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**EUROPEAN COMMISSION  
AGAINST RACISM AND INTOLERANCE  
(ECRI)**

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**Seminar with national specialised bodies to combat racism and racial  
discrimination on mediation and other forms of dispute resolution in cases of  
racism and racial discrimination  
(Strasbourg, 16-17 February 2006)**

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**REPORT**

## Introduction

National specialised bodies to combat racism and racial discrimination (specialised bodies) are ECRI's strategic partners in the fight against racism, xenophobia, antisemitism and intolerance. According to ECRI's General Policy Recommendations No.2 and No.7, specialised bodies can play a very important role in assisting victims of racism and racial discrimination by providing them with assistance in seeking out-of-court settlements of complaints (mediation), by offering them legal assistance and legal representation before the courts and by deciding on complaints and petitions as the main decision-making body. However, national anti-discrimination laws, including the laws for the setting up of specialised bodies, often describe their functions and responsibilities on a very general level and specialised bodies themselves have to bring these to life. ECRI has observed that in some countries experience in resolving cases of racism and racial discrimination, especially through mediation, is still limited and the discussions at ECRI's previous seminars with specialised bodies have shown that there is a strong interest in this topic. ECRI therefore decided to devote its third seminar with specialised bodies to the issue of mediation and other forms of dispute resolution in cases of racism and racial discrimination.

The aim of this seminar was to provide specialised bodies with a theoretical and methodological framework in the field of mediation. At the same time the seminar also addressed other methods of dispute resolution, in order to provide specialised bodies with further tools to make informed decisions on which method of dispute resolution is the most effective and appropriate when they are confronted with cases of racism and racial discrimination. Special emphasis was put on the exchange of good practices, including concrete case studies in this field.

The seminar brought together representatives of national specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner, etc.) whose mandate already covers or will be extended in order to cover racism and racial discrimination. In addition, some experts in the field of mediation and strategic litigation were invited to this seminar.

The seminar took place over one and a half days. The first part of the seminar was devoted to clarifying the concept of mediation and its practical application in different member States of the Council of Europe. The second part of the seminar tried to put mediation in the general context of dispute resolution by comparing it with other methods of conflict resolution, including decision-making by specialised bodies and sentencing by civil, administrative and criminal courts. Special attention was also given to the role of strategic litigation in resolving cases of racism and racial discrimination.

The different themes were introduced by experts on the subjects dealt with and representatives of national specialised bodies with recognised experience in the subjects in question. The programme is reproduced in Appendix I. The list of participants figures in Appendix II.

## **SUMMARY OF DISCUSSIONS AND MAIN CONCLUSIONS**

The first session set out the important role that national specialised bodies play in resolving cases of racism and racial discrimination, as also outlined in ECRI's General Policy Recommendations No.2 and No.7. Depending on their mandate and also their financial and human resources, their activities range from awareness- raising activities and giving legal advice to victims, to assisting victims in court or administrative proceedings, representing victims or even deciding themselves as the main decision-making body in cases of racism and racial discrimination. What is, however, common to all specialised bodies is that they are regularly in direct contact with victims of racism and racial discrimination and either provide the latter with legal advice themselves or inform them of which other institution or organisation they can take their particular case.

In this context the recourse to mediation is considered by many specialised bodies as a very positive form of dispute resolution, though experience in this field is rather limited. The discussions at the seminar highlighted in particular the transformative role that mediation can play in changing negative attitudes in our societies, as it is based on dialogue, which is freely entered into, and aims to rebuild a positive relationship between the victim and the perpetrator. Other advantages identified by the participants included that compared with other forms of dispute resolution, mediation was less costly and time-consuming, more flexible and also allowed for a wider range of possible outcomes or solutions, ranging from a simple apology to the payment of compensation, the granting of a voucher or doing voluntary work in, for example, an asylum seekers' reception centre. There was general agreement that the mediation approach had a great deal of potential and could be used not simply between individuals but also between individuals and institutions, between institutions themselves and between social groups. It was also held that to be most effective a mediation mechanism should ideally cover both the private and the public (official) sectors.

Many of the participants also took great interest in the concept of restorative justice, which is a relatively new concept and puts the victim and his/her needs in the centre of interest, as opposed to the concept of retributive justice, which has a strong punitive aspect and is the basis of many European criminal justice systems. There was a general feeling that the concept of restorative justice should be given a more prominent place within our criminal justice systems. A new mediation law, which recently had entered into force in Belgium, was mentioned as an example of a right step in this direction. However, at the same time it was also argued that mediation would not always be appropriate, for example, in cases of structural discrimination, where mediation could even prove to be counter-productive by preventing issues from being addressed as part of a more general problem.

During the discussions it was interesting to note the diversity of the legal and practical framework concerning mediation in Europe, although certain basic rules, as also outlined in the Council of Europe's Committee of Minister's Recommendations on Mediation in Civil and Penal Matters, exist in nearly all Council of Europe member States. Among the most important identified during the seminar were the availability of an impartial and skilled mediator, wholly voluntary participation, confidentiality and a climate that is favourable to dialogue. The participants placed special emphasis on the impartiality of the mediator, who had to be perceived by all involved parties as neutral. Some

specialised bodies expressed in this context their concern that they might not be considered impartial, as their role was to promote and protect the interests of victims of racism and racial discrimination. On the other hand, past experience had shown that the mediation function can be carried out very successfully by specialised bodies, although consideration could be given to entrusting external mediators or mediation services with this task.

The presentations of representatives of specialised bodies with wide experience in providing mediation in cases of racism and racial discrimination were followed with great interest by the participants, although it became clear during the discussions that no single mediation model fitted every case. There were many differences between countries and jurisdictions - in terms of anti-discrimination law (civil, criminal or special tribunals), judicial structures, social actors, types of national specialised bodies and political circumstances. Therefore, any mediation model had to be adapted to the particular circumstances of a given country.

The participants held a particularly animated discussion on the question of the enforceability of mediation agreements. It was pointed out that in the existing national legal framework of some European countries, the enforceability of mediation agreements is not so easily ensured, unlike in Ireland or Belgium. However, experience in, for example, Norway, which has a very well-developed and widely used system of local mediation centres, seemed to suggest that it was not absolutely necessary to have a legally enforceable agreement, as more than 90% of all mediation agreements are kept. This was also the experience of several other countries. During the discussions attention was drawn to the fact that in nearly all European legal systems it is possible to conclude mediation agreements in the form of a civil contract enforceable before the national courts.

The participants also repeatedly underlined the importance of the institutional context. It was pointed out that the scope and the effectiveness of mediation would be limited if it took place simply as part of the enforcement of criminal law. There needed to be an adequate legal incentive for people to take part and most importantly, a mediation process, to be effective, needed to be backed by law and invested with a formal legal status and infrastructure. The Irish structure, which had been described by the Director of the Irish Equality Tribunal to the seminar, was considered to be a particularly good example in this respect.

Closely connected to this issue, the participants also discussed the question of the funding of such a mediation infrastructure. During the discussions attention was drawn to the fact that any expansion of dispute resolution procedures involved extra work which had to be properly funded. In the case of mediation, the issue was complicated by the very demanding skills required of mediators. In some countries, such as Norway, considerable use was made of volunteers, but in other countries, such as Austria, very strict rules governed the training of mediators. It was also pointed out that where training and professional fees were required, it would be necessary to carefully consider the resource implications, and the availability of people with the right qualities to meet the demand.

As regarded other methods of dispute resolution, the use of strategic litigation - as a form of dispute settlement almost diametrically opposed to mediation - received particular attention during the seminar.

Many participants of the seminar considered strategic litigation as a very powerful tool in the fight against racism and racial discrimination, as it can help to stabilise and clarify anti-discrimination laws, raise awareness about these issues among judges and lawyers, document injustices, increase government accountability and also contribute to changing public attitudes and empowering vulnerable groups.

On the other hand a number of weaknesses were also identified. Among these, the absence of legal aid and the financial risk that this involves for victims was seen as the main drawback to court based enforcement in many countries. It was held that this inevitably imposed limitations on access to formal avenues of justice in cases of racism and racial discrimination and that specialised bodies had therefore a very important role to play in this context. It was pointed that this role could be fulfilled, for example, by representing victims before the courts, by financially supporting legal aid organisations or by providing legal training to civil society organisations.

Another important point that was mentioned and had to be taken in account before bringing a case to the courts was that - due to the complexity of cases concerning racism and racial discrimination - it was very difficult to win such cases, as for example the relevant statistics of the Commission for Racial Equality for the United Kingdom showed. Finally, the psychological dimension of a case should not to be neglected and it should always be kept in mind that lengthy judicial proceedings can put a very heavy psychological burden on the victim of a racist act, with no guarantee of success.

The participants therefore agreed that it was very important to define very clear criteria when taking a particular case to the courts, including whether the case had a reasonable chance of success or would impact on the existing legislative and political framework in a given country. In this context the importance of taking cases to the European Courts (the European Court of Human Rights (ECHR) in Strasbourg and the European Court of Justice in Luxembourg) was also underlined, as this would help these institutions to further develop their jurisprudence in this field. Regarding the ECHR, it was pointed out that this could be achieved more easily if specialised bodies could put pressure on their Governments to sign and ratify Protocol 12 to the European Convention on Human Rights.

In this sense the discussion, both on mediation and dispute procedures generally, suggested a particularly important role for national specialised bodies, which lay essentially in devising - and finding ways of implementing - a clear legal policy distinguishing between strategic litigation, formal dispute resolution and mediation.

At the end of the seminar all the participants agreed that none of the various options for dispute resolution should be seen as standing apart in isolation from the others. They were all part of a spectrum of mechanisms, all capable of reinforcing each other and of delivering justice to their prime beneficiaries - namely the victims of racism and racial discrimination.



## APPENDIX I

### PROGRAMME

#### 1<sup>st</sup> Day - Moderator: Mr Michael HEAD, member of ECRI

<b>SESSION 1: Setting the frame</b>	
9:30	Welcome by Mr Michael HEAD, member of ECRI
9:35 – 9:55	Standards of ECRI and the Council of Europe for dispute resolution in cases of racism and racial discrimination, by Ms Isil GACHET, Executive Secretary to ECRI
9:55 – 10:30	Discussion
10:30 – 10:45	Coffee Break
<b>SESSION 2: Dispute resolution through mediation – General principles</b>	
10:45 – 11:00	Mediation: principles and practice <ul style="list-style-type: none"><li>• Presentation by Ms Siri KEMÉNY, Chair of the European Forum for Victim-Offender Mediation and Restorative Justice</li></ul>
11:00 – 11:15	Mediation and restorative justice for victims of racism and racial discrimination <ul style="list-style-type: none"><li>• Presentation by Ms Anne SALBERG, ACOR SOS Racisme</li></ul>
11:15 – 12:30	Discussion
12:30 – 14:00	Lunch Break
<b>SESSION 3: Dispute resolution through mediation – the role of national specialised bodies</b>	
14:00 – 14:15	Dispute resolution through mediation by a national specialised body: the Irish example <ul style="list-style-type: none"><li>• Presentation by Ms Melanie PINE, Director of the Equality Tribunal (Ireland)</li></ul>
14:15 – 14:30	Dispute resolution through mediation by a national specialised body: the Belgium example <ul style="list-style-type: none"><li>• Presentation by Mr Johan OTTE, <i>Centre pour l'égalité des chances et la lutte contre le racisme</i> (Belgium)</li></ul>
14:30 – 15:45	Discussion
15:45 – 16:00	Coffee Break

<b>SESSION 4: Dispute resolution through a formal decision of a national specialised body</b>	
16:00 – 16:15	Dispute resolution through a <u>non-binding</u> decision of a national specialised body <ul style="list-style-type: none"> <li>• Presentation by Ms Mieke van der BURG, Vice-Chair of the Equal Treatment Commission (The Netherlands)</li> </ul>
16:15 – 16:30	Dispute resolution through a <u>binding</u> decision of a national specialised body <ul style="list-style-type: none"> <li>• Presentation by Mr Dezideriu GERGELY, member of the Steering Board of the National Council for Combating Discrimination (Romania)</li> </ul>
16:30 – 17:30	Discussion
17.30 – 18.30	Reception

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## **2<sup>nd</sup> Day - Moderator: Mr Marc LEYENBERGER, member of ECRI**

<b>SESSION 5: Dispute resolution before the courts and other competent authorities</b>	
9:30 – 9:45	The role of national specialised bodies in dispute resolution before the courts and other competent authorities <ul style="list-style-type: none"> <li>• Presentation by Mr Anthony ROBINSON, Legal Director of Legal Services and Enforcement of the Commission for Racial Equality (United Kingdom)</li> </ul>
9:45 – 10:00	Strategic litigation: principles and practice <ul style="list-style-type: none"> <li>• Presentation by Ms Isabelle CHOPIN, Deputy Director of the Migration Policy Group (MPG)</li> </ul>
10:00 – 11:15	Discussion
11:15 – 11:30	Coffee Break

<b>CLOSING SESSION</b>	
11:30 – 11:45	Presentation of the main findings of the Seminar
11:45 – 13:00	Discussion and assessment of the different methods of dispute resolution in cases of racism and racial discrimination
13:00	Closing of the Seminar



## APPENDIX II

### LIST OF PARTICIPANTS

#### SPEAKERS:

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**Mr Michael HEAD**, Member of ECRI

**Ms Isil GACHET**, Executive Secretary, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Ms Siri KEMÉNY**, Chair, European Forum for Victim-Offender Mediation and Restorative Justice

**Ms Anne SALBERG**, Mediator, SOS Racisme

**Ms Melanie PINE**, Director, The Equality Tribunal

**Monsieur Johan OTTE**, Centre pour l'égalité des chances et la lutte contre le racisme

**Ms Mieke van der BURG**, Vice-Chair, Equal Treatment Commission

**Mr Dezideriu GERGELY**, Member of The Steering Board, National Council for Combating Discrimination

**Monsieur Marc LEYENBERGER**, Membre de l'ECRI et de la Commission nationale consultative des droits de l'homme, Avocat

**Mr Anthony ROBINSON**, Legal Director, Legal Department, Commission for Racial Equality

**Ms Isabelle CHOPIN**, Deputy Director, Migration Policy Group (MPG)

#### PARTICIPANTS:

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**Ms Kristiina ALBI**, Advisor of the Chancellor of Justice, Office of the Chancellor of Justice

**Mr Javier BERNALDEZ FERNANDEZ**, Jefe de Servicio, Observatorio Español del Racismo y de la Xenofobia, Ministerio de Trabajo y Asuntos Sociales

**Ms Tone BJELLAANES**, Legal Adviser, The Equality and Anti-Discrimination Ombud

**Mr Ugo CARUSO**, Roma and Travellers Division, DGIII - Social Cohesion, Council of Europe

**Mr Marco DE GIORGI**, Director, National Office for the Fight against Racial and Ethnic Discrimination

**Dr Judit DEMETER**, President, Equal Treatment

**Dr Katalin GREGOR**, Senior Counsellor, Equal Treatment Authority

**Ms Danguole GRIGOLVICIENE**, Legal Adviser, Office of the Equal Opportunities Ombudsman

**Ms Birgit GUTSCHLHOFER**, Ombud for Equal Treatment in the workplace on the grounds of ethnic origin, religion or belief, age or sexual orientation

**Mr Matjaž HANZEK**, Human Rights Ombudsman, Office of the Human Rights Ombudsman

**Mr Hafsteinn HAUSSON**, Office of the Parliamentary Ombudsman

**Mr Rainer HILTUNEN**, Ombudsman for Minorities, Office of the Ombudsman for Minorities

**Mr Johan HJALMARSSON**, Lawyer, Office of the Ombudsman against Ethnic Discrimination

**Ms Mirjana IVANOVA**, Ombudsman Office of the Republic of Macedonia

**Mr George KAMINIS**, Ombudsman, Office of the Greek Ombudsman

**Ms Katri LINNA**, Ombudsperson, Office of the Ombudsman against Ethnic Discrimination

**Mr Luka MAĐERIĆ**, Head of the Office for Human Rights

**Ms Jana MAREČKOVÁ**, Executive Secretary, Government Council for Human Rights

**Mme Christiane MARTIN**, Commissaire du Gouvernement aux Etrangers, Commission Spéciale Permanente contre la Discrimination Raciale du Conseil National pour Etrangers

**Mr Tarek NAGUIB**, Collaborateur scientifique, La Commission fédérale contre le racisme (CFR)

**Ms Eliana NICOLAOU**, Ombudsman of the Republic of Cyprus

**Mr Edgars OLSEVSKIS**, Lawyer, National Human Rights Office, Anti-Discrimination Department

**Madame Brigitte PESQUIE**, Juriste, Direction des affaires juridiques, Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (HALDE)

**Ms Uranija PIROVSKA**, State advisor for international and public relations, Ombudsman Office of the Republic of Macedonia

**Ms Alexandra POLÁKOVÁ**, National Centre for Human Rights

**Mr Eddie Omar ROSENBERG KHAWAJA**, Legal Officer, Complaints Committee for Ethnic Equal Treatment/ Danish Institute for Human Rights

**Ms Anna ŠABATOVÁ**, Deputy Public Defender of Rights, Public Defender of Rights Office

**Ms Ulrike SALINGER**, Gleichbehandlungsanwaltschaft, Anwältin für Gleichbehandlung ohne Unterschied der ethnischen Zugehörigkeit in sonstigen Bereichen

**Mr Tapio SUSI**, Judge, National Discrimination Tribunal of Finland

**Ms Roxana TRUINEA**, National Council for Combating Discrimination

**Mr Aristos TSIARTAS**, Head of the Human Rights Department, Office of the Commissioner for Administration

**Ms Nada TURNŠEK**, Professor, University of Ljubljana, Faculty of Education

**Ms Brigitte WERKER**, Equal Treatment Commission

#### **SECRETARIAT:**

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**Ms Heike KLEMPA**, Responsible for relations with civil society, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Mr Giancarlo CARDINALE**, Lawyer, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Mme Claudia LAM**, Juriste, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Ms Aline USANASE**, Lawyer, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Mme Martine FREY**, Assistant, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe

**Mme Sylvia LEHMANN**, Assistant, European Commission against Racism and Intolerance, Directorate General of Human Rights, Council of Europe