

Seminar with national specialised bodies to combat racism and racial discrimination

**13-14 November 2003
Strasbourg, Human Rights Building
Salle de la Direction**

EXPLANATORY NOTE

Introduction

At a time when many member States of the Council of Europe are engaged in the process of reviewing their anti-discrimination legislation and considering the establishment or reinforcement of national specialised bodies to combat racism and racial discrimination (specialised bodies), ECRI is organising a two-day seminar on these topics to be held in Strasbourg on 13 and 14 November 2003.

This seminar aims to assist member States in their efforts at reform in this field and provide key actors in this process with a forum for exchange and discussion as to how best to implement legislation to combat racism and racial discrimination. Specialised bodies play an extremely important role in implementing such legislation and ECRI has therefore always strongly promoted the creation of such bodies in countries where they do not yet exist and their strengthening in countries where they already do exist.

Participants

This Seminar will bring 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 to cover racism and racial discrimination, and representatives of ministries who are or will be responsible for the setting up of such a national specialised body.

All participants will be expected to actively participate in discussions by commenting on interventions, providing examples of the situation in their own country and asking questions as to how certain problems are dealt with in other countries.

Programme and structure of the Seminar

The Seminar will take place over two days. The first day will be dedicated to ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination (GPR no.7) and its current state of implementation in the member States of the Council of Europe. The second day will deal with the role and functioning of

specialised bodies, on the basis of ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level (GPR no.2).

1st Day

Day I will start with an introduction of GPR no.7. The presentations of Day I will then follow the structure of GPR no.7 and will focus on the following sub-sections:

- (1) Definition of racism and racial discrimination,
- (2) Criminal law,
- (3) Civil and administrative law and
- (4) Common provisions, with a special emphasis on legal assistance and legal representation of victims of racism and racial discrimination.

Definition of racism and racial discrimination

The notion of discrimination contained in GPR no.7 is closely based on the jurisprudence of the European Court of Human Rights (ECHR). ECRI has therefore invited a judge of the ECHR to explain the concept of discrimination based on the case law of the ECHR.

The application of the civil, administrative and criminal law aspects of GPR no.7 in the member States of the Council of Europe

ECRI believes that appropriate legislation to combat racism and racial discrimination should include provisions in all branches of the law. Only such an integrated approach will enable member States to address these problems in a manner which is as exhaustive, effective and satisfactory as possible from the point of view of the victim. It is the task of specialised bodies to use this legislation for the benefit of victims of discrimination and some specialised bodies have acquired considerable expertise in making the best use of it. For each branch of the law a representative of a specialised body, whose country has extensive legislation in that particular area, will be asked to compare the situation in his/her country with the corresponding section of GPR no.7 and to assess what consequences a thorough implementation of GPR no.7 might have for victims of discrimination.

Legal assistance and legal representation of victims of racism and racial discrimination

In GPR no.7 ECRI supports the idea that associations with a legitimate interest in combating racism and racial discrimination should be entitled to bring civil cases, intervene in administrative cases and make criminal complaints. In countries where this possibility exists, specialised bodies often work in cooperation with such associations. ECRI has therefore invited a representative of the European Roma Rights Centre

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(ERRC), a European NGO that has extensive experience in using litigation to combat discrimination against Roma all over Europe. The ERRC representative will give an overview of the problems encountered and the lessons learned through experiences of litigating on behalf of victims of discrimination in different countries. This representative will also make some proposals as to how specialised bodies can support associations in this work.

2nd Day

Day II will be dedicated to GPR no.2 and its practical implementation in the member States of the Council of Europe. In order to illustrate the practical implementation of this Recommendation, an expert who prepared a comprehensive report on the “The role, structure and functioning of specialised bodies to promote equality and/or combat discrimination” has been invited. This report provides an in-depth analysis of the different aspects of the establishment, role and functioning of specialised bodies and sets out many practical examples drawn from existing specialised bodies. The rest of the day will be split into four main themes:

- (1) Mandate and status of national specialised bodies,
- (2) Structure and internal organisation of national specialised bodies,
- (3) Functions and responsibilities of national specialised bodies and
- (4) Co-operation with other organisations, institutions and civil society.

THEME I - “Mandate and status of national specialised bodies”

GPR no.2 states that specialised bodies should have terms of reference that are clearly set out in a constitutional or other legislative text, which should determine their composition, area of competence, statutory powers, accountability and funding. The clarity of the description of the mandate, instruments and powers of a specialised body is an effective means of safeguarding the independence of such institutions.

When setting up a specialised body, the national legislator also has to decide if different grounds of discrimination (race, gender, age, sexual orientation, disability etc.) will be dealt with in a single or in several separate bodies (“horizontal” or “vertical” approach). At the same time the national legislator must determine the areas (employment and labour, goods and services, housing, education, social protection etc.) that fall into the mandate of the specialised bodies and the instruments and tools that they will have at their disposal in these different areas.

Finally, it is of crucial importance that specialised bodies are provided with sufficient funding to carry out their activities effectively and that this funding is granted on an annual basis from the fiscal budget subject to the approval of parliament.

Questions:

What is (will be) the legislative basis of your specialised body?
How is (will) the independence of your specialised body (be) safeguarded?
Have you adopted (will you adopt) a “horizontal” or “vertical” approach?
Which areas are (will be) covered by your national anti-discrimination legislation and what are (will be) the competences of your specialised body in these areas?
On which kind of funding does (will) your specialised body depend (fiscal budget, project grants, self-generated resources etc.)?

THEME II - “Structure and internal organisation of national specialised bodies”

ECRI does not favour a particular structure or internal organisation of specialised bodies, but stresses in its GPR no.2 that 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 victims of discrimination.

In fact, the structure and internal organisation of specialised bodies vary considerably according to their aims, priorities and financial and human resources. While there are specialised bodies that have over 200 employees, others have very few collaborators. The size of the institution also influences the internal structure and division of tasks. There are specialised bodies with a unitary structure and others that are split into various specialised departments, which in turn may be organised according to the different grounds or fields of discrimination. The profile of staff also varies between institutions, including academics, legal experts, policy experts, information workers, technical staff, etc.

Specialised bodies are usually led by a Board, which has the task of guiding the specialised body based on the objectives and tasks set out in its terms of reference. Boards can either be composed of representatives of specific institutions or of individuals who have been selected on the basis of their merits, which can have a certain influence on their independence. ECRI therefore specifies in its GPR no.2 that the terms of reference of specialised bodies should clearly set out the provisions for the appointment of their members and should contain appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment.

Finally, ECRI also underlines in its GPR no.2 that specialised bodies should be easily accessible to victims of discrimination and that they should consider, where appropriate, setting up local offices in order to increase their accessibility and improve their effectiveness in carrying out education and training functions. Victims of discrimination should not have to overcome great obstacles to reach a specialised body, an aspect that includes such factors as the institution’s physical accessibility, its image and the language skills of its staff. Such factors impact upon a victim’s confidence that his/her case will be dealt with promptly and professionally.

Questions:

Does (will) your specialised body have a unitary structure or is (will) it (be) split into different specialised departments?

If there are (will be) different specialised departments in your specialised body, are (will) they (be) organised according a specific ground or area of discrimination?

What kind of profile does (will) the staff of your specialised body have?

How is (will) the Board of your specialised body (be) composed of?

What kind of safeguards (will) exist to guarantee the independence of the Board?

How do (will) you ensure that your specialised body is accessible to victims of discrimination?

THEME III - “Functions and responsibilities of national specialised bodies“

According to ECRI's GPR no.2, national specialised bodies should carry out a very broad range of activities in relation to victims of discrimination and other key actors in the fight against racism and racial discrimination, including monitoring the situation in a country, providing information about rights and legislation, advising victims, dealing with complaints, carrying out investigations, conducting settlements and mediation, making formal decisions and providing assistance in court cases. This wide range of activities will be examined more closely under the following four sub-headings: (1) Information, (2) Advice, (3) Legal assistance and (4) Investigation and decision making.

Information

One of the key functions of specialised bodies is to provide information about legislation and discrimination in general to different target groups such as: victims of discrimination, public authorities, state institutions, NGOs, employers, trade unions and the general public. Specialised bodies fulfil this function by conducting and commissioning studies, providing information on relevant case law, offering anti-discrimination training and raising awareness via the media or other communication channels.

Questions:

With which of the above mentioned target groups do (will) you have regular contacts?

Does (will) your specialised body conduct or commission research on anti-discrimination legislation or discrimination in general?

Do (will) you make systematic information on relevant case law available?

Do (will) you provide anti-discrimination training for specific target groups?

Do (will) you develop specific training material for this purpose?

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Via which communication channels do (will) you spread your anti-racist message and make your work known in the relevant circles (Internet, Newsletters, newspaper articles, radio and TV spots etc.)?

Advice

As outlined in ECRI's GPR no.2, specialised bodies can use their expertise to give valuable advice not only to victims of discrimination, but also to legislative and executive authorities, as well as other interested parties (teachers, employers, trade unions etc.).

Giving advice to victims of racism and racial discrimination is one of the cornerstones of specialised bodies' action. As a first step, specialised bodies often give victims of discrimination individual advice on the possibilities for bringing a legal case and the procedures to follow, including information concerning other sources of assistance to which victims can turn (e.g. trade unions, NGOs, police etc.).

Employers and other organisations might also seek advice from specialised bodies as to how to organise their employee policies in a non-discriminatory fashion. For this purpose, specialised bodies might issue codes of practices containing guidance for the elimination of racial discrimination, as described in ECRI's "Examples of good practices on specialised bodies to combat racism, xenophobia, antisemitism and intolerance".

In countries where specialised bodies also play a certain formal role in the political process – i.e. active participation in the preparation of legislation; statutory right to be consulted and to comment on draft legislation; or monitoring of practices after legislation has come into force - they can even have a considerable influence on the adoption of comprehensive anti-discrimination legislation itself.

Questions:

What kind of persons/institutions do (will) consult your specialised body for advice?

Does (will) your specialised body give advice to victims of discrimination?

Do (will) you draw up codes of conduct for employers and other organisations?

Does (will) your specialised body play a formal role in the political process and if yes, what kind of role?

Legal assistance

The intervention of specialised bodies might end at the stage of giving advice to victims of racism and racial discrimination; however, sometimes these bodies also become involved in the processing of a complaint, either through mediation and out-of-court dispute resolution or through legal representation when a case is taken to court. Many disputes are in fact settled outside the court system via mediation services provided by

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specialised bodies. There are certain advantages in settling a dispute out-of court, including that it is usually less costly and time-consuming and that the process is based on the active participation and ownership of the parties involved.

Sometimes, however, specialised bodies also represent victims of discrimination in legal proceedings, if they have the mandate to do so. The criteria for taking up legal representation vary, but usually they include cases where there is serious and widespread injustice, where the case could establish a precedent or where there is no other legal representation available. Some specialised bodies can even take up cases without a direct victim of discrimination.

Questions:

Does (will) your specialised body provide mediation services?

If yes, how does this mediation service function?

What are, in your opinion, the strengths and weaknesses of mediation?

Does (will) your specialised body provide legal representation for victims of discrimination?

If yes, what are the criteria for taking up legal representation?

What are your experiences in taking up legal representation of victims of discrimination? (if applicable)

Is (will) your specialised body (be) able to take up cases without a direct victim of discrimination?

Investigation and Decision making

According to GPR no.2 specialised bodies may be granted the necessary powers to obtain evidence and information in pursuance of their functions, to hear and consider complaints and petitions concerning specific cases, as well as to seek settlements either through amicable conciliation or through binding and enforceable decisions.

The first issue touches upon the question of what kind of investigative powers a specialised body possesses. Some specialised bodies have a statutory power to conduct formal investigations and demand access to relevant information. These investigative powers are not necessarily limited to the investigation of individual complaints, but might include investigations undertaken upon the specialised body's own initiative.

One of the most important powers a specialised body may possess is the power to act as a quasi-judicial body making formal decisions in cases of possible discrimination. Its decisions can be either of an advisory nature or legally binding. In practice, due to the high moral authority of specialised bodies, even non-legally binding decisions are usually followed.

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Given that one of the key objectives when handling individual cases of discrimination is to ensure that discrimination is not repeated, decisions and out-of court settlements of specialised bodies often call for several different courses of action. These include provision of training to the persons in question, the award of compensation to victims of discrimination and the order to comply with stringent conditions for improvements within a company or institution. Special emphasis must be put on the implementation and follow-up of these decisions.

Questions:

What kind of investigative powers does (will) your specialised body have?

Do (will) you have special powers for requesting information from all parties involved? (if applicable)

Is your specialised body able to conduct investigations upon its own initiative?

If your specialised body has decision-making powers, are its decisions legally binding or are they of an advisory nature?

If your decisions are of an advisory nature, are they usually followed and if yes, why in your opinion?

What is the usual content of the decisions of your specialised body? (if applicable)

Do (will) you follow-up the decisions of your specialised body? (if applicable)

How is the implementation of your decisions secured? (if applicable)

THEME IV - "Cooperation with other organisations, institutions and civil society"

Cooperation and dialogue with partners on the local, national and international level can have a very beneficial capacity-building impact affecting both the institution itself and its relevant partners. Specialised bodies therefore rely very much on partners for the exchange of information, experience and best practice. On the local level such partners might include NGOs, local authorities, social services or companies and on the national level other anti-discrimination bodies, human rights institutions, universities and schools, social services or trade unions. There is no doubt that cooperation between similar specialised bodies on the European level can also have a very beneficial effect on the work and functioning of specialised bodies and ECRI therefore not only strongly encourages such initiatives but wants to actively support them, including, for instance, through this seminar.

Questions:

With what kind of organisations/ institutions are (will) you (be) cooperating on the local/ national/ international level?

What are (will be) the benefits from this cooperation?

Documentation

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ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination

ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level

ECRI's Examples of good practices on specialised bodies to combat racism, xenophobia, antisemitism and intolerance

Report on "The role, structure and functioning of specialised bodies to promote equality and/or combat discrimination" by Mr Steffen WESTERGARD