

ECRI Seminar with National Specialised Bodies to Combat Racism and Intolerance (Equality Bodies) Revision of ECRI General Policy Recommendation No.2 on Specialised Bodies Strasbourg 23 and 24 May 2017

Report and Conclusions¹

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Introduction

Following on from discussions at previous ECRI seminars about the role and effectiveness of National Specialised Bodies for Combating Racism and Intolerance, which will now be called Equality Bodies, ECRI decided at its Plenary meeting in June 2016 to set up a Working Group to revise and update its General Policy Recommendation No.2 dealing with specialised bodies to combat racism, xenophobia, antisemitism and intolerance.

The fact that ECRI had devoted its second ever General Policy Recommendation (GPR), adopted 20 years ago in 1997, to a call to Council of Europe Member States to consider setting up bodies to combat racism, xenophobia, antisemitism and intolerance showed how strongly it believed that such bodies were essential to this task.²

After more than 20 years of monitoring how Member States combat racism and intolerance ECRI is even more convinced of the centrality of Equality Bodies and it has also become more aware of the factors that are essential to the success of such bodies. These include Independence, robust Anti-discrimination Legislation and Adequate Powers and Resources. It has also become clear that in order to bring about significant change, Equality Bodies must increasingly take on the role of not just combating discrimination, but taking positive action to counteract the effects of exclusion and ghettoisation on the basis of grounds such as race, national or ethnic origin, citizenship, sexual orientation or gender identity.

Much has changed since 1997 and almost all countries in Europe have now established Equality Bodies and much has been learned about the obstacles such bodies have to surmount and the practices that have proved successful for some of them. It seemed to ECRI that this was an appropriate time to revise the original GPR No.2 and to capture some of the experience and knowledge acquired over the last 20 years in a new and more comprehensive version of the GPR. It also seemed particularly appropriate to do this at a time when racism, xenophobia and other forms of intolerance are growing across Europe. And, very importantly, this was something that the Equality Bodies themselves and Equinet, the European Network of Equality Bodies³ had asked ECRI to do.

The ECRI Working Group, very efficiently chaired by ECRI member and Deputy Ombudsperson for Croatia, Tena Simonovic Einwalter, and with invaluable support from ECRI Secretariat member Wolfram Bechtel and consultant Niall Crowley, began meeting in August 2016 and

¹ *This summary and conclusions of the seminar represent the opinion of the author and do not necessarily reflect those of ECRI.*

² http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N2/default_en.asp

³ <http://www.equineteurope.org/>

produced a draft revision of GPR No.2 together with an Explanatory Memorandum by March 2017, in time for a very preliminary discussion by a Plenary meeting of ECRI that month.

Although this was originally an ECRI initiative, it was agreed that in the spirit of the disability movement's principle of 'Nothing about us without us', the draft should be circulated to the Equality Bodies in the various Member States of the Council of Europe, to Equinet, and a number of international organisation such as the European Commission, the EU Fundamental Rights Agency, the OSCE/ODHIR and the UN High Commissioner for Human Rights for their comments. The result of the consultation was very satisfactory, with 27 submissions running to 253 pages, and ECRI took account and incorporated as far as possible the comments. This meant that the Working Group could go to the seminar with the Equality Bodies with some idea of the views and concerns of equality bodies and other organisations and could offer some preliminary responses, while listening to the discussion and the exchange of views between the participants in the seminar.

The Working Group reviewed the draft GPR and Explanatory Memorandum just after the seminar and made a number of amendments to the text in response to the views expressed in the submissions and at the seminar and then submitted the amended version for discussion at the next ECRI Plenary session in June 2017.

Following that discussion, another version incorporating any further amendments will be presented to the ECRI Plenary meeting in December 2017 for final debate and adoption. It will also include some minor consequential changes to ECRI GPR No. 7 on national legislation to combat racism and racial discrimination.

The Seminar – the opening sessions

The seminar was opened by Christian Ahlund, ECRI chair, who expressed sympathy on behalf of the participants with the victims of the tragic bombing of a concert in Manchester on the previous evening.

He stressed ECRI's recognition of the pivotal role played by Equality Bodies in combating racism and intolerance and its hope that the revised version of GPR No.2 would help to strengthen the position of such bodies. The seminar was attended by over 70 heads and representatives of Equality Bodies and regional and international human rights organisations.

During the opening session Patrick Charlier, Co-director of the Interfederal Centre for Equal Opportunities of Belgium, spoke about a forthcoming study for the UN on the implementation of the recommendations of the Durban World Conference Against Racism and its follow-up conference, which called for the establishment of national bodies to combat racism. He also spoke about a new development in UN human rights treaties, namely the requirement for states under the Optional Protocol to UN Convention Against Torture and the Convention on the Rights of Persons with Disabilities to establish or designate independent domestic bodies to monitor the implementation of those conventions.

In several European countries this responsibility has been given to Equality Bodies and he argued that this creates new opportunities but also dangers for such bodies, for example the danger of overwhelming them with new responsibilities without additional funds or resources.

Evelyn Collins, chair of Equinet, warmly welcomed the draft revision of the GPR No.2. She noted that Equality Bodies were coming under increased pressure due to severe cuts to their

budgets as a result of austerity policies and increasing interference by governments, and that all this was happening at a time of growing intolerance in many countries.

She also spoke about Equinet's own Working Paper on Developing Standards for Equality Bodies,⁴ which stressed the need for a broad mandate for such bodies, encompassing equality, diversity and non-discrimination in both public and private sectors. The Equinet paper also called for complete independence, for effectiveness in terms of powers and resources, and for coherence of institutional architecture, which should be designed to enable these bodies to carry out their mandate. These factors are all reflected in ECRI's draft revision of GPR No.2. Tena Simonovic Einwalter, the chair of the ECRI Working Group, then outlined the process that had led up to the draft revision. She emphasised that the recommendations in the revised GPR No.2 should be read in conjunction with the Explanatory Memorandum, which goes into more detail about the recommendations made and outlines the thinking behind them. She also stressed that the seminar was meant as a listening exercise and mentioned that the Working Group had already changed its views on several issues as a result of the written submissions that had been received.

In the second session Richard Senghor, Secretary General of the Défenseur des Droits of France, spoke about the merger of four organisations to establish the current Défenseur body. He said there had been some concerns about the merger and there were difficulties in bringing together four formerly independent organisations, each with its own history and culture. Would this lead to less emphasis being put on some mandates and would the new body be swamped by a much greater number of complaints?

Despite the difficulties, he said that the experience had been generally positive. They could now deal with more issues and could offer a broader service to persons who came to them with complex problems covering a number of different grounds of discrimination and unfair treatment.

This presentation was significant because the draft revision had originally expressed a preference for stand-alone Equality Bodies but in this case it appeared that a multi-mandated body could have advantages in some situations. George Tugushi, a member of the ECRI Working Group, who chaired this session, noted that Equality Bodies could come in different shapes and sizes in different countries and Evelyn Collins commented that the discussion showed the need to respect the local situation in each case while also trying to ensure that the Equality mandate was not neglected or undermined as a result of a merger with other bodies.

The debate at the Seminar

By this time there was quite a lively engagement from the participants and a number of key threads of discussion began to emerge. Almost all speakers welcomed the idea of a revised version of the GPR with a strong emphasis on independence, adequate resources, broad mandates and robust anti-discrimination legislation. One of the ombudspersons of Bosnia Herzegovina made a passionate call for stronger language in the new GPR so that it could be used to press governments to give wider and more powerful mandates to Equality Bodies and to respect and implement their decisions.

On the other hand, the deputy Equality Ombudsman of Sweden expressed the view that the draft document was too long, too complicated and too ambitious. He argued that it should not

⁴ <http://www.equineteurope.org/Equinet-Working-Paper-on-Developing-Standards-for-Equality-Bodies>

express a preference for separating the function of adjudicating on complaints from the promotion, victim support and litigation functions of Equality Bodies and it should not propose additional functions for bodies that already had limited resources. He expressed concern that if Equality Bodies were given too many responsibilities, governments could undermine them by saying that they were not fulfilling all their functions, while refusing to give them the resources necessary to do so. And he suggested that the Explanatory Memorandum was too detailed and sought to engage in micro management of Equality Bodies.

Some of these issues were ongoing themes throughout the seminar. Other speakers from Ombuds institutions said that the function of adjudicating on complaints was essential to their work and should not be split off from the other functions of Equality Bodies. However, there was a good deal of agreement that the functions of advocacy and representing complainants should be kept separate from the adjudication of cases, even if both functions were vested in a single organisation. This was necessary to avoid actual or perceived conflicts of interest.

As regards the degree of detail in the revised draft of GPR No.2, and the recommendation of additional functions for Equality Bodies, some participants said that they really wanted detailed standards and recommendations to put to their governments as representing best international practice which should be adopted in their jurisdiction as well.

On the issue of stand-alone Equality Bodies or multi-mandate bodies, it was obvious that there was a wide variety of models across the various Member States, which had to be respected, and that while there were some potential advantages to multi-mandate bodies, such as being able to provide a more comprehensive service, there were potential disadvantages as well. There was in particular the danger of weakening the emphasis on equality issues and of having to spread limited resources too thinly over a wide range of activities. And there was a general view that mergers of bodies that were motivated primarily by cost saving presented a potential threat to the effectiveness of Equality Bodies.

Another issue which generated some discussion was whether decisions by adjudicatory bodies should be subject to appeal to the courts. Representatives of Ombudsman institutions were concerned that their recommendations, which are not legally binding, could be frustrated by being challenged by way of lengthy court procedures. It was pointed out, however, that the suggestion about appeals in the draft revision of the GPR applied only to legally binding decisions and that due process would require access to an appeal procedure in such cases. This seemed to be an instance where somewhat more detail, rather than less, might be required in the Explanatory Memorandum.

Other issues that raised concerns that the Working Group had not anticipated included the recommendation that Equality Bodies should be subject to the general public service financial controls and that they should be able to accept additional funding, in a transparent manner, from non-governmental sources. Several participants warned that financial controls could be used by an unsympathetic government to harass or obstruct 'troublesome' Equality Bodies, though they did not oppose the principle of financial accountability.

Others said that Equality Bodies could be accused of compromising their independence if they received external funding, as suggested in the draft document, even from highly respected private philanthropic bodies, or any source other than the Council of Europe, the OSCE, the EU or the UN. Once again it may be necessary to clarify what was intended by some further discussion in the Explanatory Memorandum.

Some participants also asked whether, in light of the pressure a number of Equality Bodies are currently experiencing, it would be a good idea to set out a list of minimum requirements for such bodies if they are to conform to the relevant EU Directives and Council of Europe and UN standards. Others, however, resisted this, arguing that if a list of minimum requirements was identified, then some governments would confine themselves to those minimum requirements and it would make it difficult to raise standards and strengthen Equality Bodies.

The harsh reality of the situation in some countries was brought home to the seminar participants by the contribution of Adam Bodnar, Polish Commissioner of Human Rights. He said that he and his Deputy Commissioner are currently fighting for the survival of their institution. They are under attack in the Polish Parliament and his deputy had been criticised because she teaches gender studies in one of the universities. He was concerned that some of the recommendations in the revised draft, such as extending the remit of Equality Bodies to the private sector where it is not already covered, or allowing them to take funding from external philanthropic sources, could be used by opponents to attack equality structures and discredit ECRI as well.

He said he would love to have the powers and mandate outlined in the revised GPR but this was not feasible in Poland at the moment. He said he would prefer to have the revised GPR than not to have it but suggested that it should qualify some of its recommendations by saying that they should apply subject to resources and the circumstances in which each body operates. It was clear that the Polish body is in a very difficult situation, raising the question whether Equality Bodies in other countries could help by expressing solidarity and concern.

Adam Bodnar said that in his opinion the EU institutions had shown little interest in the situation of the Equality Body in Poland or the implementation by the Polish authorities of EU Directives on equality. He urged the EU institutions to take a more active role in ensuring the enforcement of EU equality law and the effectiveness of the bodies needed to secure that objective.

Conclusions

The seminar proved to be a very valuable contribution to the process of revising ECRI's GPR No.2 and to the general discussion about the role of Equality Bodies throughout Europe. It was somewhat challenging for the ECRI Working Group but that was much more useful than a passive, non-committal response.

The discussion at the seminar brought home how diverse the Equality landscape is in Europe, where Equality Bodies have been established at different times and in different circumstances and have their own characteristics and traditions. In the circumstances it would not be appropriate to be overly prescriptive or adopt a 'one size fits all' approach.

On the other hand, virtually all the participants welcomed the idea of a revised GPR No.2 that would set out the core and indispensable requirements of Equality Bodies: Independence, a broad Mandate, strong Anti-discrimination Legislation, and Adequate Resources.

There was some disagreement about the Institutional Architecture of Equality Bodies: whether they should be single stand-alone bodies, multi-mandate bodies, or bodies created by a merger of Equality Bodies and National Human Rights Institutions. There was agreement, however, that protecting the core attributes of Equality Bodies and ensuring their independence, the integrity of their mandate, adequate funding and resources, and continued visibility was more important than which structure was adopted.

Some participants criticised the revised draft of the GPR as over ambitious and seeking to set too high a standard but others said there was a need for harmonising the mandates, powers and resources of Equality Bodies and for setting standards of excellence based on good practices developed by particular bodies with a view to having these adopted as widely as possible.

Towards the end of the seminar ECRI chair Christian Ahlund said that most of ECRI's GPRs had been criticised as too ambitious when they were first adopted, but that was ECRI's

function: - to aim for higher standards and goals, while of course defending what has been achieved when it comes under threat as the Polish Human Rights Commissioner's office is at the moment. Over time it would be hoped that the high standards set out would become the norm to be adopted by all states.