

## Chopping up the iceberg



The role of NGOs in combating discrimination

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## Role of NGOs in combating discrimination

- ✱ Introduction
- ✱ Legal opportunities
- ✱ Issues arising
- ✱ Recommendations

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## Introduction

Role and tasks of NGOs in combating discrimination

- ✱ How large is the iceberg?
- ✱ Advocacy from small, community based work to broad, policy oriented work.
- ✱ Victim support: from information to counselling and legal support.

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## Legal opportunities

EC Directives acknowledge role of NGOs in protection of rights

✳ Victim support: NGOs 'should be empowered to engage in proceedings on behalf or in support of victims'.

See Article 7 Race Directive and Article 9 Framework Directive

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## Legal opportunities

✳ Dialogue with the government:

MS 'shall encourage dialogue with appropriate NGOs, which have a legitimate interest in contributing to the fight against discrimination'.

See Article 12 Race Directive, Article 14 Framework Directive.

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## NGO issues

✳ Transposition of the Directives

✳ Lack of awareness (potential) victims

✳ Access to justice

✳ Lack of knowledge among legal professionals

✳ Standards/burden of proof

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## Transposition of the Directives

✳ *Directives not implemented (e.g. D, L, CZ)*

✳ *Faulty transposition (Commission report soon published?)*

Result: inadequate implementation of equal treatment norms, inadequate protection against discrimination. Limited opportunities for victims' rights.

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## Lack of awareness

*Lack of awareness (potential) victims*

(Potential) victims often

✳ Do not know the law

✳ Do not know where to go for support

✳ Think that complaining does not help

✳ Find the incident not important

✳ Fear victimisation

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## Access to justice

*Problematic legal aid*

✳ Legal services are sometimes not available

✳ Financial and other thresholds for legal aid are too high

✳ Qualified lawyers unavailable

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## Lack of knowledge

### *Lack of knowledge among legal professionals*

Sometimes legal professionals lack the knowledge of non-discrimination laws: advocates, solicitors and judges are not always trained in / familiar with equal treatment issues.

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## Standards/burden of proof

### *Collecting evidence of discrimination*

Difficulty in collecting proof of discrimination: statistical data, witnesses.  
Shift of the burden of proof sometimes not applied.

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## Recommendations

Demand and use a dialogue with the government on:

- \* Faulty transposition
- \* Access to justice (legal aid)
- \* Training and awareness raising of judges and lawyers
- \* Awareness campaigns for (potential) victims

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## Recommendations

### *Victim support*

- ✧ Counselling
- ✧ Mediation
- ✧ Litigation (civil procedures, or as a last resort: criminal prosecution)

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## Recommendations

*Strategic litigation: Use the court system to create social changes, with lasting effects beyond the individual case.*

- ✧ Use specialized body, situational tests.
- Identify:
- ✧ Issues for litigation
  - ✧ Litigation goals
  - ✧ Legal forum and jurisdiction.

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## Recommendations

*Strategic litigation: considerations*

- ✧ Client goes first
- ✧ Impact
- ✧ Community support/public hostility
- ✧ Evidence
- ✧ Lack of funding
- ✧ Judge's knowledge/collaboration

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## Recommendations

### *Strategic litigation: legal considerations*

- ✳ National procedures: refer to EC-legislation, ICERD, art. 14 ECHR and Protocol 12.
- ✳ Consider the collective complaints procedure of the Protocol to the European Social Charter.

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## Recommendations

### *Strategic litigation: other considerations*

- ✳ Make shadow reports:  
UN committees: CERD, HR-committee  
Council of Europe: ECRI
- ✳ Write to MEP
- ✳ Write to European Commission

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