségi jogok országgyűlési biztosa***

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## **EQUAL TREATMENT AUTHORITY, HUNGARY**

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### **Background**

The Equal Treatment Authority is an independent body, which was set up by the Hungarian government to receive and deal with individual and public complaints about unequal treatment. The Authority was established by Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities and by the Law No 362/2004 (XII.26.) The Authority works under the instruction of the Government, under the supervision of a member of the government but cannot be directed in the exercise of its duties as defined by the above-mentioned Act.

### **Function**

The Authority reviews the complaints it receives to see if the law on equal treatment has been violated. It deals with unequal treatment involving gender; racial origin; colour; nationality; national or ethnic origin; mother tongue; disability; state of health; religious or ideological conviction; political or other opinion; family status; maternity or paternity; sexual orientation; sexual identity; age; social origin; financial status; part-time, temporary and other types of employment contract; the membership of an organisation representing employees' interests and any other status, attribute or characteristic (described as "characteristics").

It is forbidden to treat people differently on these grounds of discrimination. The Authority deals with complaints about direct as well as indirect discrimination.

### **Mandate**

The Authority shall

- a) based on an application or in cases defined below, conduct ex officio investigations to establish whether the principle of equal treatment has been violated, and make a decision on the basis of the investigation;
- b) pursuant to the right of claim enforcement in the public interest, initiate a lawsuit with a view to protecting the rights of persons and groups whose rights have been violated;
- c) review and comment on drafts of legal acts concerning equal treatment;
- d) make proposals concerning governmental decisions and legislation pertaining to equal treatment;
- e) regularly inform the public and the Government about the situation concerning the enforcement of equal treatment;
- f) in the course of performing its duties, co-operate with non-governmental and representative organisations and the relevant state bodies;

- g) continually provide information to those concerned and offer assistance in combating the violation of equal treatment;
- h) assist in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment;
- i) assist in the preparation of the reports for the Commission of the European Union concerning the harmonisation of its directives on equal treatment;
- j) prepare an annual report to the Government on the activity of the Authority and its experiences obtained in the course of the application of this Act.

In the course of conducting *ex officio* investigations according to the above mentioned Paragraph a), the Authority shall proceed in accordance with the provisions of Act IV of 1957 on the general procedures of state administration.

The Authority shall perform its duties set out in Paragraph c)-j) in co-operation with an advisory body whose members have extensive experience in the protection of human rights and in enforcing the principle of equal treatment, and have been invited by the Prime Minister to join the aforementioned body.

A violation of the principle of equal treatment within the scope of this Act shall be investigated by the Authority too. The Authority shall also proceed *ex officio* in cases where the principle of equal treatment is violated by the Hungarian State, local and minority governments and all other public authorities, the armed forces and the police.

If the Authority has established that the regulations on equal treatment have been violated, they may

- a) order that the situation constituting a violation of the law be eliminated;
- b) prohibit the further continuation of the conduct constituting a violation of the law;
- c) publish its decision establishing a violation of the law;
- d) impose a fine.

### **Investigation and decision making**

The decision of the Authority cannot be appealed against in the framework of the public administrative procedure, and cannot be altered or annulled by supervisory powers. The Court can review a decision of the Authority.

The Authority cannot investigate decisions and measures taken by Parliament, the President, the Constitutional Court, the State Audit Office, the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights, the Parliamentary Commissioner on Data Protection, the Courts and the Public Prosecutor's Office.

The Authority may participate as an advocate in the judicial review of a public administrative decision made by another public administrative body concerning the principle of equal treatment.

## **Organisation of the Equal Treatment Authority**

The Authority is headed by a President appointed by the Hungarian Government, and composed of a Vice-President, a Legal Department and a Finance Department.

A Consultative Body which was set up in July 2005 assists the Authority in its work. The Consultative Body is composed of six experts appointed by the Minister of Justice and the Minister of Youth, Family, Social Affairs and Equal Opportunities.

### **Contact details:**

#### **Equal Treatment Authority**

#### ***Egyenlő Bánásmód Hatóság***

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### **Background**

The Equality Authority is an independent body set up under the Employment Equality Act of 1998. It was established on 18 October 1999.

The Employment Equality Act of 1998 and the Equal Status Act of 2000, outlaw discrimination in employment, vocational training, advertising, collective agreements, the provision of goods and services and other facilities, such as accommodation and education, to which the public generally have access, on nine distinct grounds. These are: gender; marital status; family status; age; disability; race (which includes race, colour, nationality, ethnic or national origin); sexual orientation; religious belief; and membership of the Traveller community.

Discrimination is described in the Act as the treatment of a person in a less favourable way than another person is, has been or would be treated on any of the above grounds.

### **Mandate**

The general functions of the Equality Authority established under the above legislation are:

- To work towards the elimination of discrimination in relation to the areas covered by the legislation.
- To promote equality of opportunity in relation to the areas covered by the legislation.
- To provide information to the public on the working of the Employment Equality Act, 1998, the Equal Status Act, 2000, the Maternity Protection Act, 1994 and the Adoptive Leave Act, 1995. The Parental Leave Act, 1998, also accords the Equality Authority an information role on the provisions of that legislation.
- To keep under review the working of the Pensions Act, 1990, as regards the principle of equal treatment.
- To keep under review the working of the Employment Equality Act, 1998, the Equal Status Act, 2000, the Maternity Protection Act, 1994 and the Adoptive Leave Act, 1995 and to make recommendations for necessary change to the Minister.

These functions establish a dual mandate for the Equality Authority – to combat discrimination and to promote equality of opportunity. This involves a combination of enforcement and developmental approaches in the work of the Equality Authority.

The legislation provides the Equality Authority with a range of explicit powers to implement these functions. These are:

- To provide assistance at its discretion to those who consider that they have been discriminated against if there is an important point of principle involved or if it is unreasonable to expect the person to represent themselves.
- To prepare, for submission to the Minister, codes of practice which if approved can be relied on in relevant court proceedings.
- To invite a business to carry out an equality review and to prepare and implement an equality action plan, or, where appropriate and where the business does not have less than fifty employees, carry out such a review and prepare such an action plan on its own initiative. An equality review involves an audit of the level of equality of opportunity in the business from an employment and/or a service provision perspective and an examination of policies, practices, procedures and perceptions for their contribution to equality of opportunity. An equality action plan is a programme of actions to further promote equality of opportunity in the business.
- To conduct an enquiry for any purpose connected with its functions and to conclude by making any necessary recommendations.
- To appoint advisory committees to advise on matters relating to its function.
- To undertake or sponsor research.
- To undertake or sponsor activities relating to the dissemination of information.

### **Internal Organisation**

The Equality Authority is headed by a Board consisting of 12 members, which includes two nominations from the Irish Congress of Trade Unions and two nominations from the Irish Business and Employers Confederation. The other members are drawn from organisations and groups who have knowledge or experience of equality issues. A Chief Executive is accountable to the Board. A senior management team includes a legal advisor and head of legal section, head of administration section, head of development section, head of research section and head of communication section.

### **Activities**

The Equality Authority is committed to realising positive change in the situation of those experiencing inequality by:

1. promoting and defending the rights established in the equality legislation and
2. providing leadership in building a commitment to addressing equality issues in practice, creating a wider awareness of equality issues, celebrating the diversity in Irish society and mainstreaming equality considerations across all sectors.



Its main activities to achieve these objectives in the area of combating racism are:

- Casework in supporting individuals taking cases under the legislation and in taking cases on a general practical basis.
- Initiatives to support the development of the National Action Plan on Racism and its implementation.
- Developing and implementing a joint initiative with the Social Partners and also involving the Equality Commission for Northern Ireland, to promote and support anti-racism in the workplace. The themes of the Anti-Racist Workplace Weeks have included anti-racist training for organisations and migrant workers.
- Research work developing a knowledge base on the situation and experience of those experiencing racism and to analyse policy and practice for their capacity to address this issue.

**Contact details:**

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**THE EQUALITY AUTHORITY**  
AN tÚDARÁS COMHIONANNAIS



### **Background**

The Equality Tribunal was established under the terms of the Employment Equality Act of 1998, along with the Equality Authority (see previous chapter).

The Equality Tribunal is the accessible and impartial forum which adjudicates or mediates individual cases of alleged discrimination, direct and indirect, in both employment (including pensions) and the provision of goods and services, which may come before it. Collective agreements may also be referred to the Tribunal for investigation or mediation.

#### ➤ **Mediation**

Cases before the Tribunal are referred to mediation unless either party objects. Mediation is an internationally recognised process carried out by a trained Equality Mediation Officer, who will assist those in dispute to reach a mutually acceptable agreement. The process involves the respondent and the complainant coming together with a Mediator. It is entirely voluntary and either side can end mediation at any time. The case can then be dealt with by investigation instead. The agreement reached is confidential and is signed by both parties. When signed it is legally binding and can be enforced through the civil courts.

#### ➤ **Investigation**

Where a case does not go to mediation, it is referred instead for investigation. An investigation is a quasi-judicial process carried out by an Equality Officer who will normally consider written submissions from both parties before arranging a joint hearing or hearings of the issue in contention, to enable him or her to reach a decision in the matter. Hearings are heard in private and are held in a location which is best suited to the parties concerned.

After hearing all the evidence, the Equality Officer will consider the matter and issue a detailed written Decision. The Decision is first issued to the parties to the case and is subsequently published. Decisions of the Tribunal are legally binding but are also subject to appeal. Cases taken under the Employment Equality Acts 1998 and 2004 and under the Pensions Acts 1990-2004 may be appealed, by either side to the Labour Court, an Industrial Relations Tribunal. Cases taken under the Equal Status Acts 2000 - 2004 may be appealed, by either side, to the civil courts.

Equality Officers receive specialist training to enable them to carry out their functions effectively. They have extensive powers which allow them, where necessary, to require the attendance of witnesses, enter premises and obtain information which may assist them in the effective conduct of an investigation

➤ **Redress**

If an Equality Officer finds that discrimination under the legislation has occurred, he or she must order redress. Redress will consist of one or more of the following: an order of compensation payable by the respondent to the complainant, an order of equal pay, an order for equal treatment and/or an order for a specific course of action to be taken by a specific party. Financial compensation in employment cases cannot be more than two years (104 weeks) pay and in the case of awards under the Equal Status Acts 2000-2004, they cannot exceed €6 349. In the majority of Decisions made to date, awards have been substantially less than the maximum permitted. Overall between a quarter and a third of cases are decided in favour of the complainant.

➤ **Representation**

Legal representation is not necessary at Tribunal Hearings but either side may choose to be legally represented or to be represented by a professional association or by a representative body, if they wish.

➤ **Advice**

Because of the quasi-judicial nature of the Tribunal's functions and the need for the Tribunal to remain absolutely impartial in dealing with the issues which come before it, it may only give procedural information to the public. It cannot give advice to the parties to disputes in discrimination cases.

➤ **Claims on the race ground**

Claims on the race ground under the equality legislation for which the Tribunal has responsibility have shown a steady increase.

In employment, claims have risen from 2 in 2000 to 51 in 2004.

In equal status, claims have risen from 0 in 2000 to 21 in 2004.

There have been no pension claims referred on the race ground.

**Contact details:**

**The Equality Tribunal**

3 Clonmel Street

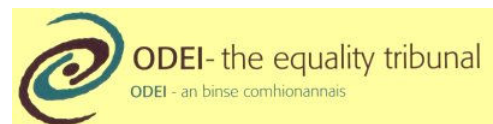
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## **OFFICE AGAINST RACIAL DISCRIMINATION, ITALY**

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### **Background**

The Office against Racial Discrimination (UNAR) was set up by Legislative Decree no. 215 of 9 July 2003 and the Presidential Decree of the Council of Ministers (DPCM) of 11 December 2003, in order to enforce the EU Directive no. 2000/43/EC. The Office works for the promotion of equal treatment and the fight against discrimination based on race or ethnic origin. Its headquarters are at the Department for Equal Opportunities of the Presidency of the Council of Ministers.

### **Mandate**

The UNAR's mandate is to promote equal treatment and to fight against discrimination based on race or ethnic origin. Its main task is to lay the foundation for launching strong integration policies which can guarantee peaceful co-existence based on the protection of fundamental human rights. The Office is intended to be a reference point for people who claim to be victims of racial and ethnic discrimination, as well as an institutional body to monitor the effectiveness of instruments for the protection of equal treatment.

### **Internal organisation**

The UNAR is a public office situated within the Department for Equal Opportunities. It has a staff of civil servants and external consultants, including lawyers, judges, and experts in the field of social sciences.

The Office is organised into two units:

- A unit responsible for equal treatment.
- A unit responsible for studies, research and institutional relations.

The main function of the first unit is to collect, including through a contact centre, claims of potential cases of discrimination and to analyse and examine every claim in co-operation with a group of experts in order to provide the victims with immediate legal assistance and qualified expert advice which can also be used in court trials.

The function of the second unit is to promote information and awareness-raising campaigns on the fight against racial discrimination.

### **Activities**

The Office monitors and guarantees equal treatment and the effectiveness of its protection by:

- providing legal assistance to victims of discrimination during judicial or administrative actions and investigating discrimination claims while respecting the judicial authority in the context of these actions;
- promoting affirmative action;
- publicising the availability and methods of legal protection against discrimination through communication and awareness-raising campaigns;
- presenting recommendations and providing advice on issues connected to discrimination based on race and ethnic origin;
- preparing two annual reports to be submitted to the Parliament and to the President of the Council of Ministers;
- promoting studies, research, training courses and exchange of experience also in collaboration with non-governmental organisations working in this sector in order to implement guidelines to combat discrimination based on race or ethnic origin.

### ***Information and awareness raising campaign***

The UNAR carries out a specific information and public awareness-raising activity through the media, focusing on different target groups, such as migrants, schools and universities, the police, associations and NGOs and social workers and entrepreneurs.

This activity aims to:

- inform the general public about integration;
- disseminate information about anti-discrimination legislation;
- promote intercultural messages via the media;
- increase the participation of students;
- raise awareness of fundamental rights among migrants, ethnic minorities and in workplaces.

The UNAR works in co-operation with trade unions and business associations to promote positive action through training courses, information campaigns and the promotion of codes of conduct in workplaces.

The UNAR also aims to give information to political institutions about necessary actions to take against racial discrimination, by meeting local authorities, establishing partnerships with other national institutions and reporting to the Parliament and to the President of the Council of Ministers.

### ***Contact Centre***

One of the main functions of the UNAR is to provide assistance to those people claiming to be victims of discrimination. To this end, the Office has set up a contact centre, which operates daily from 10.00 am to 8.00 pm. The centre can be contacted via a freephone number (800 90 10 10). It employs multilingual staff and its services are available in Italian, English, French, Spanish, Arab, Russian, Romanian and Mandarin Chinese.

The contact centre is intended to guarantee immediate access to the Office for victims of discrimination and to provide them with information and support as well as to register their complaints. The call centre service, which started on 10 December 2004, has received around 1000 calls per month and registered around 30 cases of proven racial discrimination per month.

When the UNAR receives a complaint of discrimination, it registers it and carries out research to find a rapid solution, sending the documentation for an initial consultation to its experts. If a solution cannot be found using conciliation procedures, the UNAR supports the victim in other ways, for example by finding associations that are entitled to represent the victims before the courts.

### **Legal assistance**

In cases of discrimination, the UNAR provides victims with the following legal assistance and qualified expertise:

- assistance to victims of discrimination during judicial or administrative procedures;
- analyses and investigations to determine whether discrimination has taken place;
- mediation and settlement procedures;
- assistance to and collaboration with associations entitled to represent the victims during court trials, if authorised to do so by the victim.

As regards the last point, one of the main tasks of the Office is to combat discrimination in co-operation with associations promoting equal treatment. In fact, the new anti-discrimination law attaches an important role to associations that provide legal assistance to victims of discrimination. The legislative decree n.215/2003 regulating this issue promotes affirmative action to protect victims of discrimination, in co-operation with associations and non-profit-making-organisations. It entitles the latter to represent the victims during court trials upon authorisation given by the victim. Associations have to be officially registered in order to represent victims during court trials. They can register at the Department for Equal Opportunities or at the Ministry for Labour and Social Policies. At the moment 82 of the most important associations and NGOs are officially registered.

### **Contact details :**

#### **Office against Racial Discrimination (UNAR)**

#### **Ufficio Nazionale Antidiscriminazioni Razziali**

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I-00187 ROME

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Fax: +39 06 67792272

e-mail [antidiscriminazioni@pariopportunita.gov.it](mailto:antidiscriminazioni@pariopportunita.gov.it)

Website:[www.pariopportunita.gov.it](http://www.pariopportunita.gov.it)





## **LATVIAN NATIONAL HUMAN RIGHTS OFFICE, LATVIA**

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### **Background**

The Latvian National Human Rights Office (LNHRO) was established on 18 July 1995 pursuant to Regulations of the Cabinet of Ministers on the Latvian National Human Rights Office. The current status and functions of the LNHRO are set out in the law of 5 December 1996 on the Latvian National Human Rights Office.

The LNHRO is an independent state institution aimed at promoting the observance of human rights in Latvia and is recognised as a national equal treatment body according to the relevant European Union Directives.

### **Mandate**

The main objective of the LNHRO is the promotion and protection of fundamental rights and freedoms in the Republic of Latvia, in accordance with the Constitution and international human rights treaties. The law regulating the LNHRO does not contain any specific antidiscrimination provisions for the moment. They emerge from the general concept of human rights. However the draft Amendments to the law on the Latvian National Human Rights Office (recently adopted in the second reading in the Parliament) provide that the LNHRO is the responsible body for the promotion of equal treatment. The reference to the Directive 2000/43/EC is included in the above-mentioned draft law. No explicit grounds of discrimination have been mentioned in the law, but in practice the Office covers all the grounds of discrimination from the perspective of the protection human rights, namely race, skin colour, language, gender, disability, sexual orientation, religion, belief, political or other opinion, national or social origin, property, birth or other status. These amendments will invest the LNRHO with specific competences according to European Union antidiscrimination law, including the right of the LNHRO to bring antidiscrimination cases before the court.

The LNHRO is competent to:

- enquire into any complaint relating to the abuse of human rights;
- review applications about human rights violations committed by public officials and private persons;
- immediately react to facts indicating violations of human rights, and on its own initiative determine conditions which may cause such violations;
- investigate the national situation regarding the observance of human rights, especially in areas relevant to vulnerable groups;
- investigate complaints of violations of the rights of individuals and citizens as stated in the Constitution and in international human rights treaties which are binding on Latvia.

The LNHRO is obliged:

- not to disclose information on the person submitting a complaint or any other person, when necessary for the protection of the rights of the individual;
- not to investigate a complaint if a Court verdict has already come into legal effect in a civil, criminal or administrative case concerning the violation of human rights and against the same person and for the same violation.

### **Internal organisation**

The Ombudsman is the Director of the Office. The Director is appointed for a four-year term following a recommendation of the Cabinet of Ministers. She/he selects the Deputy Director and staff members of the LNHRO.

### **Main activities:**

The main activities of the LNHRO are as follows:

- to review applications concerning human rights violations;
- to conduct independent investigation;
- to provide advice and assistance to victims of discrimination;
- to conduct independent research and analysis;
- to provide information about and promote understanding of human rights to the general public.

The Office provides assistance to victims of discrimination in the form of advice and assistance in taking cases to courts. It does not yet have the right to bring cases before the courts itself.

### **Contact details:**

#### **Latvian National Human Rights Office (LNHRO)**

#### ***Valsts Cilvēktiesību Birojs***

Elizabetes street 65 – 12, 4<sup>th</sup> floor

LV-1050 RIGA

Tel: +371 7287210

Fax: +371 7244074

E-mail: vcb@vcb.lv

### Background

The Office of the Equal Opportunities Ombudsman was established on 25 May 1999 by Decision No. VIII-1200 of the Parliament of the Republic of Lithuania. Its legal basis stems from the Law on Equal Opportunities between Women and Men of 1 December 1998. This law came into effect on 1 March 1999.

On 1 January 2005, a new Law on Equal Treatment came into force, guaranteeing the right to file complaints to the Equal Opportunities Ombudsman in cases of discrimination on grounds of age, sexual orientation, disability, race and ethnic origin, religion or beliefs.

### Mandate

The Ombudsman supervises the implementation of equal opportunities and may investigate complaints relating to:

- **Direct discrimination based on gender, age, sexual orientation, disability, racial or ethnic origin, religion or beliefs**, which occurs when a person or group of persons is treated less favorably than another is, has been or would be treated in a comparable situation, except for in the following cases provided for by law:
  - restrictions on grounds of age;
  - when knowledge of the official state language is required;
  - prohibition from taking part in political activities;
  - different rights applied on the basis of citizenship;
  - special measures to facilitate the process of integrating persons with disabilities into the labour market ;
  - special temporary measures applied while striving to ensure equality and prevent the violation of the right to equal treatment;
  - certain professional activities requiring specific human characteristics.
- **Indirect discrimination**, which occurs when an apparently neutral provision, criterion or practice restricts the rights of a person or group of persons on the grounds of gender, age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.
- **Harassment**, which occurs when a person or group of persons violate the dignity of or create an intimidating, hostile and degrading or offensive environment for a person or group of persons on the basis of the latter's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs .
- **Instruction to discriminate** on the basis of a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

However, the provisions of the Law on Equal Opportunities of Women and Men and the Law on the Equal Treatment do not apply to family and private life.

Every natural or legal person has the right to file a complaint with the Equal Opportunities Ombudsman about the violation of equal rights.

The complaints should be in writing: the complainant or his representative may send the complaint to the Equal Opportunities Ombudsman by post, fax, e-mail or bring it to the Ombudsman's office.

If the Equal Opportunities Ombudsman receives complaints orally (including by telephone) or has found indications of the violation of equal rights via the mass media or other sources of information, the Ombudsman may start the investigation on his/her own initiative.

The Ombudsperson may also decide to investigate anonymous complaints.

The time limit for filing complaints shall be 3 months after the commission of acts against which the complaint is being filed. Complaints filed after the expiry of this time limit shall not be investigated unless the Equal Opportunities Ombudsman decides otherwise.

### **Decision-making powers**

Upon the completion of the investigation (lasting up to 2 months) the Equal Opportunities Ombudsman may take one of the following decisions:

- to refer the material to investigative bodies if indications of an offence have been established;
- to recommend to discontinue the actions violating equal opportunities or to repeal the relevant legal act;
- to dismiss the complaint if the violations mentioned in it have not been corroborated;
- to discontinue the investigation if the complainant withdraws the complaint;
- to admonish regarding a violation which has been committed;
- to temporarily halt the investigation, if the person, whose complaint or actions, in reference to which a complaint has been made, are under investigation, is ill or absent.

The infringement of the principle of equal treatment on the basis of racial or ethnic origin, religion or belief, disability, age or sexual orientation will be specifically prohibited by the Code of Administrative Offences and the violators will face the possibility of an administrative fine.

The Office of the Equal Opportunities Ombudsperson may provide information to the press and other mass media about the investigation of a complaint relating to the violation of equal opportunities, with the consent of the complainant.

### **Contact details:**

#### **Office of the Equal Opportunities Ombudsperson**

#### ***Lygių galimybių kontrolieriaus tarnyba***

Pylimo str. 35

LT-01141 VILNIUS

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Fax: +370 5 261 27 25

E-mail: mvlgk@lrs.lt

Website: [www.lygybe.lrs.lt](http://www.lygybe.lrs.lt)

## **PERMANENT SPECIAL COMMISSION AGAINST RACIAL DISCRIMINATION, LUXEMBOURG**

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### **Background**

The Permanent Special Commission against Racial Discrimination (CSP-RAC) was officially inaugurated on 14 May 1996. Its existence is based on the Luxembourg Act of 27 July 1993 on the integration of foreigners in the Grand Duchy of Luxembourg and on social action for foreigners.

The Act also provides that the CNE must set up a Permanent Special Commission against Racial Discrimination (CSP-RAC), made up of members of the National Council for Foreigners and of external members, appointed for their specific skills relating to the subject to be dealt with.

### **Mandate**

The CSP-RAC's specific tasks are set out in Section 24 of the Act of 27 July 1993 on the integration of foreigners in the Grand Duchy of Luxembourg:

"The Permanent Special Commission against Racial Discrimination shall be responsible for preparing, either at the request of the government or of the Council or on its own initiative, opinions and proposals relating to action against any form of racial discrimination, and for devising projects and programmes, particularly in the spheres of education, cultural and social activities and public staff training, with a view to fostering mutual understanding among the various communities resident in Luxembourg".

Furthermore, in accordance with the Government Council Decision of 28 June 1996, the CSP-RAC is responsible for receiving and examining complaints by persons within the jurisdiction of Luxembourg who claim to have suffered any violation of the rights laid down in the International Convention on the Elimination of All Forms of Racial Discrimination, and who have exhausted all available legal remedies. In pursuance of Article 14 of the Convention, the CSP-RAC must register such complaints and transmit them to the United Nations' Committee on the Elimination of Racial Discrimination (CERD), in Geneva.

The government has also decided that the CSP-RAC will be responsible for receiving and examining petitions from persons or groups of persons within Luxembourg's jurisdiction who complain that they have suffered any violation of the rights laid down in the Convention.

## Activities

- **To issue opinions on draft legislation and regulations drawn up for the CNE** (on, for instance, a bill to supplement the Penal Code declaring racism, revisionism and other action based on unlawful discrimination to be crimes; a bill on the access of Community nationals to posts in the Luxembourg civil service; a bill on Luxembourg nationality; a bill reforming electoral law).
- **To issue other opinions, prepared for the CNE at its request** (such as an opinion on dual nationality; an opinion on work permits; an opinion on the transposition into Luxembourg law of the European Union's Council Directives 2000/43/EC and 2000/78/C.E).
- **To make proposals and take action relating to education and the training of public officials** (for example, suggestions relating to police training covering relations with migrants and ethnic groups, addressed to the head of the police training college; participation in conferences attended by senior police officers on relations between law enforcement agencies and Luxembourg's resident foreign population; a circular to teachers at all primary and secondary schools in Luxembourg on ways of combating racism, widely accepted ideas, xenophobia and intolerance in schools).
- **To make proposals and opinions on its own initiative to the government** (on such matters as the family names of residents from other cultures and the setting up of a racial discrimination complaints centre).
- **Other activities** (such as the preparation of a CNE workshop on integration and discrimination in Luxembourg, attended by some 350 participants in February 1998; the setting up of a national committee to organise activities in Luxembourg during 1997, the European Year against Racism; the organisation of a debate during the plenary session of the National Council for Foreigners on the improper use of the word "race").

The present Commission will be replaced by a Centre for Equal Treatment, to be set up in the framework of the transposition of Directive 2000/43/C.E. The relevant draft law is currently under discussion.

### Contact details:

**Permanent Special Commission against Racial Discrimination (CSP-RAC)**  
**Commission Spéciale Permanente contre la Discrimination Raciale du Conseil National pour Etrangers**

12-14, Avenue Emile Reuter  
L-2919 LUXEMBOURG  
Tel: +352 478-3695  
Fax: +352 478-3672

## **EQUAL TREATMENT COMMISSION, NETHERLANDS**

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### **Background**

The Dutch Equal Treatment Commission (CGB) is an independent body that was established in 1994 to promote and monitor compliance with the equal treatment laws. The Commission also gives advice and information about these laws. Everyone in the Netherlands can ask the Commission for an opinion or advice about a specific situation concerning unequal treatment, free of charge.

### **Mandate**

The Commission reviews the requests for opinions it receives to see if the regulations on equal treatment have been violated. It deals with unequal treatment on the grounds of: gender; race; nationality; religion; belief; political conviction; sexual orientation; civil status; part-time or full-time work; temporary contracts; disability or chronic illness and age.

It is forbidden to treat people differently on these grounds in a number of situations, such as working relationships between employers and employees, and in offering goods and services.

The Commission deals with requests for opinions about direct as well as indirect discrimination.

### **Internal organisation**

The CGB consists of nine Commissioners, including a President and two Vice-Presidents. Furthermore, the CGB has at least nine substitute Commissioners, who can substitute a Commissioner during a hearing. Some of them also have specialist knowledge. Legal advisers support the Commissioners during investigations. The CGB also has a job evaluation schemes expert.

### **Activities**

The Equal Treatment Commission's main fields of activity are as follows:

- investigating complaints and ruling on whether there has been unequal treatment or discrimination within the scope of the Dutch equal treatment legislation;
- making recommendations in addition to its rulings and taking cases to court;
- initiating investigations on its own initiative;
- investigating, on the request of companies, governmental bodies or other organisations, whether their policies are in conformity with equal treatment law;
- having advisory and consultative status;

- making referrals for mediation;
- carrying out information, public-awareness raising and research activities;
- co-operating with other institutions.

## **Procedure**

When the CGB receives a request for an opinion about alleged discrimination, it investigates whether the equal treatment law has been violated. In some respects, the CGB is similar to a court. An important difference is that the CGB gathers information itself. Other differences are that filing a petition is free of charge and that people do not need a lawyer. The CGB does not necessarily need to receive a petition in order to investigate whether the equal treatment law has been violated. It also conducts investigations on its own initiative.

Individuals who feel that they have been unequally treated on one of the above-mentioned grounds may file a petition for an opinion to the Commission. An individual may also request a third party to file a petition as their representative. This may be a relative, a trade union, or a pressure group, such as an anti-discrimination organisation, which is entitled to act as an authorised representative and carry out the procedure on behalf of the individual concerned. However, the nomination of an authorised representative does not mean that the individual can remain anonymous.

Pressure groups may also file petitions with the Commission independently. However, they can only file petitions if they are organisations or societies that were officially founded to promote the interests of the people to whom the regulations for equal treatment apply. Trade unions and other employee's associations may also file petitions to the Commission, but their petitions must concern equal treatment within their own company or organisation.

After a petition is filed, it is reviewed by the Commission to see if it can be processed. The Commission interviews both parties and gives them a chance to respond to the other's point of view. The Commission can also ask third parties as witnesses to give information about the case. The procedure is free and no lawyer is required.

Once enough information has been collected, the investigation is closed and a hearing is held, usually lasting around one hour. Both parties testify at the hearing and can take experts to it. The Commission can question both parties and compare their points of view.

After the hearing, the Commission discusses the case in a closed meeting. It comes to a decision within a maximum of eight weeks. In its decision, the Commission specifies whether the regulations on equal treatment have been violated and whether the complainant has been a victim of discrimination.

The Commission's decisions have a high moral authority but are not legally binding. The Commission cannot force the party who has been found guilty of discrimination to comply with its decision. However, in practice, its decisions are usually accepted and followed.



After a decision has been made, the Commission often follows up a case. For example, it may talk to representatives of the branch of industry in which the case occurred in order to build up good communication channels, which may prevent similar cases occurring in the future.

### **Assessment of actions**

Employers or organisations may submit their own regulations to the Commission, requesting an assessment of whether these comply with the existing legal regulations. This is referred to as a request for an assessment of one's own actions.

### **Contact details:**

**Equal Treatment Commission**  
**Commissie Gelijke Behandeling**

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Fax: +31 30 8883883  
E-mail: [info@cgb.nl](mailto:info@cgb.nl)  
Web site: [www.cgb.nl](http://www.cgb.nl)





### **Background**

The Centre for Combating Ethnic Discrimination was established as a public office in 1998. The staff provides legal aid to individuals who suffer from discrimination on the basis of their religious belief, skin colour or national or ethnic origin. The Centre also documents the nature and extent of discrimination in Norway, and can propose measures to prevent and counteract discrimination. The Centre operates nation-wide.

The Centre is under the direction of a Board. The Board consists of seven members and three deputies with backgrounds and experience in anti-discrimination and human rights organisations, legal practices, business and industry, law enforcement, the prosecution authorities or other areas deemed relevant to the field of activities of the Centre. The Centre's terms of reference state that half of the Board members and deputies should preferably be persons with a minority background. The Chief Executive is responsible for the daily operation of the Centre and for ensuring that activities are carried out within the framework of the guidelines set by the Board. The staff includes persons with competence in law and the social sciences.

The Centre's definition of ethnic discrimination includes both direct and indirect discrimination, as outlined below:

- Direct discrimination occurs when an individual is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin or religious belief.
- Indirect discrimination occurs where the effect of an apparently neutral criterion puts individuals of a particular racial or ethnic origin at an unjustifiable disadvantage.

### **Functions**

The objective of the Centre for Combating Ethnic Discrimination is to ensure protection against discrimination.

#### ➤ **Legal Assistance**

The Centre's operational guidelines are found in the Courts Act para. 218, and can be summarised as follows:

- to provide information to individual clients about their rights;
- to provide clients with a written opinion on their case;
- to help clients with complaints against decisions or procedures;
- to help clients make statements to the police;

- to direct clients to the right institution in cases where such an institution is in a better position to help.

In a case of major significance, the Centre may provide financial assistance to clients so that the case can be brought to trial.

The Centre regards cases to be of major significance when the judgment will provide clarity in an otherwise unclear legal situation, or result in the development of case law regarding discrimination.

#### ➤ **Documentation and external activities**

According to its terms of reference, the Centre shall document and monitor the situation with respect to the nature and scope of discrimination and pursue external activities by: recording enquiries and their follow-up; obtaining documentation on discrimination; preparing annual reports on the nature and scope of discrimination; maintaining contacts with other bodies to prevent and stop discrimination; promoting proposals on steps to prevent discrimination in society.

Documenting instances of discrimination is supplementary to providing legal assistance and provides an overview of the extent of discrimination in Norway.

- *Documenting legal assistance*

The Centre keeps records of cases where it has given legal assistance, along with a summary of the action taken in the case in question. These cases are described in several ways in the Centre's annual reports (entitled "Moving towards better protection"). The Centre provides a statistical overview of the cases - broken down according to gender, geographical location, ethnic/national origin and areas of enquiry.

- *Active gathering of information regarding discrimination*

The Centre has initiated surveys and produced reports on particular areas of concern. It has published reports regarding the justice system, the teaching of the school subject "Christian knowledge, including religious and ethical education", and regarding discrimination of women who wear religious headgear.

#### ➤ **Influencing developments**

- *Suggesting measures to prevent or counteract discrimination*

The Centre gives advice to organisations, private enterprises and public institutions on measures that may prevent or counteract discrimination. These suggestions are conveyed through bilateral meetings or through our reports.

- *Public statements*

The Centre participates in the public debate regarding racism and discrimination in the media and through lectures, panel debates etc. The Centre also expresses its views through statements on relevant plans of action, policy measures and political issues regarding ethnic minorities.

- *Co-operation with others in preventing discrimination*

The Centre is only one out of several agencies in this field. There are other organisations and government departments whose work involves ethnic minorities. They therefore have useful information and a high level of competence, which can be beneficial to the Centre's work. The Centre therefore actively encourages other parties to monitor and follow up information that may assist them in combating discrimination. The Centre is of the opinion, and has actively proposed, that comprehensive national surveys should be conducted on the subjective experiences of ethnic discrimination. Such surveys have been carried out in Sweden and Denmark and have yielded valuable information. The Centre believes that such information could be used to work to increase the level of confidence in public authorities and relevant bodies in the private sector.

The main areas of the Centre's work since its inception have been:

- Influencing the development of a better legal framework to prohibit discrimination
- Monitoring activities including documentation
- The employment sector
- The justice system
- The housing market
- Refusal of entry to bars, clubs and recreational services
- Child welfare
- National minorities
- Religious education in schools
- Police attitudes to and dealings with minorities.

### **The reorganisation of anti-discrimination work in Norway**

On 31 December 2005 the Centre for Combating Ethnic Discrimination (SMED) ceased to exist. The Storting (Parliament) has approved the Government recommendation for establishing a new Equality and Anti-Discrimination Ombudsman and an Equality and Anti-Discrimination Tribunal based on the model of the present gender equality mechanism. The Government's aim is for the new enforcement mechanism to be established with effect from 1 January 2006.

The current Gender Equality Ombudsman, the Gender Equality Centre and the Centre for Combating Ethnic Discrimination (SMED) will become part of the new ombudsman mechanism.

The new Ombudsman will have both proactive and supervisory functions in relation to the new Anti-Discrimination Act. The new mechanism will make decisions on individual cases concerning discrimination, and the tribunal will be empowered to order measures to prevent discriminatory conditions. If such orders are not complied with, the tribunal may also impose a coercive fine until the condition in question has been rectified. The role of a neutral Ombudsman who expresses opinions on individual cases is incompatible with the role of legal representative, which means that the legal aid services currently offered by SMED will cease to exist. However, a provision expanding the duty of the Ombudsman to provide guidance has been enacted in order to ensure that victims of discrimination receive the best possible assistance. Under this provision, advice may be given with regard to all relevant information and preparations related to the case. It might be relevant, for instance, to provide advice on discrimination issues where it may be appropriate to initiate proceedings on the basis of a different set of rules than the statutes which the Ombudsman will be charged to enforce. The expanded duty to provide guidance covers the discriminatory grounds that the Ombudsman will be entrusted to monitor.

#### **Contact details:**

##### **Centre for Combating Ethnic Discrimination**

##### ***Senter mot etnisk diskriminering***

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PB 677 Sentrum

N-0106 OSLO

Tel: +47 22 24 69 70

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Web site: [www.smed.no](http://www.smed.no)

Senter mot etnisk  
diskriminering



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## **COMMISSION FOR EQUALITY AND AGAINST RACIAL DISCRIMINATION, PORTUGAL**

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### **Background**

The Commission for Equality and against Racial Discrimination (CICDR) was established by law no 134/99 on the Prohibition of Discrimination in the Exercise of Rights due to Motives based on Race, Colour, Nationality or Ethnic Origin, which was passed by the Portuguese Assembly on 28 August 1999. It met for the first time in Autumn 2001.

### **Mandate**

The main task of the CICDR is to assist with the implementation of Law N° 134/99 mentioned above, which covers direct and indirect discrimination. According to this law, racial discrimination covers any distinction, exclusion, restriction or preference based on race, colour, descent, nationality or ethnic origin which results in annulling or restricting the recognition or exercise of a person's economic, social and cultural rights.

According to Law 134/99, Articles 5.2b to 5.2f, the role of the Commission is to:

- collect any information relating to discriminatory acts and practices and to apply the relevant sanctions;
- make recommendations on the adoption of legal measures, regulations and administrative measures intended to prevent discrimination on grounds of race, colour, nationality or ethnic origin;
- promote studies and investigations into racial discrimination;
- publish an annual report on equality and racial discrimination in Portugal.

The Commission also has the statutory right to make recommendations to Parliament to initiate legislation or to recommend the government to issue decrees to combat discrimination.

### **Internal Organisation**

The Commission for Equality and against Racial Discrimination is currently chaired by the High Commissioner for Immigration and Ethnic Minorities. The other members of the Commission are from a wide variety of backgrounds, relevant to combating discrimination. Amongst other representatives, the Board is made up of NGOs working with or consisting of ethnic minority groups, representatives of immigrant and anti-racist organisations and NGOs active in human rights protection.

## Activities

### - Formal investigations

The Commission receives complaints about and investigates acts of possible racial discrimination. The Commission can decide to investigate regardless of proof, and in such cases it will ask the competent body to look into the matter. In cases where discrimination is proved, the Commission can decide on a financial sanction.

The Commission's main work concerns possible offences under administrative law provisions. Any discriminatory acts committed by individuals or public or private-law entities constitute administrative offences punishable by a fine, irrespective of the issues of civil liability or of any other penalty which may be applied.

Additional penalties may also be decided upon, depending on the seriousness of the offence and the amount of the fine imposed. Attempted offences and negligence are also punishable.

If a punishable administrative offence is committed through failure to carry out a duty, the enforcement of a penalty and payment of a fine do not exempt the offender from performing the said duty. If a single act is simultaneously a criminal offence and an administrative offence, the responsible official is always punished under the criminal law.

When the Commission receives reports or complaints about matters which may be considered to be acts of racial discrimination, it has to launch the trial process. The general inspectorates are responsible for ensuring that the appropriate courts prepare the case files.

When a case file has been prepared and the Standing Committee has indicated its view to the CICDR, a decision has to be taken by the High Commissioner for Immigration and Ethnic Minorities. The Commission is currently dealing with 34 cases. So far there has been one conviction, of a private-law enterprise.

### Contact details:

#### **Commission for Equality and against Racial Discrimination (CICDR)**

#### ***Comissão para a Igualdade e contra a Discriminação Racial***

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## NATIONAL COUNCIL FOR COMBATING DISCRIMINATION, ROMANIA

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### Background

The Romanian legislative framework in the field of discrimination provides for the principle of equality among all citizens without discrimination on account of race, nationality, ethnic origin, language, religion, gender, belief, political orientation, fortune or social origin<sup>1</sup>, as well as sanctioning acts of discrimination<sup>2</sup>. Government Decision no. 1194/2001 on the Organisation and Functioning of the National Council for Combating Discrimination, provides for the creation of the National Council for Combating Discrimination<sup>3</sup>, an independent body created to implement the principles of equality and non-discrimination.

### National Council for Combating Discrimination

The Council's purpose is to promote the principle of equality between all citizens. In the exercise of its functions, the Council carries out its activities independently, without any restriction or influence from other public institutions or authorities.

The National Council for Combating Discrimination is headed by its Steering Board, the decision-making body, which was appointed on 31 July 2002<sup>4</sup>.

The Council performs the following functions with a view to fulfilling the tasks set out by law:

- proposing the establishment, according to the law, of certain actions or special measures for the protection of disadvantaged persons and groups that are either in a position of inequality compared to the majority of citizens owing to their social origin or a handicap, or who are also faced with attitudes of rejection and marginalisation from the majority society;
- proposing draft legal regulations in the field to the Government;
- endorsing the draft legal regulations regarding the exercise of rights and freedoms, in conditions of equality and non-discrimination;
- co-operating with the relevant public authorities with a view to bringing domestic legislation into line with international regulations on non-discrimination;
- co-operating with public authorities and legal and natural persons (individuals and groups) in order to prevent, sanction and eliminate all forms of discrimination;

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<sup>1</sup> The Romanian Constitution

<sup>2</sup> The Romanian Penal Code, Government Ordinance no. 137/2000 On Preventing and Punishing All Forms of Discrimination (adopted by Law 48/2002), Emergency Government Ordinance no. 31/2002 on prohibiting the activities of some organisations and symbols having a fascist, racist or xenophobic character and prohibiting propaganda used by persons who committed crimes against peace and humanity;

<sup>3</sup> Government Decision no. 1194/2001 on the Organization and Functioning of the National Council for Combating Discrimination;

<sup>4</sup> The decision of the Prime Minister of the Romanian Government, no. 139/31.07.2002

- monitoring the application and observance of the legal provisions on preventing, sanctioning and eliminating all forms of discrimination by public authorities and legal and natural persons;
- receiving petitions and complaints regarding violations of the legal provisions concerning the principle of equality and non-discrimination from individuals and groups, NGOs active in the field of human rights protection, other legal entities, public institutions; analyses the respective petitions and complaints, adopts the appropriate measures and answers within the terms provided under the law;
- co-operating with NGOs active in the field of human rights protection;
- elaborating studies and research projects on the observance of the principle of equality and non-discrimination that shall be submitted to the Government and made public;
- issuing publications in this domain;
- ascertaining and sanctioning the contraventions provided under the Government's Ordinance No. 137/2000 on Preventing and Punishing All Forms of Discrimination;
- co-operating with similar foreign organisations and with foreign NGOs active in the field of human rights protection, as well as with international organisations working in this field;
- drawing up and implementing affirmative actions to prevent discrimination;
- carrying out programmes and national campaigns in order to fulfil its tasks.

## **Mandate**

The Council is responsible for the application of the Government's policy in the field of anti-discrimination. By law, the Council also monitors the application of equal treatment regarding non-nationals.

The National Council for Combating Discrimination aims to implement the principle of equality among citizens and to prevent, as well as to combat, acts of discrimination. It aims to achieve these goals through three primary actions, as follows.

### ➤ **Preventing discrimination**

The National Council for Combating Discrimination works to prevent discrimination by:

- organising and carrying out national awareness campaigns based on equality and respect for individual rights;
- improving the legislative framework relevant to discrimination by drafting and promoting internal laws based on European standards, as well as harmonising existing laws with the above-mentioned standards;
- drafting and signing protocols on mutual assistance and co-operation with the public authorities, to ensure the prevention, sanctioning and elimination of all forms of discrimination;
- providing a mediation service;

- creating and developing partnerships with Romanian civil society representatives with a view to preventing discrimination;
- constantly informing citizens on the activities of the Council, on the possible changes to the legal framework in the field of discrimination and on European expertise in this matter;
- creating national field offices for combating discrimination.

#### ➤ **Punishing discriminatory acts**

The National Council for Combating Discrimination receives and reviews the petitions and complaints regarding violations of the legal provisions concerning the principle of equality and non-discrimination from individuals and groups of persons, NGOs active in human rights protection, other legal entities, and public institutions. The Steering Board of the National Council for Combating Discrimination, exercising its decision-making role, analyses the petitions and complaints received, and adopts, by decisions, the appropriate measures, following investigations carried out by the specialised staff of the Council (the Inspection Team). Once the decision has been adopted, the Steering Board decides on the fine that is to be paid by the person or by the legal entity, for perpetrating a discriminatory act.

It is possible to appeal against the sanctions applied for committing the discriminatory act under the procedure provided by the common law in the legal domain of offences<sup>5</sup>.

For all discrimination cases, the victims are entitled to claim damages, proportional to the act, as well as the restoration of the situation prior to discrimination or to the cessation of the situation created by discrimination, in accordance with common law. Upon request, the court can order that the competent authorities withdraw the licence of legal entities that significantly prejudice society by means of a discriminatory action or have repeatedly violate the provisions of the Government Ordinance no. 137/2000. Human rights non-governmental organisations can appear in court as parties in cases involving discrimination pertaining to their field of activity and which prejudice a community or a group of persons.

#### **Internal organisation**

The Council is headed by the President. In the field of establishing and sanctioning discriminatory acts, the President is assisted by a Steering Board.

#### **Activities**

##### ➤ **National Alliance against Discrimination**

The National Council for Combating Discrimination has launched the establishment of the National Alliance against Discrimination (NAD), in order to co-operate effectively with civil society and social partners. NAD is an open-ended forum for debate for all NGOs that are active in human rights protection

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<sup>5</sup> Government Ordinance no. 2/2001 on the legal framework on offences

and preventing discrimination, as well as trade unions. The aims of the Alliance are to assist in the implementation of the National Plan for Combating Discrimination and to identify issues of particular concern. Furthermore, members of the Alliance may formulate declarations and recommendations concerning different aspects of combating discrimination. So far, 40 organisations are members of the NAD.

➤ **Inter-ministerial Committee for the Prevention of Discrimination**

In order to achieve full harmonisation of the internal legislation covering anti-discrimination, the National Council for Combating Discrimination has proposed the establishment of an Inter-ministerial Committee for preventing discrimination. Key ministers involved in promoting legal initiatives to combat discrimination and promoting equality will be members of this committee.

➤ **Protocols of collaboration**

Recognising both the experience and expertise of different bodies in certain fields, the Council has initiated protocols of collaboration with some ministries and public bodies, in order to offer mutual support and to co-operate in organising activities for the prevention of discrimination. Protocols have already been signed with the Ministry of the Interior. To date, Protocols are ready to be signed with the Ministries of Culture and Denominations, Youth and Sports, Public Information and Public Administration.

➤ **University programmes**

To promote the concepts of non-discrimination and equality within universities, the National Council for Combating Discrimination has contacted the universities across Romania in order to establish centres for study and research on discrimination in universities. The aim of this programme is to train specialists in non-discrimination and to familiarise students with situations which can develop into acts of discrimination. In this respect, it is intended to organise seminars, conferences and round tables, to carry out studies on non-discrimination issues and to organise practical training sessions for interested students.

**Contact details:**

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### **Background**

The Slovak National Centre was set up under Act No. 308/1993 on the Establishment of the Slovak National Centre, which came into force on 1 January 1994, following an Agreement between the United Nations and the Government of the Slovak Republic regarding the Establishment of the Slovak National Centre for Human Rights.

In accordance with Article 13 of the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, the Centre is regarded as a national specialised body, entrusted to promote equal treatment and combat all forms of discrimination, according to the Anti-discrimination Act No. 365/2004, which came into force on 1 July 2004.

### **Internal Organisation**

The Centre is headed by an administrative Board and an Executive Director.

### **Mandate and activities**

The Centre's competencies have been extended under the Anti-discrimination Act. The Centre carries out tasks in the field of human rights protection, including the rights of the child. To this end, the Centre:

- monitors and assesses respect for human rights and respect for the principle of equal treatment;
- collects and by request issues information about racism, xenophobia and antisemitism in the Slovak Republic,
- conducts research and collects and disseminates information in the field of human rights,
- prepares educational activities and participates in information campaigns to promote a tolerant society,
- provides professional advice and a counseling service for victims of discrimination and intolerance,
- provides expert opinions on the request of natural persons, legal entities or on its own initiative,
- provides a library service,
- provides other services concerning human rights, such as organising conferences, seminars, running public campaigns and making public statements in press and TV.

➤ **Supporting individuals/Legal assistance**

The Centre can be called upon by anybody, who thinks he/she has been discriminated against. The Centre can represent parties in court proceedings concerning a breach of the principle of equal treatment. The Centre can request all relevant information, with a fixed time limit, from the courts, prosecution, other public authorities, local self-government bodies and other public entities. The Centre can also request information from non-governmental organisations.

➤ **Monitoring the situation**

The Centre publishes an annual report on the situation of human rights in the Slovak Republic, as well as periodicals. The Annual report for 2004 is accessible on [www.snslp.sk](http://www.snslp.sk).

➤ **Awareness-raising and training**

The Centre organises a variety of awareness-raising activities, including the EU "Diversity Against Discrimination" Campaign and conferences on subjects such as "The Protection of Human Rights in the Slovak Republic 1993-2004", held in Bratislava in May 2004 and "Human Rights and Education on Combating Discrimination", held in Bratislava in December 2004, as well as public statements in the press and on the radio.

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## **OMBUDSMAN AGAINST ETHNIC DISCRIMINATION, SWEDEN**

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### **Background**

The Office of the Ombudsman against Ethnic Discrimination (DO) was established by Parliament in 1986 through the Law against Ethnic Discrimination. The Ombudsman is appointed by the Government for a period of six years.

The DO is independent and regulated by the law on the Ombudsman against Ethnic Discrimination (1999:131), by yearly decrees issued by the Ministry of Justice and by the laws against ethnic discrimination. The DO takes its own decisions in all individual matters but it is accountable to the Ministry of Justice.

Beside the DO there are three Ombudsmen, namely the Disability Ombudsman, the Equal Opportunities Ombudsman and the Ombudsman against Discrimination on Grounds of Sexual Orientation.

### **Mandate**

The three main duties of the DO are as follows:

- to investigate complaints made by individuals who consider themselves discriminated against;
- to supervise employers' compliance with legislation;
- to raise awareness about issues of ethnic and religious discrimination through informing and training.

Ethnic discrimination occurs when a person is treated unfairly compared to others or is otherwise subject to unjust or insulting treatment because of ethnic origin or religious belief. Legal protection against ethnic discrimination is at present regulated in the Measures to Counteract Ethnic Discrimination in Working Life Act (1999); the Act on Equal Treatment of Students in Higher Education (2001) and the Act prohibiting Discrimination (2003), which applies for example to goods, services and housing.

### **Internal organisation**

The current Ombudsman is Mrs. Katri Linna. The Office of the Ombudsman consists of 30 employees.

### **Activities**

#### **➤ Supporting individuals**

Individuals who consider themselves discriminated against on the basis of belief or ethnicity may bring a complaint to the DO. A complaint can be filed by someone who for instance considers him- or herself to have been refused

employment, a bank loan or access to housing or to public places such as bars and restaurants on the grounds of ethnic origin or religious belief. Complaints against bars and restaurants have increased in particular since 2003, when a new law against discrimination was implemented.

When the DO receives complaints concerning working life and the person making the complaint is a trade union member, the DO must ask if the trade union is willing to take on the case. If the complainant is not a union member or if the union decides not to take responsibility for the case, the DO can investigate the complaint. Some complaints are resolved through settlements as a result of communications between the DO and the accused party. In other cases, for instance if the accused party denies responsibility, the DO can bring the case to court for legal ruling.

### ➤ **Supervising compliance with legislation**

According to the law employers have a duty to set measurable goals and undertake practical measures to counter ethnic discrimination in working life. The DO is responsible for scrutinising employer's affirmative actions in regard to ethnic discrimination. If the employer is not willing to accept corrective measures proposed by the DO, the latter can turn to the Board against Discrimination. The Board against Discrimination can insist that the employer implements the measures and can impose a civil fine in the case of non-compliance.

Each year the DO focuses its supervisory activities on different sectors of society. In 2005, the DO concentrated on governmental authorities as employers.

### ➤ **Raising awareness and shaping opinion**

The DO aims to promote human rights and to counter ethnic and religious discrimination. By liaising with society's key organisations, the DO attempts to influence these institutions to further combat ethnic discrimination. For this purpose, the DO maintains on-going contacts with, for example, religious and ethnic associations, trade unions and employers' organisations, the police, the armed forces and other similar institutions and organisations. The DO also maintains continuous co-operation with other governmental institutions, especially the other ombudsmen, in order to promote human rights.

Members of the DO staff are frequently invited to speak and to take part in national and international seminars and conferences. The office of the DO also communicates with the press, radio and television concerning both individual cases and more general issues. It implements special projects with the aim of awareness-raising and shaping public opinion, either regarding certain particular issues or focused on specific target groups. The situation of the Roma receives special attention.



## ➤ **Special projects**

In 2005, the DO started a project aimed at reducing discrimination in pubs and restaurants. The DO co-operates with the restaurants and their associations and is working to develop a code of good practice for access to such places. The code must be totally coherent and non-discriminatory to prevent door-keepers and bar and restaurant owners and staff from making arbitrary and discriminatory customer selections. Another task within the project is to scrutinise restaurants as employers when it comes to affirmative actions. The Swedish government is also currently looking into the possibility of withdrawing the license to serve alcohol from restaurants that have been found guilty of discrimination.

During the last three years the DO has been running a project, assigned by the government, to prevent discrimination against Roma. The project used dialogue, co-operation, empowerment and education in human rights as the main tools to prevent discrimination and a report on its findings was released in 2004. One of the most important arguments of the report is the need for genuine Roma participation and influence in any decision-making that concerns Roma. Many aspects of the strategies suggested in the report have subsequently been adopted by the Swedish government. As a result of the Roma project the DO receives an increasing number of complaints of discrimination from Roma.

Following the experience gained from the Roma project and from a study of the complaints filed by individuals to the DO during the last six years, the DO are now emphasising outreach work to target groups that are believed to be especially exposed to discrimination. Using the same tools, namely dialogue, education in human rights, co-operation and empowerment, the aim is to encourage these groups to fight for their rights, within and through their existing organisations. By doing this the DO also expects to gain a better overview of on-going discrimination in Sweden.

From the beginning of 2005, the DO has been running a two-year project with The National Courts Administration. The project is intended to raise awareness and understanding of discriminatory practice in the Swedish judiciary system. The training aims to explain psychological factors behind discrimination. With the use of actual complaints filed at the DO as a factual background for discussions on discrimination in the judiciary system, the project targets a broad group of judges.

Since 2002 the DO has been a member of EuroNEB - the European Network of Specialised Equality Bodies. The purpose of this co-operation is to build and reinforce co-operation between different European institutions working towards equal opportunities, and through this promote improvement of legislation on equality and human rights in Europe. The project is coordinated by The Migration Policy Group and financed by the European Union.

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## **FEDERAL COMMISSION AGAINST RACISM (CFR), SWITZERLAND**

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### **Background**

Switzerland acceded to the International Convention on the Elimination of All Forms of Racial Discrimination on 29 December 1994. States which sign this Convention undertake to make racist acts punishable, to eliminate racist propaganda, to pursue a policy with a view to eliminating racial discrimination, to guarantee equal treatment for all individuals irrespective of their nationality, ethnic origin, religion or skin colour, and to combat prejudice at school or in other fields of education. The Federal Council set up the CFR, a specialised national institution, in order to implement this Convention.

According to Article 261bis of the Penal Code, any public racial discrimination is punishable. The cantonal judicial authorities are responsible for applying this article.

### **Mandate**

According to the CFR's terms of reference, in pursuance of the decision of the Federal Council of 23 August 1995, the CFR's objectives are to promote better understanding between persons of different races, colours, ethnic or national origins or religions, to combat any form of direct or indirect racial discrimination and to pay special attention to prevention as a way of making its work effective.

### **Internal Organisation**

The CFR is composed of 19 experts appointed by the Swiss government. Some of these experts are representatives of religious communities, minorities, non-governmental anti-racism organisations, both sides of industry (employers' and employees' organisations) and the Conferences of Cantonal Directors of Education and the Police, while others are independent experts. The Secretariat provides support for the Commission and deals with routine matters. It is attached to the General Secretariat of the Federal Department of the Interior.

### **Activities**

The main activities of the CFR are as follows:

- raising public awareness;
- transmitting recommendations and viewpoints to the authorities;
- offering support and advice to the persons concerned;
- co-operating with all the parties involved;
- observing, documenting, analysing.

➤ **Awareness raising**



The CFR raises awareness and carries out public relations work by running campaigns and issuing public statements, publications and press articles. The Commission draws up its own reports on certain specific areas.

➤ **Recommendations to the authorities**

The CFR advises the Federal Council and departments through consultation procedures, recommendations, expert reports and the viewpoints it puts forward. It also provides support to cantonal and municipal authorities, mainly by holding annual meetings on subjects of common interest, such as the situation of Swiss travellers and prejudice against asylum-seekers of African origin.

➤ **Support**

The President and the Secretariat of the CFR offer advice to anyone who feels that he or she has suffered racial discrimination. They carry out research and act as mediators in the event of disputes. The Commission does not, however, have an official role as ombudsman.

➤ **Co-operation with all the parties involved**

The CFR plays a central role in promoting collaboration and co-operation between federal authorities, non-governmental organisations and international bodies. The Commission issues invitations to the parties involved and expresses its views on topical themes, sometimes at the request of NGOs. In the context of the federal authorities, it coordinates its own activities with those of the Federal Commission for Refugees and the Federal Commission for Foreigners.

➤ **Observation, documentation, analysis**

The CFR encourages research into important subjects connected with its activities such as antisemitism in Switzerland, islamophobia and the exclusion of certain groups of immigrants on the basis of their temporary resident status.

The CFR Secretariat is responsible for the Commission's documentation (newspaper articles, scientific publications and judgments connected with the application of the anti-racist criminal law, Art 261bis of the Penal Code). Interested parties may consult this documentation.

➤ **Activities at international level**

The CFR monitors international developments in the field of protection against racism and respect for human rights and works for the implementation of the relevant international conventions. It is part of the Swiss delegation to the Committee which monitors the UN's International Convention on the Elimination of All Forms of Racial Discrimination. It is a national specialised body recognised by the United Nations and the Council of Europe.

➤ **Publications**

"Tangram", the CFR's free newsletter, appears twice a year, each issue focusing on one special topic. The CFR recently launched a website, which receives over 80 000 visits a year from all parts of the world.

Reports have been published on the following themes: antisemitism in Switzerland, segregation in schools, the prohibition of discrimination and family reunification, cantonal procedures for naturalisation and assistance for victims of racism.

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**Eidgenössische Kommission gegen Rassismus**  
**Commission fédérale contre le racisme**  
**Commissione federale contro il razzismo**  
**Cumissium federala cunter il razzissem**





### Background

The Commission for Racial Equality was set up by the 1976 Race Relations Act, which covers discrimination on the grounds of colour, race, nationality, citizenship and ethnic or national origin. The Commission is funded by an annual grant from the Home Office, but works independently of government. It is run by Commissioners appointed by the Home Secretary, and has support from all the major political parties.

### Mandate

The CRE's duties are threefold:

- to work towards the elimination of discrimination;
- to promote equality of opportunity and good relations between persons of different racial groups generally;
- to keep under review the working of the Race Relations Act, and, when required by the Secretary of State or when it otherwise thinks it necessary, to draw up and submit to the Secretary of State proposals for amending it.

The CRE is the only government-appointed body in the country with a statutory power to enforce the Race Relations Act.

The functions of the CRE are as follows:

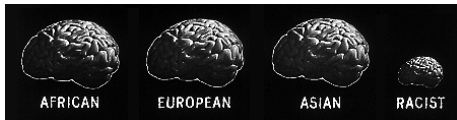
#### ➤ **Formal investigations**

The Commission may, if it sees fit, conduct formal investigations for any purpose connected with the carrying out of its duties and must conduct them if required to do so by the Secretary of State. The 1976 Act, sections 48-52, sets out the terms under which such investigations may be carried out.

A formal investigation may result in the Commission making recommendations that a person or organisation make changes to their practices or procedures to eliminate unlawful discrimination and promoting equality of opportunity and/or good relations between persons of different racial groups. It can also make recommendations to the Secretary of State for changes in the law.

If the Secretary of State has instigated the investigation, the Commission must present him with a report of its findings, and he must then arrange for the publication of this report. In all other cases, the Commission can prepare a report which is published or made available for public inspection.

If in the course of a formal investigation the Commission becomes satisfied that unlawful discrimination and/or contraventions of other parts of the Act have occurred, it is empowered to serve a non-discrimination notice on the person/s concerned, which requires them not to contravene specified provisions of the Act. They are then required to inform the Commission, and persons concerned (e.g. employees), of steps taken to comply with the Act. The Commission must inform the recipient of such a notice in advance that it is contemplating serving the notice, and that they have the right of appeal against the requirements of the notice.



Non-discrimination notices which have become final are entered into a register of non-discrimination notices maintained by the Commission.

The significance of a non-discrimination notice is that once it becomes final, the recipient is liable for the next five years, should he persist in committing unlawful acts, to proceedings by the Commission for an injunction or other court order.

The Commission can deal with persistent discrimination by seeking an injunction or order from a designated county court or a sheriff's court in Scotland, if a person on whom a non-discrimination notice has been served (within the last five years), or against whom a court or tribunal finding has been made, seems likely to contravene the Act unless restrained.

➤ **Enforcement in relation to discriminatory practices and advertisements, and pressure and instructions to discriminate**

The Commission has special powers and functions in relation to the provisions of the Act dealing with discriminatory practices and advertisements, and pressure and instructions to discriminate. Only the Commission may institute legal proceedings in respect of contraventions. The formal investigation and non-discrimination notice procedure are also available to the Commission in these cases.

➤ **The Public Duty (Race Relations Act as Amended 2000) – The Legal Framework**

Following the murder of black teenager Stephen Lawrence, and the subsequent inquiry into the police investigation of his death, the Government proposed changes to the Race Relations Act to address some of the Macpherson report's recommendations. The amended Race Relations Act (2000) includes a new statutory duty on 43 000 public bodies to promote race equality. The aim is to tackle institutional racism by helping these public bodies to provide fair and accessible services, and to improve equal opportunities in employment for everyone. Some bodies also have specific duties to help them meet the general duty.



If a public body listed in Schedule 1A of the Act does not meet the general duty, one or more people with an interest in the matter, or the CRE, can apply to the High Court for Judicial Review. The CRE can also use its powers of formal investigation to enforce the general duty.

Where public authority fails to meet specific duties placed on it under the Act, it could face enforcement action by the CRE under section 71D of the amended Race Relations Act. The CRE can serve a compliance notice on the authority stating that it must meet its duties — it must then tell the CRE (within 28 days of the date of the notice) what it has done or is doing to meet its duties. This compliance notice can be enforced through a court order.

The CRE monitors adherence to both the general and specific duties by examining samples of published information and reports required by Race Equality Schemes or policies through working with inspectorates and audit bodies, as well as assessing evidence of possible failure to comply brought to the CRE's attention by individuals, groups, trade unions and various interested voluntary sector (and other public sector) groups.

## Activities

### ➤ Assistance

Anyone who thinks that they have suffered racial discrimination has the right of direct access to courts or industrial tribunals for redress. The CRE can help complainants by putting them in touch with other agencies which can help and advise them (solicitors, trade unions etc.), or it has discretion to help them directly where the case raises a question of principle or where the complainant is for some reason not in a position to deal with the case unaided. In such cases, the Commission may give advice, seek a settlement, or arrange for legal assistance or representation.

When a person applies to the Commission in writing for assistance in respect of his or her case, the Commission is required, within two months of receiving the application, to consider it, decide whether or not to grant it and to inform the applicant of its decision.

### ➤ Provision of information and advice

The Commission has the general responsibility of advising the Government on the working of the Act. It publishes an annual report which includes a general survey of developments, highlights significant cases which have come before the courts or industrial tribunals, and sets out the most important findings and recommendations arising in connection with its own formal investigations. It is thus the principal source of information about the Act, about which it publishes explanatory material from time to time.



It also advises a variety of agencies on how to avoid discrimination and promote equal opportunities - training and enterprise councils, local authorities, housing departments, employers, health and education authorities, the police etc.

The Commission publishes reports based on specific formal investigations or on wider surveys and enquiries.

It keeps MPs, political parties, national organisations and institutions, and the media informed of its activities.

➤ **Codes of practice and guides**

The Commission may issue codes of practice containing guidance for the elimination of discrimination and the promotion of equality of opportunity between persons of different racial groups. These codes of practice enter into force after approval by Parliament and by the Home Secretary. It also provides guides aimed at specific areas (for example, how the Race Relations Act applies to job advertisements, how it applies to the work of estate agents and vendors, etc.).

➤ **Assistance to organisations**

The Commission may give financial or any other assistance to any organisation which, in its opinion, is concerned with the promotion of equal opportunity and good relations between persons of different racial groups. For example, it provides funding for the 102 Racial Equality Councils working at local level throughout the United Kingdom. Representatives of community groups, voluntary and statutory organisations and individuals who support their aims, manage these RECs.

**Internal organisation**

The management of the Commission for Racial Equality is composed of a Chair, currently Trevor Phillips, 14 Commissioners and a Chief Executive. The Commission for Racial Equality employs approximately 200 members of staff.

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### **Background**

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act of 1998. On 1 October 1999 the Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council.

### **Mandate**

Article 74 of the Northern Ireland Act outlines the functions of the Equality Commission, which are as follows:

- to promote equality of opportunity and affirmative and positive action;
- to work towards the elimination of unlawful discrimination in relation to gender, race, disability, religious belief, political opinion and sexual orientation;
- to promote good relations between persons of different racial groups, religious beliefs and political opinions;
- to oversee the effectiveness of the statutory positive duties placed on public authorities under Section 75 of the Northern Ireland Act, and;
- to keep under review the relevant legislation for which the Commission is responsible.

The grounds of discrimination covered by the Commission are gender; race; disability, religious belief and political opinion and sexual orientation. Responsibility for age discrimination will be added in 2006.

### **Internal organisation**

The Commission is led by a Chief Commissioner, a Deputy Chief Commissioner and 16 other Commissioners. Commissioners are appointed by the Secretary of State through the public appointments process and normally serve for a period of three years. The Commission has a staff of 143, headed by a Chief Executive.

### **Activities**

#### **➤ Supporting complainants**

The Commission provides advice and assistance to people who believe they have been discriminated against on one of the above-mentioned grounds. Assistance by the Commission ranges from simply giving advice to arranging for legal representation in some cases. It can also take legal action against

individuals and organisations in some circumstances; for example, if they have published a discriminatory advertisement.

The Commission does not decide whether discrimination has in fact occurred; this is for an independent industrial tribunal or court.

➤ **Investigation and enforcement**

The Commission has a wide range of powers to ensure compliance with the legislation; including powers of enquiry and investigation. One of its key aims is the promotion of affirmative/positive action to bring about greater equality in employment and the wider society. As a result of its investigations it can effect changes in policies and practices, where necessary through the use of non-discrimination notices, legally binding agreements or legally enforceable directions in some cases. Fair employment legislation also places additional duties on employers with regard to registration, monitoring and review of employment composition and practices. It has a wide range of powers to audit employer duties.

➤ **Promoting equality and good relations**

The Commission combines its enforcement powers with action to promote and encourage good equal opportunities practice. It also provides information, advisory and training services to assist employers, trade unions, service providers, non-governmental organisations and others. The Commission offers an information and library service to all of these groups and to students, the media and the general public. The Commission issues publications and Codes of Practice, to provide guidance and set standards for fairness and equality, in areas such as employment, equal pay, housing and the provision of goods, facilities and services. The Commission also initiates public education campaigns to raise awareness and works in partnership with others to help build a more equal society.

➤ **Research**

The Commission undertakes research and commissions or financially supports research undertaken by others in order to provide reliable information and inform the debate on equality issues.

➤ **Grants**

Under both the Race Relations Order 1997 and the Sex Discrimination Order 1976, the Commission can provide financial or other assistance for promotional and educational activities to organisations promoting gender and racial equality as well as good race relations.

➤ **Public Sector Statutory Duty**

Section 75 of the Northern Ireland Act places significant duties on public authorities regarding how they carry out their functions. These duties relate to the promotion of equality of opportunity on grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation and whether or not people have dependents; and promoting good relations between people of different racial groups, religious belief or public opinion. These duties on public authorities include the production and review of Equality Schemes, conducting equality impact assessments and including consultation as an integral part of the policy-making process. The Commission has also been given powers and responsibilities to oversee the effectiveness of the duties including the approval of the Equality Schemes, investigating complaints and giving advice to public authorities and others.

➤ **Legislative Review**

The Commission monitors the way that Northern Ireland's equality laws are working and makes recommendations to Government on ways in which they can be improved.

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## **Appendices**

### **Appendix I**

ECRI's General Policy Recommendation N° 2:  
Specialised bodies to combat racism, xenophobia, antisemitism and  
intolerance at national level  
(adopted on 13 June 1997)

### **Appendix II**

ECRI's General Policy Recommendation N° 7 on national legislation to  
combat racism and racial discrimination  
(adopted on 13 December 2002)  
Extracts – Common provisions





## APPENDIX I

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### **ECRI General Policy Recommendation N°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level**

**Adopted by ECRI on 13 June 1997**

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The European Commission against Racism and Intolerance (ECRI):

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate general policy recommendations to member States;

Taking into account Resolution 48/134 adopted by the General Assembly of the United Nations on 20 December 1993 on National Institutions for the Promotion and Protection of Human Rights;

Taking into account also the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights held in Paris from 7-9 October 1991 (known as the "Paris Principles");

Recalling the different Resolutions adopted at the first and second European meetings of National Institutions for the Promotion and Protection of Human Rights, held respectively in Strasbourg on 7-9 November 1994 and in Copenhagen on 20-22 January 1997;

Taking into account Recommendation N° R (85) 13 of the Committee of Ministers on the institution of the Ombudsman;

Taking also into account work carried out by the Steering Committee for Human Rights (CDDH) relating to the establishment of Independent National Human Rights Institutions;

Emphasising that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of fundamental human rights;

Recalling the proposal of ECRI to reinforce the non-discrimination clause (Article 14) of the European Convention on Human Rights;

Profoundly convinced that everyone must be protected against discrimination based on race, colour, language, religion or national or ethnic origin or against discrimination which might stem indirectly from the application of the law in these areas;

Convinced of the necessity of according the highest priority to measures aiming at the full implementation of legislation and policies intended to combat racism, xenophobia, antisemitism and intolerance;

Recalling that an effective strategy against racism, xenophobia, antisemitism and intolerance resides to a large extent on awareness-raising, information and education of the public as well as on the protection and promotion of the rights of individuals belonging to minority groups;

Convinced that specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of the range of measures taken in this field and to providing advice and information to national authorities;

Welcoming the fact that such specialised bodies have already been set up and are functioning in several member States;

Recognising that the form such bodies might take may vary according to the circumstances of member States and may form part of a body with wider objectives in the field of human rights generally;

Recognising also the need for governments themselves to provide information and to be accessible to specialised bodies and to consult them on matters relevant to their functions;

recommends to the governments of member States:

1. to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist;
2. in examining this question, to make use of the basic principles set out as an appendix to this recommendation as guidelines and a source of inspiration presenting a number of options for discussion at national level.

## **Appendix to ECRI General Policy Recommendation N° 2**

### ***Basic principles concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level***

#### **Chapter A: The statutes establishing specialised bodies**

##### *Principle 1*

###### *Terms of reference*

1. Specialised bodies should be given terms of reference which are clearly set out in a constitutional or other legislative text.
2. The terms of reference of specialised bodies should determine their composition, areas of competence, statutory powers, accountability and funding.

#### **Chapter B: Alternative forms of specialised bodies**

##### *Principle 2*

1. According to the legal and administrative traditions of the countries in which they are set up, specialised bodies may take different forms.
2. The role and functions set out in the above principles should be fulfilled by bodies which may take the form of, for example, national commissions for racial equality, ombudsmen against ethnic discrimination, Centres/Offices for combating racism and promoting equal opportunities, or other forms, including bodies with wider objectives in the field of human rights generally.

## **Chapter C: Functions and responsibilities of specialised bodies**

### *Principle 3*

Subject to national circumstances, law and practice, specialised bodies should possess as many as possible of the following functions and responsibilities:

- a. to work towards the elimination of the various forms of discrimination set out in the preamble and to promote equality of opportunity and good relations between persons belonging to all the different groups in society;
- b. to monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, antisemitism and intolerance and to make proposals, if necessary, for possible modifications to such legislation;
- c. to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields;
- d. to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts;
- e. subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate if and when necessary;
- f. to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
- g. to have appropriate powers to obtain evidence and information in pursuance of its functions under f. above;
- h. to provide information and advice to relevant bodies and institutions, including State bodies and institutions;
- i. to issue advice on standards of anti-discriminatory practice in specific areas which might either have the force of law or be voluntary in their application;
- j. to promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- k. to promote the awareness of the general public to issues of discrimination and to produce and publish pertinent information and documents;
- l. to support and encourage organisations with similar objectives to those of the specialised body;
- m. to take account of and reflect as appropriate the concerns of such organisations;

## **Chapter D: Administration and functioning of specialised bodies**

### *Principle 4*

#### *Composition*

The composition of specialised bodies taking the form of commissions and the like should reflect society at large and its diversity.

#### *Principle 5*

##### *Independence and accountability*

1. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to the approval of parliament.
2. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly.
3. Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament.
4. The terms of reference of specialised bodies should set out clearly the provisions for the appointment of their members and should contain appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.

#### *Principle 6*

##### *Accessibility*

1. Specialised bodies should be easily accessible to those whose rights they are intended to protect.
2. Specialised bodies should consider, where appropriate, setting up local offices in order to increase their accessibility and to improve the effectiveness of their education and training functions.

#### **Chapter E: Style of operation of specialised bodies**

#### *Principle 7*

1. Specialised bodies should operate in such a way as to maximise the quality of their research and advice and thereby their credibility both with national authorities and the communities whose rights they seek to preserve and enhance.
2. In setting up specialised bodies, member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their functions and are fully consulted on matters which concern them.
3. Specialised bodies should ensure that they operate in a way which is clearly politically independent.

## APPENDIX II

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### ECRI General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination – Extracts

#### Extracts: “Key elements of national legislation against racism and racial discrimination.”

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#### V. Common provisions

24. The law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at national level (henceforth: national specialised body). The law should include within the competence of such a body: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.
25. The law should provide that organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by the national law, a legitimate interest in combating racism and racial discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to. If a specific victim is referred to, it should be necessary for that victim’s consent to be obtained.
26. The law should guarantee free legal aid and, where necessary, a court-appointed lawyer, for victims who wish to go before the courts as applicants or plaintiffs and who do not have the necessary means to do so. If necessary, an interpreter should be provided free of charge.
27. The law should provide protection against any retaliatory measures for persons claiming to be victims of racial offences or racial discrimination, persons reporting such acts or persons providing evidence.
28. The law should provide for one or more independent bodies entrusted with the investigation of alleged acts of discrimination committed by members of the police, border control officials, members of the army and prison personnel.”

#### Extracts: “Explanatory memorandum to ECRI General Policy Recommendation N° 7 on National Legislation to Combat Racism and Racial Discrimination.”

#### V. Common provisions

##### *Paragraph 24 of the Recommendation*

50. According to paragraph 24 of the Recommendation, the law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at national level. The basic principles concerning the statute of such a body, the forms it might take, its functions, responsibilities, administration, functioning and style of operation are set out in ECRI’s general policy recommendation no 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.
51. The functions attributed to this body should be provided by law. The Recommendation enumerates a certain number of such functions. Assistance to victims covers provision of general advice to victims and legal assistance, including representation in proceedings before the courts. It also covers assistance in seeking friendly settlement of complaints.

52. As concerns investigation powers, in order that a national specialised body may conduct these effectively, it is essential that the law provides the latter with the requisite powers, subject to the rules of procedure of the national legal order. This includes powers granted in the framework of an investigation, such as requesting the production for inspection and examination of documents and other elements; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. The national specialised body should also be entitled to bring cases before the courts and to intervene in legal proceedings as an expert.
53. The functions of the national specialised body should also include monitoring legislation against racism and racial discrimination and control of the conformity of legislation with equality principles. In this respect, the national specialised body should be entitled to formulate recommendations to the executive and legislative authorities on the way in which relevant legislation, regulations or practice may be improved.
54. As concerns awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment, the national specialised body could run campaigns in collaboration with civil society; train key groups; issue codes of practice; and support and encourage organisations working in the field of combating racism and racial discrimination.
55. In addition to these functions, the national specialised body may be attributed other responsibilities. Moreover, another body could be entrusted with the adjudication of complaints through legally-binding decisions, within the limits prescribed by the law.

***Paragraph 25 of the Recommendation***

56. The Recommendation provides in its paragraph 25 that organisations such as associations, trade unions and other legal entities with a legitimate interest should be entitled to bring complaints. Such a provision is important, for instance, in cases where a victim is afraid of retaliation. Furthermore, the possibility for such organisations to bring a case of racial discrimination without reference to a specific victim is essential for addressing those cases of discrimination where it is difficult to identify such a victim or cases which affect an indeterminate number of victims.

***Paragraph 27 of the Recommendation***

57. According to paragraph 27 of the Recommendation, the law should provide protection against retaliation. Such protection should not only be afforded to the person who initiates proceedings or brings the complaint, but should also be extended to those who provide evidence, information or other assistance in connection with the court proceedings or the complaint. Such protection is vital to encourage the victims of racist offences and discrimination to put forward their complaints to the authorities and to encourage witnesses to give evidence. In order to be effective, the legal provisions protecting against retaliation should provide for an appropriate and clear sanction. This might include the possibility of an injunction order to stop the retaliatory acts and/or to compensate victims of such acts.”