



CONSILIUL PENTRU PREVENIREA ȘI ELIMINAREA
DISCRIMINĂRII ȘI ASIGURAREA EGALITĂȚII
СОВЕТ ПО ПРЕДУПРЕЖДЕНИЮ И ЛИКВИДАЦИИ
ДИСКРИМИНАЦИИ И ОБЕСПЕЧЕНИЮ РАВЕНСТВА
COUNCIL FOR PREVENTING AND ELIMINATING
DISCRIMINATION AND ENSURING EQUALITY

EQUALITY BODIES AS AMICUS CURIAE

Guidelines to the Moldovan Council for Preventing and Eliminating
Discrimination and Ensuring Equality to Write an Amicus Curiae Brief

Partnership for Good Governance
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an Amicus Curiae Brief

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An amicus curiae is literally a « friend of the court » and is also often referred to a third-party intervener. Despite the inexistence of a strict legal definition, it may be described as a person or entity that intends to contribute to legal proceedings, but without becoming a party as such, with no immediate stake in the outcome. Simply submitting an amicus brief or submission may also signal to the Court that the case is significant and that the issues are larger than their impact on the particular litigants. The overall purpose of this type of intervention is to provide a different perspective or a point of law that may not otherwise be considered and/or bring expert analysis to the court. When an Equality Body intervenes in a proceeding, it represents the public interest pertaining to the fight against discrimination and promoting equality.

I. THE IMPORTANCE OF THE AMICUS CURIAE IN THE ADMINISTRATION OF JUSTICE

1. Origins

Amicus curiae have ancient roots. Originating in Roman law and appearing early in the common law tradition in England during the XVII and XVIIIth centuries, an amicus curiae was an “outsider” to a dispute permitted by the court to intervene in the proceedings to present neutral and unbiased information.

This “outsider” first developed in countries having an adversarial law system, i.e. where the courts rely on the fighting parties to bring to light not only the essential issues in a case but also all the relevant evidence and legal arguments. In such a system, there are cases in which the contest between the parties fail to provide all needed information to the court. The amicus could thus serve as an impartial source of information and legal expertise without having a direct interest in the proceedings. The function of the amicus curiae was one of “oral shepardizing” by communicating references or citations from case-law to the court.

2. Role and functions

Amici offer assistance to the courts to help them arrive at the most appropriate solution. Its participation is particularly important when courts have to resolve novel and complex legal and factual issues or in cases concerning controversial and disputed issues.

Amici enrich and supplement the legal arguments and perspectives presented by the parties.

- The epistemic quality of the judgments may thus improve thanks to these additional information and legal insights buttressing the arguments of the parties.

Amici may also inform the court of the broader consequences of the cases, by showing the potential implications of a decision or by pointing out its consequences for people or groups not party to the suit.

- Amicus intervention improves the judicial decision-making process by providing background information, which enables courts to make informed decisions about their wider social, legal and factual context and consequences.

- They ensure the representation of a wide spectrum of views and interests in line with a democratic society, encompassing diversity and pluralism, which could otherwise be ignored or underscored. This has the potential effect of improving the democratic legitimacy of the judicial and compensating the limitations of the individual enforcement model. Compared to a lawsuit, the purpose of amicus curiae intervention is not to argue a particular outcome of the case, but rather to present a neutral legal opinion elaborating in more detail on the applicability of national and international legal standards to the legal issues at hand.

When Equality Bodies intervene as amicus curiae, they also remind the parties, the courts and the public opinion that they are acting as watchdogs.

- Their intervention is thus a signal that they are vigilant on particular issues at stake before the courts.

3. Development in the USA

The use of amicus briefs is particularly prevalent in the United States and has become a tool of persuasion: the amicus curiae evolved there, in the famed words of historian Samuel Krislov, “from friendship to advocacy” Amicus briefs have indeed shifted “from a source of neutral information to a corporate lobbying tool for NGOs”¹.

The last decade, the number of amicus briefs have proliferated in conjunction with the explosion of interest groups and lobbyists and an ever-expanding judicial role. In 2014–15, amicus briefs were filed in 98% of all cases.

Topic	Number of brief
Limitation of working hours (<i>Lochner v. New York</i> 1905)	0 brief
Racial segregation (<i>Brown v. Board of Education</i> 1954)	6 briefs
Right to abortion (<i>Roe v. Wade</i> 1973)	22 briefs
Health Care case (<i>NFIB v. Sebelius</i> 2012)	136 briefs
Same-sex marriage case (<i>Obergefell v. Hodges</i> 2015)	148 briefs

The U.S. Equal Employment Opportunity Commission (EEOC), responsible for enforcing anti-discrimination federal laws within the scope of employment, uses the amicus curiae power. The last five years, the EEOC has filed amicus curiae briefs between approximately 14 to 40 times, respectively in 2013 and 2016. In 2018 (until end of September), the US Equality Body intervened 20 times. So far, almost all of the amicus briefs have been filed in one of the U.S. Courts of Appeal.

¹ Samuel Krislov, “The Amicus Curiae Brief: From Friendship to Advocacy” (1963) 72 Yale L.J. 694). According to Krislov, the nature of the amicus changed in response to tough consequences and injustices that flowed from restrictions inherent in the adversarial process. These problems were exacerbated in America: “The assertion of judicial review and of the Court’s role as ‘umpire to the federal system’” meant that private disputes were used to shape the Constitution, leading the Supreme Court to “strictly scrutinize the right of parties to appear before federal courts as parties in interest.” As NGOs have made significant use of this tool to advocate for the particular group or issue they represent so as there may be some analogy between amici curiae and interest-group lobbyists.

EEOC has recently filed several amicus briefs arguing that the prohibition on sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964 shall encompass discrimination based on sexual orientation. In two cases, the courts followed this interpretation; the third one is still pending ².

The EEOC intervention before the U.S. Supreme Court is exceptional. It happened once yearly in 2012, 2013, 2014 and 2018. In July 2018, the amicus brief filed by the Solicitor General on behalf of the EEOC was about the meaning of “employer” according the 1967 *Employment Act*³.

4. Geographic expansion in Europe⁴

In Europe, including in inquisitorial and civil law systems, the amicus curiae has also become a common feature of human rights and non-discrimination law litigation in domestic systems, particularly before upper and constitutional courts.

In 1981, the Court accepted for the first time to hear a representative of the British Trade Union Congress in the case *Young, James and Webster v the United Kingdom*⁵. This case highlighted the need to define a legal basis allowing for this type of third-party participation, which eventually came in the form of an amendment to the Rules of the Court that were modified several times. With the entry into force of Protocol no. 11 in 1998, third-party interventions were mentioned in the Convention itself. Protocol no. 11 clarified and codified the applicable rules in relation to amicus curiae submissions by opening up possibilities for the president of the court to invite or grant leave to anyone concerned other than the applicants to submit written comments or, in exceptional cases, participate in the hearings (for more details, see our developments in III.2.a).

There is a constant increase in terms of numbers of amicus participation from various NGOs in the European Human Rights Court’s proceedings. There is a greater propensity among UK-based organisations/charities and large transnational human rights organisations to intervene in Strasbourg. But research centres, conservative groups or Equality Bodies have also the opportunity to write amicus submissions depending on the issue at stake. The amicus briefs cover almost all issues under scrutiny of the Court, although cases involving the prohibition of torture and inhuman or degrading treatment, the right to family and private life, the right to free expression and the prohibition of discrimination attract a higher concentration of briefs⁶. The rate of participation of amici

² The Hively and Zarda cases were decided favorably; Horton is still pending: <https://www.eeoc.gov/eeoc/litigation/briefs/hively.html>; <https://www.eeoc.gov/eeoc/litigation/briefs/zarda.html>; <https://www.eeoc.gov/eeoc/litigation/briefs/horton3.html>

³ https://www.supremecourt.gov/DocketPDF/17/17-587/54113/20180712160842691_17-587bsacUnitedStates.pdf

⁴ For a complete overview, see Nicole Bürli, *Third-Party Interventions before the European Court of Human Rights*, Intersentia, 2017, 214 p.; Astrid Wiik, *Amicus Curiae before International Courts and Tribunals*, Hart Publishing, 2018, 655 p.

⁵ First, the European Court of Human Rights did not accept spontaneous amici. At that time, the European Commission perceived its role as impartial and capable of presenting the general interest before the Court. For example, in *Tyrer v. The United Kingdom*, the Court refused without discussion the intervention requested by the National Council for Civil Liberties App no 5856/72 (ECtHR, 25 April 1978); example quoted by D Shelton, ‘The Participation of Nongovernmental Organizations in International Judicial Proceedings’ (1994) 88 *The American Journal of International Law* 611, 630.

⁶ Laura von den Eynde, *Amicus curiae NGOs before the European Court of Human Rights*, Stanford Thesis, May 2011 <https://law.stanford.edu/wp-content/uploads/2015/03/LauraVan-denEynde-ta2011.pdf>

curiae is particularly high before the Grand Chamber, due to the complexity and novelty of the cases reaching this chamber⁷.

The Commissioner of Human Rights can take part in the proceedings of the European Court of Human Rights, either at the invitation of the President of the Court or, since the entry into force of Protocol No. 14 on 1 June 2010, on his own initiative. The Commissioner can submit written contributions and participate in hearings.

As developed below (III.2.b), the European Committee of Social Rights may also invite third-parties to intervene.

5. The role of Equality Bodies as amicus curiae in Europe⁸

The Equality Bodies settled in Belgium, Croatia, Finland, France, Georgia, Great Britain, Ireland, Kosovo, Moldova, Norway, Poland, Romania, Ukraine, Serbia, Slovakia, Slovenia, etc. have power to intervene before the national courts as amicus curiae. Some of them have a long experience about this mechanism such as the Equality and Human Rights Commission in the UK, while others have not used such a power yet, like the Commissioner for Protection of Equality in Serbia.

Most of them occasionally intervene before the courts, most of time at upper level, either before the constitutional and the supreme courts or, at least, at the level of the appeal. In the majority of cases, the courts follow their conclusions.

In July 2018, the EU Commission issued a Recommendation⁹ addressed to EU Member States in order to close the gap in standards between Equality Bodies across Europe. One recommendation is about providing to the Equality Bodies the power to give independent assistance to victims, which may take the form of acting as amicus curiae.

6. Impact on final decision-making

Although it is difficult to assess the impact of the amicus curia in the proceedings, one of its most obvious effect is when the court adopts the arguments of the amicus submission, resulting in a significant change in the law. How common this is, depends on the particular tribunal and the frequency of amicus interventions, but there are many examples where interventions have determined, or at least influenced, the main arguments of the courts (for examples, see below). Amicus curiae briefs can at least put a certain pressure to help avoid that the court decides in the wrong direction. Even where an intervention fails to convince a majority of the court, it may still be a valuable resource for the dissenting judges to raise their case and provide arguments for a better decision in the future.

⁷ For example, there were 21 third-interveners before the Grand Chamber in *Lautsi v. Italy* relating to the display of crucifixes in the State-school classrooms in Italy, i.e. the Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, the Republic of San Marino, the Principality of Monaco, Romania, Greek Helsinki Monitor, Associazione nazionale del libero Pensiero, Centre for Law and Justice, Eurojuris, International Commission of Jurists, Interights and Human Rights Watch, Zentralkomitee der deutschen Katholiken, Semaines sociales de France and Associazioni cristiane lavoratori italiani, Thirty-three members of the European Parliament acting collectively.

⁸ http://www.equineteurope.org/spip.php?page=tableau_neb§ion=mandate

⁹ Recommendation of the European Commission of 22.6.2018 on standards for equality bodies; https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf


II. WHEN TO INTERVENE AS AN AMICUS CURIAE

1. The monitoring stage

The worst scenario for a would-be intervener is to find out too late that a significant case is coming up. Facing a last-minute scramble to intervene may bother not only the parties but also the court, and may even be disastrous before the European Court of Human Rights. Therefore, identifying on time the relevant cases for an intervention is crucial. This may however be difficult unless the case has already been subject to some publicity or when the plaintiff has concurrently lodged a claim with the Equality Body and requested its intervention before the national courts.

At national level, a proactive would-be intervener shall look at the Court of Appeal’s output at least, and identify important cases, which may go to the highest Court. From a practical point of view, one or two staff members of the Equality Body should be in charge of monitoring the cases that are upcoming before the domestic courts and the European institutions.

They are **various sources of information** to highlight and identify pending cases raising legal challenges with public interest as described below.

Before the Moldovan courts and tribunals	Before the European Court of Human Rights and	Before the European Committee for Social Rights
<p>Monitoring of the database, if available, of the pending cases before the Courts of Appeal and the Supreme Court of Justice.</p> <p>Regular networking with the judiciary (judges, clerks), specialised lawyers and civil society dealing with discrimination issues and/or vulnerable groups.</p> <p>Consultation of legal reviews and social media reports from legal practitioners in the field.</p> <p>Use of online tools (Google alerts etc.).</p> <p>Consultation of press reviews: even if newspapers and TV usually report on cases at a stage that may be too late to intervene (just before or after the hearings).</p>	<p>Follow-up of domestic cases that have reached the higher courts as cases reaching European Court of Human Rights have in principle exhausted the national remedies.</p> <p>Monitoring of the pending cases on the Court’s website to ensure that an application for permission to intervene respect the time-limit.</p> <p>This is particularly crucial before the ECtHR as the applications may be considered only within a 12-week period after a case is ‘communicated’ to the State respondent, which in practice is even shorter (there is usually a delay of 3 weeks).</p>	 <p>Even if this does not prevent the Equality Body to intervene on cases challenging other countries, Moldova has not yet ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints.</p> <p>Monitoring of the pending cases on the Committee’s website.</p> <p>Regular networking with NGOs, umbrella NGOs and social partners entitled to lodge collective complaints concerning the Charter.</p>

2. Identifying “test cases”

The Equality Body needs to assess whether a case raises issues of public interest beyond the facts.

The type of cases where Equality Bodies intervene are usually “test cases”, i.e. cases whose outcome overcomes the facts and the significance for the victim him/herself.

For example, they concern an untested point of law or seek to overturn a prevailing judicial interpretation.

An Equality Body takes into account different factors to decide whether it is opportune to intervene. This is done by assessing the case through the eyes of the strategic litigation policy.

- The case may raise one or more major issues of public importance and has potential to set precedent or to raise public interest.

In France, the Defender of Rights has intervened on racial profiling cases before the Paris Court of Paris and the Court of Cassation. These proceedings raised a very important precedent for the protection against racial discrimination in a judicial context where police controls have always been considered discretionary and had never been challenged before the courts.

On 9 November 2016, the Court of cassation followed the observations of the Defender of Rights in 3 cases and ruled that the State was liable for racial profiling in police controls. As regards evidence of racial profiling, the Court, implicitly recognizing the absence of traceability of the controls and the necessity to give access to effective remedy within the meaning of Article 13 of the ECHR, confirmed applicability of the shift in the burden of proof provided in civil claims for discrimination. According to the Court, even when controlling persons in relation to their potential illegal presence on the territory, a police control is discriminatory if it is only based on the physical characteristics of persons subjectively associated with the real or deemed origin of the person and that there are no pre-existing objective reasons related to the context of the control or the behaviour of the person ¹⁰

- There are prospects of achieving positive change in the legal framework even beyond the facts of the case

The Polish Commissioner for Human Rights has endeavoured to promote legal gender recognition although there is no legislation about in Poland. Gender recognition is possible only thanks to a judicial procedure, which requires from the transgender person to file a lawsuit against his/her parents.

In 2011, a transgender man, MP, followed the procedure in 2011 and was recognised as a man. In 2014, MP was raped because of his transgenderism and got pregnant. The biological father remained unknown. He then gave birth to a child but he was refused to register that birth in the registry office while he became the only parent. The registry office turned to the court to establish how to issue a birth certificate.

The Commissioner for Human Rights joined the court procedure and requested the court to recognize MP as a father. Since it is possible under Polish law to issue a birth certificate with the name of the mother only (the name of the father is then random) that procedure should apply to the situation of MP. The prosecutor and one conservative right-wing NGO also joined the court procedure and asked the court not to recognize MP as a parent and issue a birth certificate with parents defined as unknown.

¹⁰ For a complete description, see Sophie Latraverse in European network of legal experts in gender equality and non-discrimination, France, News Report, 18 November 2016, <https://www.equalitylaw.eu/downloads/3962-france-court-of-cassation-first-civil-chamber-9-november-2016-nos-15-24-207-to-15-25-877-regarding-the-liability-of-the-state-for-racial-profiling-in-police-controls-pdf-131-kb>

The Court of first instance recognized MP as a father but the prosecutor appealed. The Court of Appeal recognized him as a mother. Meanwhile, the prosecutor turned to the court to renew the 2011 procedure. He stated that having a child proves that MP has still his “maternal instinct” and he should not be recognised as a man any longer. The Commissioner argued that being a parent does not determine gender: both, men and women, have their instincts and court decision on gender recognition should not be based on stereotypes. The case is still pending.

- There are prospects of encouraging good practice, and providing the opportunity to secure better understanding of rights and obligations

In UK, the Equality and Human Rights Commission intervened before the European Court of Human Rights in four cases, Eweida and Chaplin v. the United Kingdom and Ladele and McFarlane v. the United Kingdom about the conciliation between freedom of religion and non-discrimination law on the basis of sexual orientation in the workplace. The first pair concerned a British Airways employee and a nurse who both complained that dress codes at their respective places of work prevented them from openly wearing a small cross on a chain around their necks. In the second pair, a registrar of marriages and a relationship counsellor refused to offer their services to same-sex couples on the basis that a homosexual lifestyle was incompatible with their religious beliefs. The cases were brought by Christians, but the implications of the judgment apply to employees with any religion or belief, or none.

Welcoming the Eweida judgment, the Equality and Human Rights Commission (EHRC) announced that it would be working with employers and religious groups to help them interpret the ruling on the employer responsibilities for policies and practices affecting religion or belief rights in the workplace, the rights of employees (including job applicants) and the rights of customers or service users. There was potential for confusion for both employers and employees following the ruling, due to the fact that the Court found that Eweida had suffered discrimination but that the other applicant, Chaplin, had not.

In 2014, the British Equality Body issued a guide aiming to help employers understand the legal implications of the Court’s judgments and understand how to comply with these judicial decisions when recognising and managing the expression of religion or belief in the workplace. It specifically addresses questions such as how an employer will know if a religion or belief is genuine, the kind of religion or belief requests that have to be considered by the employer, the steps that an employer shall take to deal with a request, whether employees can refrain from work duties etc.

¹¹ Religion or belief in the workplace: A guide for employers following recent European Court of Human Rights judgments, March 2014, <https://www.equalityhumanrights.com/en/publication-download/religion-or-belief-workplace-guide-employers-following-recent-european-court>

- The case may challenge or clarify the law

In Finland, courts must reserve an opportunity for Ombudsman to be heard in legal issues concerning the application of non-discrimination law according to section 27 of the Finnish Non-Discrimination Act (1325/2014)¹². The Finnish Non-Discrimination Ombudsman submitted a statement in the case ruled by the Supreme Administrative Court.

The Court followed the Ombudsman's statement and found that a municipality had violated the law because it refused to offer a free school meal, as required under the Basic Education Act, in a liquid form in accordance with the special needs of a disabled child. According to the Supreme Administrative Court, the education provider had to accommodate a special diet made necessary by the pupil's physical condition or disability, according to the Non-Discrimination Act¹³.

- The case may reverse a discriminatory policy, decision or rights infringement or has potential to help prevent breach of non-discrimination law; attention will be put on the nature, scale, severity of discrimination (continuing, widespread or systematic breaches of non-discrimination law would be favoured).

In Croatia, four NGOs actively involved in the protection of LGBT rights initiated a collective anti-discrimination claim against the president of the Croatian soccer federation for stating that only healthy people play football and, as long as he would be the president of the federation, homosexuals could not thus play in the national soccer team. In the same period, there were similar statements against the LGBT community in the media and several attacks occurred against members of this community. Due to the seriousness of the violation of the LGBT community's rights and the successful cooperation with the NGOs initiating the court proceeding, the Croatian Ombudsman intervened to support the plaintiffs' legal arguments. The Supreme Court concluded in this case to discrimination based on sexual orientation, forbade the president of the federation to make any other similar statements against homosexuals in the media and ordered him to publicly apologize¹⁴.

¹² English translation of Non-Discrimination Act: <http://finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>

¹³ Finland, The report of the non-discrimination ombudsman to the Parliament, 2018, https://www.syrjinta.fi/documents/14490/0/OIKEA_Eduskuntakertomus_englanti/3e49a37f-e7f8-4ba5-85b4-5a6c75e9cc22

¹⁴ Supreme Court of the Republic of Croatia of 28 February 2012 *NGOs v V.M., president of the national soccer federation*, Gž.25/11: this case is described in EQUINET, Strategic litigation handbook, 2017, http://www.equineteurope.org/IMG/pdf/equinet-handbook_strategic-litigation_def_web.pdf;

In 2017, the French Defender of Rights intervened as amicus curiae in the landmark “Chibanis”¹⁵ case to argue that discrimination based on nationality occurred.

This case concerned 2,000 Moroccan Chibanis recruited in their home country by the French national rail company in the 1970s, due to labour shortages in France and the expansion of the rail network. They were recruited on special contracts and were not offered the rail workers’ status including numerous advantages and benefits. They were paid less, had no possibility to get promoted and this had also a negative impact on their pension rate. At that time, the rail company considered employees shall have French citizenship to work as rail workers or, since 1991, to be EU country citizens. A group of 848 Moroccans won their case for discrimination based on their nationality and ethnicity against the French rail company before the Paris Court of Appel on 31 January 2018. The employer was ordered to pay substantial damages (170 million euros in total) to the victims but decided not to appeal.

- The case may have a positive benefit to the public and provides the opportunity to improve the compliance with non-discrimination law, including in relation to the policies and practice of a strategically significant organisation or sector

In UK, the Equality and Human Rights Commission considered the case A v Secretary of State for Business, Energy and Industrial Strategy to be a strategic case with wider public interest. The petitioner (A) had been awarded around £75,000 by an Employment Tribunal which made 29 findings in her favour of discrimination, harassment and victimisation on the grounds of sex and religion. Nevertheless, she was unable to enforce the award as by the time she was aware of allegations that her employer was shifting its funds and her lawyer was able to raise an interdict, most of her employers funds were no longer in their bank account. The issue at stake was thus whether, by failing to make statutory provision for the granting of diligence on the dependence by an employment tribunal, the United Kingdom was in breach of its EU obligation to provide the petitioner with a remedy for harassment, in connection with her former employment, that is compliant with the principles of effectiveness and equivalence. The British Commission was granted permission to intervene. Nevertheless, the Court did not take up the British Equality Body’s arguments in its judgement dated 1st June 2018¹⁶.

3. Assessing the risks for intervention

Once a test case is identified, the Equality Body needs to proceed to a risk mitigation analysis relating to its intervention. The following questions need to be addressed:

a. according to the value of the case

- Is there still some litigation on the facts?
- Do you have any doubts about the victim’s “reliability”?

¹⁵ Chibani is a North African Arabic term for white hair and refer to old men.

¹⁶ <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2018csoh54.pdf?sfvrsn=0>

If these questions are answered positively, it is very likely that the case may stick to the facts and/or that the legal challenges may be spoilt by the inconsistencies of the so-called victim. In this kind of scenario, it is advisable to wait for another case or, at least, wait for the appeal procedure to check whether these aspects are settled.

- What are your aims and expectations?

It is important to determine in advance the message / information / evidence you want to communicate to the court. This is not only a key question that a prospective intervener should ask itself, but it is also the determining criteria applied by the court in deciding whether to grant permission to intervene. For example, interveners usually cannot simply duplicate the parties' submissions. The following questions should be addressed:

- Does it fit with your priorities according to your strategic plan and compared to the available resources to handle other claims?
- How relevant is your work and experience to the court's consideration of the case?
- What would be its adding value beyond the arguments advanced by any of the parties to the case? How would you be able to assist the court and how prepared are you to act as a neutral legal or policy expert?
 - Did you collect and gather evidence on the case that the parties do not know about?
 - Can you provide specific statistics, e.g. to show the court that the issue is recurrent and not isolated and that your organisation is often lodged with similar claims?
 - Have you developed an original / sophisticated argumentation compared to the victim, e.g. with references to international and European case-law?
 - Do you have expertise to assist the court with comparative law?
 - Did you make any research or survey on the issue raised by the case?

b. according to the impact on the victims of discrimination/minority groups

- What impact is your intervention likely to have on the protected groups in particular if you fail?
- Is there a risk that it leads to a worse outcome for victims of discrimination / minority groups?

Even if you may disregard cases where your prospects of success are less than 50%, losing a case is not necessarily definitive. A failure may later become a victory as a "bad judgment" may sharply illustrate the inequity of the law and its interpretation by the courts. The Equality Body may use it to request for a change of the law.

In France, the Defender of Rights has noticed many gaps in the protection of pregnancy and the protection against discrimination of liberal collaborators. For example, the French Equality Body intervened in 2012 in a case dealing with the liberal collaboration's termination of a female lawyer after she announced being pregnant.

In its decision MLD-2012-148 of 29 October 2012, the Defender of Rights decided to intervene before the Court of Cassation. It explained that the right not to justify the termination of a liberal collaboration shall not be used to terminate it on a discriminatory ground. It reminded that the 2006/54 Directive on gender equality prohibits discrimination based on gender and pregnancy within the sector of self-employment and that national law implementing EU law shall be interpreted accordingly. Nevertheless, the Court of Cassation considered the claim inadmissible on 20 December 2012 and refused to consider the merits of the case¹⁷.

The Defender of Rights used this judgment to advocate a change in the law and recommended the Government to improve the protection against discrimination of liberal collaborators during their pregnancy. In 2014, the Defender of Rights made several recommendations in this respect, which were taken into account in the Law no. 2014-873 of 4 August 2014 adding a special provision relating the protection of the pregnant liberal collaborators during a period of 16 weeks. When pregnant, the liberal collaborator are now entitled to suspend their collaboration for at least 16 weeks. Except in the case of serious breach the rules of professional conduct of the person concerned, not related to the state of pregnancy, liberal collaborators are now expressly protected against the termination of their collaboration contract for a period starting from either the declaration of pregnancy or the announcement of the intention to suspend the contract and ending 8 weeks after end of this suspension period.

In 2015 and 2016, the Defender of Rights investigated and helped two lawyers victims of discrimination based on pregnancy to reach a amicable settlement and used its power to require disciplinary sanctions to the authors of discrimination.

In May 2018, the National Union of Young Lawyers Federations (FNUJA) and the Defender of Rights announced the results of a survey relating to discrimination within the lawyers' profession. 72% of women and 47% of men have witnessed discrimination towards colleagues in the last five years. 38% of respondents (53% of women and 21% of men) reported having experienced discrimination themselves in the last five years. The main grounds of discrimination reported were sex (22,4%), pregnancy (19,7%) and age (17,3%).

The mobilisation of the legal profession is the result of the strategy of the French Equality Body over a period of 10 years. "Its action combined statistical studies, pursuing claims, recommending reforms and field work with representatives of the profession. In the face of former denial, obtaining sanctions and documenting the reality of discrimination was necessary to obtain a strong commitment of the profession"¹⁸.

c. according to the impact on the Equality Body's image

- How important is it for your Equality Body to be involved in one case for your image/visibility?

¹⁷ https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=1503

¹⁸ Sophie Latraverse, Report of the Defender of rights regarding experiences of discrimination in the lawyer profession, 23 May 2018; <https://www.equalitylaw.eu/downloads/4613-france-report-of-the-defender-of-rights-regarding-experiences-of-discrimination-in-the-lawyer-profession-pdf-276-kb>

- Would your contribution to the case outweigh the risk that the Equality Body might be subject to criticism of the public opinion?
- What impact may have an intervention if associated with an unwelcome/unpopular change or interpretation in law, policy or practice?

It does not mean that in such a situation, you should censure yourself. But you would need to anticipate the impact of your intervention in terms of image/communication and define how ready you are to deal with any bad publicity associated with the case.

In Northern Ireland, Belfast County Court ruled in 2015 in a case Lee v Ashers Baking Co Ltd that the refusal of the Christian-owned bakery to make a cake iced with the slogan ‘Support Gay Marriage’ was discriminatory. A subsequent hearing at the Royal Court of Appeal was rejected. But on 10 October 2018, the Supreme Court quashed the judgment¹⁹.

The Equality Commission for Northern Ireland does not have the power to act as amicus curiae but has decided to financially support the case in favour of M. Lee, a LGBT activist whose interests have been adversely affected by the bakery. £250,000 have been spend to support Lee’s appeal. The Northern Equality Body will now have to pay costs and has been strongly criticised for such high expenses while public opinion is in favour of the Supreme Court’s ruling. Although the case may be referred to the ECtHR and may eventually be overturned, the Commission has become unpopular and its credibility undermined by the public opinion.

III. HOW TO INTERVENE AS AN AMICUS CURIAE

The procedure to intervene as a third-party is usually rather flexible: very often there is no prescribed form, no fee for requesting leave and no need to seek the consent of the parties. There are however some rules applicable, especially before the European institutions.

1. The procedure before the courts and tribunals in Moldova

The intervention of the Moldovan Council for Preventing and Combating Discrimination and Ensuring Equality (Equality Council) as amicus curiae is not explicitly provided for neither in the Law no. 121 of 25 May 2012 on Ensuring Equality nor in the Law no. 298 on the activity of the Equality Council.

The Equality Council itself may however intervene, as amicus curiae, in cases of relevance to its mandate before the domestic courts according to the Civil Procedural Code.

a. The relevant legal provisions applicable to the Equality Council

The possibility for the Equality Council to intervene in legal proceedings is expressly provided for in article 74 of the Civil Procedural Code referring to “the participation of public authorities in the proceedings to provide an opinion on the case”.

¹⁹ <https://www.supremecourt.uk/cases/uksc-2017-0020.html>

Article 74. Participation of public authorities to give an opinion on the case in the proceedings

(1) In the cases stipulated by law, the competent public authorities may, on their own initiative, at the request of the trial participants or the court's office, intervene in the proceedings before the first instance decision, as well as in the appeal court, to draw conclusions, according to their mandate, in order to protect the legitimate rights, liberties and interests of other persons, the interests of the state and society.

(2) If necessary, the court may, on its own initiative, involve the competent public authority in the case in order to give an opinion on the case under consideration.

3) The bodies specified in this article shall have procedural rights and obligation of participants in the proceedings, listed in article 56 of this code, as well as in other laws.

This article does not provide for specific and strict procedural forms in terms of time-limit, length of the submission or obligation to obtain the consent of the parties. According to article 67(2) of Civil Procedural Code, the copy of the third-party intervention application shall be handed to both parties, but it is up to the court to decide upon this request.

It appears that in practice, the Equality Council usually intervenes on the request of the victims in order for the court to draw on its expertise in equal treatment legislation. The number of submission each year are the following:

Year	Number of amicus submissions per year
2014	6
2015	2
2016	2
2017	3
2018	3

The Constitutional Court has recently invited the Equality Council to provide its amicus submission concerning the different sanctions applicable to drivers impaired by alcohol or various drugs depending on whether they were driving vehicles requiring a driving license or not. According to the Contraventional Code, the first ones faced the risk of being cumulatively fined and deprived of their driving license, while the latter could alternatively face a fine, unpaid community service or contravention arrest. In its amicus brief dated 25 April 2018, the Equality Council considered that such a difference of sanctions was not discriminatory because the drivers of different categories/subcategories of vehicles were in different situations. In its decision no. 11 of 8 May 2018, the Constitutional Court however refused this analysis and ruled that such a differential treatment was contrary to Article 16 in conjunction with Articles 25 and 46 of the Moldovan Constitution²⁰.

Besides, there is currently a bill under discussion before the Parliament to amend the equality legislation in Moldova. Beyond the request for an increase of resources and budget, one specific amendment concerns the obligation for any court dealing with a discrimination case to prior request the Equality Council's opinion. This opinion

²⁰ <http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=658&l=ro>

might take the form of a third-party intervention. This draft should be discussed in Parliament in the following months.

b. The best timing for intervening *ex officio* before the national courts and tribunals

Concerning the best timing to intervene, you will thus need to evaluate the pros and cons and eventually decide depending on your objectives.

As the Equality Bodies primarily seek to clarify the law or prospect of a positive change, they usually intervene in the upper courts because it is better achieved at that stage. There are often factual disputes in the lower courts, which reduce the opportunity to achieve such aims. It may also be better to wait for the appeal stage as the decision from a higher court may also have a greater impact.

However, in some specific cases, it can also be helpful to intervene in lower tribunals, e.g. as it may attract wide public interest and attention from the judges.

In France, plaintiff lodged a claim of a hairdresser whose probation period was terminated. He called in sick one day and his boss accidentally sent him a text message intended for someone else. In it, she said: "I'm not keeping him. I'll let him know tomorrow. I don't have a good feeling about this guy. He's a 'faggot'. They always 'pull a bitch switch' ". The next day she dismissed him. The Defender of rights presented observations before the employment tribunal arguing that the termination of the employment contract was based on sexual orientation.

The 2016 first instance ruling did not follow the Equality Body's submission and stated: "If we put it in the context of the field of hairdressing, the tribunal considers the term 'faggot' used by the manager cannot be considered as a homophobic statement, because it is recognised that hair salons regularly hire homosexuals without it ever being a problem. This judgement garnered quite a bit of attention in the press and triggered a public outcry in the public opinion. LGBT NGOs, the Ministry of Labour and the Public Defender of Rights considered this judgment as surprising or shameful. The Paris Court of Appeal quashed this judgement on 21 February 2018.

c. The importance of cooperation with the parties

Once a case is identified as raising public interest, it is opportune to get access to the case file (claim, defence, grounds for appeal, etc.) through the lawyers in charge after explaining the benefit a third-party intervention may bring to the case. This is the easiest and quickest way to get a copy even such information may also be available in the registry of the court, which are part of the public record once filed.

In case of an *ex officio* intervention, it is particularly crucial for the Equality Body to approach the parties, even if their consent to its intervention is not mandatory by law. It may be helpful to get information about how each party is running its case, in order to provide the most efficient assistance to the court. The Equality Body would first and foremost liaise in particular with their lawyers, at least to avoid to duplicate or undercut their arguments. Awareness of the development of the dispute between the parties is important: when the Equality Body acts as *amicus curiae*, it is not in control of the direction of the case. It is thus dependent on what private parties are litigating and

appealing. If the case progresses and the arguments change, or counter-arguments about the third-intervention are put forward, it may also be useful to have the option of a later oral intervention to reply and adapt the argumentation.

Although the role of the Equality Body is to assist the court on the public interest, its role consists also in fighting discrimination and promoting equality. Therefore, its intervention may bring, some support to the victim of discrimination. The lawyer's victim would usually be keen to discuss strategy with the Equality Body to coordinate the arguments.

The Equality Body may thus be placed in an awkward position as it may be perceived as a supportive intervener. Cooperation in this respect shall not impede and undermine its independence and impartiality.

In France, the Equality Body faced one Court of Appeal's refusal to its intervention on the basis that it was contrary to the principle of equality of arms enshrined in article 6-1 of the European Convention of Human Rights. In 2010, the Court of cassation rejected this analysis considering that the principle of a fair trial is respected as long as all information is accessible and discussed by the parties before the judge.

Another issue relating to the timing concerns the communication of the amicus submission to the court and the parties. Even if the Moldovan procedural rules do not determine a strict deadline, it is important to provide the amicus brief well before the hearing (a minimal period of 3-4 weeks may be considered as reasonable). Otherwise, there is a risk for non-admission based on the failure to respect the right to a fair trial. Each party should have an opportunity of presenting his case and be fully informed of the documents, evidence, arguments, etc relied upon by his opponent, and the judgment must not be based on a point that has not been argued and examined in court.

2. The procedure before the European institutions

a. Before the European Court of Human Rights

Individuals, NGOs, Ombudspersons and Equality Bodies representing diverse interests and views regularly make "third-party interventions" in the proceedings of the European Court of Human Rights. According to article 36 of the ECHR and article 44 of the Rules of the Court, the President of Court may invite a third-party intervention to submit written comments or, in exceptional cases, to take part in hearings, as a third-party may also seek to provide information to the Court on its own initiative.

Article 36 of the European Convention of Human Rights

(1) In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

(2) The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

(3) In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Rule 44 of the Rules of the Court²¹

3. (a) Once notice of an application has been given to the respondent Contracting Party under Rules 51 §1 or 54 §2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, (...) any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.

(b) Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages as provided in Rule 34 § 4 not later than twelve weeks after notice of the application has been given to the respondent Contracting Party. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

4. (a) In cases to be considered by the Grand Chamber, the periods of time prescribed in the preceding paragraphs shall run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of the case to the Grand Chamber.

(b) The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown.

5. Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.

6. Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

7. The provisions of this Rule shall apply *mutatis mutandis* to proceedings before the Grand Chamber constituted to deliver advisory opinions under Article 2 of Protocol No. 16 to the Convention. The President of the Court shall determine the time-limits which apply to third-party interveners.

The only requirements to submit an amicus brief before the ECtHR are the following ones:

- It shall be “duly reasoned”.
- It shall be written in one of the court’s official languages (French or English).
- It shall be submitted “not later than twelve weeks after notice of the application has been given to the respondent Contracting Party, e.g. when the case is

²¹ https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

communicated to the State respondent. The communication is published on HUDOC database²² but usually 3 weeks in arrears, which reduces the time-limit to 9 weeks.

- Where a case has been referred or relinquished to the Grand Chamber, interveners have 12 weeks from that later decision.

The President of the Court also usually requires that the submissions do not exceed ten or twelve pages and that the intervener do not seek to address either the facts or the merits of the case. Late applications are not normally considered except if sufficient cause is shown.

Acceptance of such briefs is at the discretion of the President of the Court. It must be “in the interest of the proper administration of justice”. Therefore, if the participation does not serve the ends of justice, the President of the Court can reject applications to submit amicus briefs. It may happen when:

- there is a clear precedent making third party intervention unnecessary,
- when the request merely duplicates what the parties or other amici have presented, or
- when the request does not have any close connection to a pending case.

As the court generally welcomes applications for leave to intervene, when the above formality requirements are fulfilled, leave to intervene by way of written submissions is almost always granted. The amicus curiae thus receives a copy of the complaint file. Leave to make oral submissions at the hearing is only rarely sought and almost never granted²³.

Any written comment submitted by an amicus is thus forwarded to the parties to the case who are entitled to file written observations in reply and, where appropriate, to reply at the hearing.

To be granted as a third-party intervention before the ECtHR, the Equality Body shall send to the Registry of the Court:

1. an official letter to request a duly reasoned permission to the President of the Court
2. in French or in English
3. within 12 weeks after the communication of the case or the Chamber judgement
4. describing the Equality Body’s activities and explaining its interest in the case
5. setting out the relevant issues at stake and a brief outline of the proposed intervention.

Once the President has accepted the third-party intervention, the amicus brief shall:

1. be written in French or in English
2. in 10 pages maximum
3. within the time-limit determined by the Court, i.e. usually 3 weeks
4. and not seek to address either the facts or the merits of the case.

²² <https://www.echr.coe.int/Pages/home.aspx?p=press&c=>

²³ For example, the NGO Interights was invited to make oral submissions at the hearing before the Grand Chamber in *Opuz v Turkey* (App No 33401/02, 9 June 2009).

An agenda example

14 December 2017	Communication of the case on the ECHR's website.
5 March 2018	Letter sent by the Equality Body requesting leave for submission to the President of the Court
20 March 2018	Positive answer of the Section Registrar of the Court fixing a new deadline for amicus submission to 11 April 2018 + copy of the complaint file
9 April 2018	Amicus submission sent to the Court
13 April 2018	Return receipt of the letter by the Section Registrar informing that the submission has been forwarded to the parties

b. Before the European Committee of Social Rights

Similarly, the European Committee of Social Rights authorises third-parties to intervene.

Rule 32A of the Committee entitled "Request for observations":

1. Upon a proposal by the Rapporteur, the President may invite any organisation, institution or person to submit observations.
2. Any observation received by the Committee in application of paragraph 1 above shall be transmitted to the respondent State and to the organisation that lodged the complaint.

Such a request to intervene before the European Committee of Social Rights generally comes once it has delivered a decision of admissibility.

Even if third-party interventions are admitted only when requested by the European Committee of Social Rights, an Equality Body may nevertheless trigger such an interest by sending a letter to the President of the European Committee.

The procedure is quite similar to the one before the ECtHR but it is much more flexible, e.g. it does not impose the same 12-week time-limit. There is no limitation of pages even if it is appropriate to keep the amicus brief short.

An agenda example:

27 February 2015	Registration of one collective complaint
30 June 2015	Complaint declared admissible
4 December 2015	Letter sent by the Equality Body requesting leave for submission to the President of the ECSR
2 February 2016	Positive answer of the Section Registrar of the Court fixing a deadline for amicus submission : 29 February 2016 asking to give clarification about the national legislation and practice without supporting one party + copy of the file
26 February 2016	Submission sent to the ECSR
1 March 2016	Return receipt by the ECSR

3. Shaping an amicus submission

3.1. General advice relating to the style of the amicus brief ²⁴

A well-crafted amicus brief must be clear, concise and to the point.

- **Be clear**

Consider that your submission is a one-time opportunity to make your point. Choose one or several issues and argue them strongly. Avoid any canned message.

Ex: Explain how the case at stake may affect many similar victims of discrimination and substantiate your argument with reliable statistical data (number of similar claims) and relevant fact-finding surveys.

- **Be brief**

Before the ECtHR, the amicus submission is limited to 10 pages. Consider it as a maximum, even before the national courts, as all courts are overloaded with paperwork. Use active verbs and keep sentences short.

- **Follow a clear structure**

Divide your brief in sections/paragraphs for a more user-friendly content.

You may tailor your brief to the facts of the case, but do not limit your focus to the litigants' arguments. Direct the court's view to the big picture.

When feasible, it can be strategic to draft your submission in a way to cross reference to the information within the claim form, defence, court documents and, if possible, the skeleton arguments as this does assist the judges with their reading.

- **Supplement, do not duplicate but restate if necessary**

Do not rehash the arguments of the parties. The amicus brief must add something to the body of arguments before the court and not reiterate them.

However, reformulate the arguments presented if the parties explain them awkwardly. Include a short statement of facts if the parties state them poorly or incompletely.

If necessary, coordinate with the litigants to avoid filing a redundant brief or worse, a contradictory one. A supportive amicus brief can flesh out points left undeveloped by the victim.

- **Provide a new perspective**

Suggest a different approach to the issue than the parties. Explain upfront why the issue is larger and more important than the litigation between the two parties at bar.

Ex: Provide a bigger picture, illustrate your arguments with figures and charts, put forward new elements to shift the burden of the proof of discrimination etc

- **Show you are a reliable expert on the issue**

Conduct thorough research and provide clear legal analysis. Spell out the connection between the case at bar and pending cases or others likely to arise.

- **Use a terminology familiar to the court and explain concepts the court may be unfamiliar with**

²⁴ This part is largely inspired from the paper of *Judge Neal Nettesheim & Clare Ryan*, "Friend of the Court Briefs: What the Curiae Wants in an Amicus", *Wisconsin Lawyer*, 2007, vol. 82, no. 5, <https://www.wisbar.org/NewsPublications/Wisconsin-Lawyer/Pages/Article.aspx?Volume=80&Issue=5&ArticleID=1255>

Ex: Before the ECtHR, use the notions of consensus, positive obligations, vulnerable groups, wide/narrow margin of appreciation etc that are relevant to discrimination issues.

Ex: Before the national courts, explain and define the concepts of direct and indirect discrimination, discriminatory harassment, victimisation/retaliation, discrimination by association, systemic discrimination, shift of the burden of proof, evidence methods (through statistics, chronology etc).

- **Write persuasively and be straightforward**

Identify the clearest and most persuasive arguments. You are not limited to a client's best interest, so use your freedom to serve the best interest of the justice system as a whole.

- **Be impartial**

Do not be one-sided. Be fair and objective. Your status of Equality Body imposes that you remain neutral and factual and that you do not act as a lobbyist. An amicus submission is also more convincing if you acknowledge and discuss counter-arguments. Otherwise, you will not really assist the court in its tasks.

- **Watch your style and tone**

Be objective and moderate. Do not overstate the issue at stake or exaggerate the outcome. Do not overlook counter-arguments or use peremptory tone.

- **Build your credibility**

Obtaining trust from the courts is a long run process. Seek only to provide high quality amicus submissions. Submission after submission, this high standard of quality will provide effectiveness to your advocacy efforts. By providing low quality briefs, you may on the contrary burden the court.

3.2. General advice relating to the content of the amicus brief²⁵

3.2.1. Types of intervention

- **The “true” friend of the court** is the one that does not have a stake in the outcome but has an interest in the proper administration of justice and provides information and knowledge to the court.
The content of an amicus intervention may be slightly different depending on its aims.
- **The “Me too” amicus:** Its brief adds nothing but its “vote” to one side or the other. Its purpose is to tell the court that it agrees with one party and hopes the Court will decide in his/her favour. This kind of intervention may have a valuable democratic function and may be useful as an “endorsement.” Nevertheless, such briefs usually do not provide assistance to the Court and may even be refused before the European Court of Human Rights and the European Committee of Social Rights.
- **The amicus showing another perspective to the court:** the amicus provides another perspective, usually broader than the parties' and explains how other people in similar situations may be affected by the court's decision. Its intervention is about warning the court to all potential consequences of deciding the case a given way. The brief is thus very practical and it articulates how things work.

²⁵ This part is largely inspired from the paper JUSTICE, To assist the Court : third party interventions in the public interest, 2016, <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2016/06/To-Assist-the-Court-Web.pdf>

Presenting the big picture means to collect factual information demonstrating the importance or the implications of the legal issues involved and to which the court or parties may otherwise not have access. Such briefs are known as “Brandeis briefs” in the USA.

In 1908, Louis Brandeis supported an Oregon law restricting the number of hours women could work in a laundry in the case Muller v. Oregon before the U.S. Supreme Court. He did so by relying more on a compilation of scientific information and social science than on legal instruments²⁶. It consisted of more than 100 pages, containing mainly empirical data demonstrating the negative impact long workdays on the health, safety, morals and general welfare of women. A Brandeis brief therefore refers to “a special sort of amicus brief that, instead of relying solely on logic, legal theory, and controlling precedent, takes a data-intensive, sociological approach to advancing arguments”²⁷.

An amicus brief may also take a long-term view on the development of the law, endeavouring to persuade the court to resolve the controversy in a certain way. It thus lets a court know that some particular groups and communities care about how a case is resolved.

- **The amicus filling the gaps:** The amicus has a strong expertise on a particular issue raised by the case and may fill gaps in the analysis or research provided by the parties. These kinds of briefs can also alert the Court to the consequences of a given line of analysis and the practical effect of the decision. The gap can be a failure to fully address important points or it can be a failure to focus on the bigger picture. Generally, amici take the case as they find it and may not raise new issues. Courts may disregard the amici’s arguments that are not espoused or are hurtful to one party. Under certain circumstances, the court may however allow and address new issues raised by amicus briefs. Nevertheless, the Court cannot decide *ultra petita*.

3.2.2. Format of the amicus submission

The amicus submission should include the following features set out below:

1. Introduction

The intervention should include an introduction covering the following (some of which will be recycled from the application for leave to intervene):

- **Describe your organisation and its missions:** Provide a brief description of your organisation, including its missions, its legal status, its public policy aims and its activities. In order to save space for your substantive arguments, this part should remain concise and brief.
- **Explain why your contribution may help the court, why the case is of public interest and/or raise issues beyond the litigation of the parties**

²⁶ Strum, Philippa (1989). “Brandeis and the Living Constitution”, in DAWSON, Nelson L. Brandeis and America. Lexington, Ky.: University Press of Kentucky. p. 120.

²⁷ Judge Neal Nettesheim & Clare Ryan, “Friend of the Court Briefs: What the Curiae Wants in an Amicus”, *Wisconsin Lawyer*, 2007, vol. 82, no. 5, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=80&Issue=5&ArticleID=1255>

directly involved. It is important to explain why this particular case deserves the court's attention, and not just why the lower courts are wrong. Set out facts that put the controversy in a larger context (e.g. its impact upon the public generally or sectors of it) or show the court the potential impacts of resolving the controversy one way or another.

- Conclude your introduction by **an outline of your main arguments.**

2. Elaboration of the arguments (in 10-12 pages max)

- **Show the Court a bigger picture**

- ✓ Demonstrate your practical experience or evidence to help the court determine an issue before it

In its third-party intervention before the European Committee of Social Rights in 2018²⁸, the Belgium Institute for Equality between men and women explained that there is no legal provision in Belgium on the definition of work of equal value, nor any legal provision on who can function as a comparator, hypothetical or otherwise. The nation courts have construed the notion of "work of equal value" so strictly that it (almost) coincides with the concept of "equal work". In this regard, the Belgian case-law lags behind on the case-law on European level and that of other Member States, where two different professions may be considered as similar and comparable. The Belgium Equality Body illustrated the situation by providing the example of the employment tribunal of Gent judgment dated 10 August 2017, a case in which the Institute intervened with no avail. The judge in this case stated that the argument of work of equal value was unfounded, because the three female employees who were paid less than their male counterparts did not execute the exact same tasks, requiring the same competences, as their male colleagues. However, the individual booklets in which the employees had to report their tasks showed that the three female employees, who earned less than their male counterparts, worked on the same orders and documents, and conducted within this framework the same or similar acts as their male colleagues. The Equality Body concluded that giving a clear definition of "work of equal value" could help advance the case-law on this point.

- ✓ Provide helpful context from your work

In its third-party intervention before the European Committee of Social Rights in 2018²⁹, the Portuguese Commission for Equality in Labour and Employment (CITE) described an experimental project it has taken part in, together with the Trade Union Confederation and ILO office in Lisbon and aiming at developing and testing a job evaluation method free from gender bias. During the project, this methodology was tested in several companies (mainly SME) in the food and beverage sectors. They found out that some of the occupational categories were gender-segregated, that the occupations which were mainly performed by women were less valued than the ones performed by men and that the working conditions of female-dominated occupations were much worse than male-dominated occupations 'ones.

²⁸ Observations of the Institute for Equality between men and women, 28 May 2018, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No.124/2016, <https://rm.coe.int/cc124casedoc9-en-observations-by-equinet/16808aef17>

²⁹ Observations by CITE, 28 May 2018, University Women of Europe (UWE) v. Portugal, Complaint No. 136/2016 before the European Committee of Social Rights, <https://rm.coe.int/cc136casedoc6-en-observations-by-equinet/16808aefcf>

These findings allowed the companies to improve their working conditions, to review some occupational categories and in one company, some women moved to occupations that were typically considered as men's occupation. After this experimental pilot project, three economic sectors (textile, footwear and woollen industry) used the same methodology and identified that the pay gap was gendered. This diagnosis allowed the trade unions of these sectors and the employers' associations to start a collective bargaining process in order to review some of the most gender-segregated occupations and include this into the collective labour regulation instruments.

- ✓ Provide a greater understanding of the ruling's consequences on the law or practice.

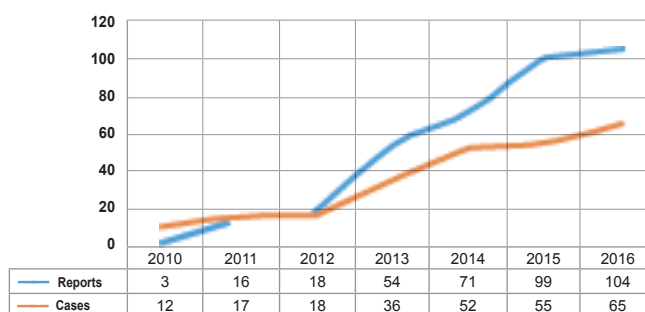
In its third-party intervention before the Court of Cassation, the French Equality Body explained that ethnic profiling is a pervasive problem in French policing³⁰. According to observational studies of police stop-and-search operations, there has been a significant concentration of identity checks on young men perceived as Arab/North African and Black. As there is no traceability system, French police do not release information about their stop and search practices. Therefore, the Court could be aware that a denial of discriminatory operations of controls may occurred and that the subsequent right of victims to an effective judicial remedy may thus be undermined.

- **Produce statistical data**

- ✓ Include data you have collected (e.g. number of claims on the issues, specific surveys conducted by the Equality Body etc)
- ✓ Include secondary relevant sources (e.g collected by officials institutions, research institutes, NGOs, international organisations)
- ✓ Data collection may include quantitative and qualitative data

In its third-party intervention before the European Committee of Social Rights³¹, the Belgium Equality Body, UNIA, explained that of all files lodged in the education sector, over half concerned the criterion of discrimination based on disability (57%). Out of the 487 disability files, 127 concerned education (26%) : 93 files involved discrimination on the ground of refusal of reasonable accommodation (73%), 22 files concerned pupils with psychological disorders or autism (17%), 8 concerned pupils with a psychological disorder/ADHD (6%), 5 concerned pupils with a mental disability (4%) and 8 concerned pupils with multiple disabilities (physical and mental).

UNIA showed that the number of disability reports and files in the education sector in the French Community was rising steadily.



³⁰ Decision no. MDS-2016-132 du 29 avril 2016, https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=18452

³¹ Observations of UNIA, 6 December 2017, *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium* Complaint No.141/2017, <https://rm.coe.int/cc141casedoc5-en-unia-s-observations-on-the-complaint/16808d02b4>

- **Include and analyse the International and European standards applicable**

- ✓ Include relevant International and European law standards to the case

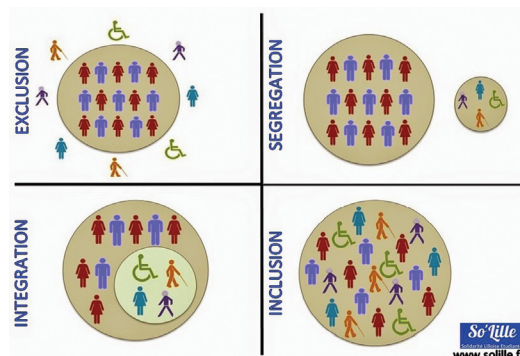
In its third-party intervention before the European Committee for Social Rights in 2018³², the Irish Human Rights and Equality Commission (IHREC) challenged the Irish government’s position, i.e. that “the complaints procedure and remedies available provide adequate protections to ensure that men and women receive equal pay for equal work”. The Irish Equality Body quoted the 2017 report to the UN Committee on the Elimination of Discrimination Against Women in Ireland stating that “Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination. Similar limitations on compensation in other EU Member States have been found to be incompatible with EU law. This has led Ireland’s compliance with EU law being questioned, particularly in relation to the question of “whether the legislation includes real and effective compensation”.

- ✓ Define your experience on the application of those standards

In its third-party intervention before the European Committee of Social Rights³³, the Belgium Equality Body, UNIA, demonstrated that the share of pupils in special education has grown steadily over the past 10 years. A number of pupils with disabilities were able to enter mainstream education through reasonable accommodation measures provided by schools, but this was not without difficulties, as demonstrated by the increasing number of reports made to UNIA concerning reasonable accommodation in education (73% of disability – education files in 2016). 5.8% of them were integrated in mainstream schools through integration measures provided by the authorities. In theory, the legislation in the French Community ensures that pupils with disabilities are not excluded from mainstream education and have access to reasonable accommodation. In practice, only pupils who are deemed capable of adapting to the standardised requirements of mainstream schools have a chance of being integrated. UNIA concluded that the Belgium education is a segregated system (with pupils with disabilities attending special schools) in which only a small proportion of pupils are integrated in mainstream education. The French Community in Belgium had made no endeavours to move towards a genuinely inclusive education system in compliance with Article 24 of the CRPD.

UNIA also explained the differences between the concepts of segregation, integration and inclusion within the field of education that used by the European Committee of Social Rights. It also illustrated these concepts in the table below.

The table below illustrates the difference between the concepts:



³² Observations by IHREC, 28 May 2018, *University Women of Europe (UWE) v. Ireland*, Complaint No. 132/2016 before the European Committee of Social Rights, <https://rm.coe.int/cc132casedoc8-en-observations-by-equinet/16808aef40>

³³ Observations of UNIA, 6 December 2017, *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium* Complaint No.141/2017, <https://rm.coe.int/cc141casedoc5-en-unia-s-observations-on-the-complaint/16808d02b4>

- **Provide a comparative approach**

Other countries may have experience the same problem before the courts, which may help decide the outcome of the case.

- ✓ Include comparative law (e.g. across the EU), the relevant international and precedents from other countries (e.g. in Europe but also in the USA, Canada, Australia, South Africa, etc)
- ✓ Describe and analyse good practices existing in other countries
- ✓ Develop analysis on how comparative material in other countries should influence the development of the law in this case

In its third-party intervention before the Czech Constitutional Court about the adoption of children by same-sex couples in 2013³⁴, the Public Defender of Rights explained that this issue was not exclusively a Czech question and considered it appropriate to take a brief look at the legal situations of lesbians and gays in other European Union States. When addressing its amicus brief, the Czech Equality Body showed modern trends and developments in the domestic laws of several countries toward greater openness and acceptance of same-sex couples: In 2013, same-sex couples had the right to marry in 11 EU countries. 6 other EU States had adopted legislation endorsing registered partnerships. Therefore, 17 states out of 28 EU Member States made it possible to institutionalize gay and lesbian's partnerships. Out of these 17 States, the joint adoption and the adoption of a child by a single partner was allowed in 13 states and the adoption of a child by only one partner was allowed in 2 States. Therefore, out of 17 EU Member States recognizing same-sex relationships, only the Czech Republic and Hungary did not allowed to same-sex couples the adoption of children at that time.

The Public Defender also considered that enabling the child to be adopted by registered partners was not only a political issue but a human rights one. It referred to a similar case in Austria about the constitutionality of the ban of joint adoption by registered partners. The Austrian Constitutional Court concluded that such a ban was unconstitutional because registered partners were disadvantaged on grounds of sexual orientation and that there were no substantial justification for such a differential treatment. The counter-argument relating to the protection of the best interests of the child was dismissed as inappropriate; it was based on the erroneous assumption that parental sexual orientation may be relevant to determine the quality of parental care. The Austrian Constitutional Court therefore annulled the relevant provisions in question with effect from 31 December 2015.

- **Develop specific legal expertise**

- ✓ Provide legal insight helping the Court on the interpretation of the law to decide the issues in the case

In Croatia, four human rights organisations initiated a legal proceeding following the president (V.M.) of the Croatian Football Association's public statement that gay people will not play in the national football team, as long as he would be president, and that only healthy people play football. Zagreb County Court ruled that no discriminatory harassment had occurred, since there was no evidence of any negative consequences such as fear or a hostile or intimidating atmosphere.

³⁴ Decision of the Public Defender of Rights, no.10/2015/SZD, 22 April 2015, <http://eso.ochrance.cz/Nalezene/Edit/4262>.

In its third-party intervention before the Supreme Court in 2015³⁵, the Croatian Ombudsperson explained that the rule on burden of proof was not adequately implemented by courts. The rule has been most often ignored because the burden of proof rests on the complainant who has to provide evidence for every element of his claim. Judicial decisions were explained by the standard formula that “courts decide which facts to consider as proven according to their conviction on the basis of a conscientious and careful assessment of each piece of evidence and all the evidence as a whole, and on the basis of the results of the proceedings in their entirety”. The Supreme Court held that as the burden of proof had shifted to V.M., he had to prove that his statement did not constitute discrimination and did not cause an intimidating, hostile, degrading or offensive environment. As V.M. failed to do so, the Supreme Court thus annulled the first instance judgment and ruled that by his statements V.M. had discriminated against homosexual persons and ordered him to publicly apologise.

In 2015, the Public Defender of Georgia intervened before the Batumi District Court regarding the lawsuit of the representatives of LEPL Georgian Muslims Relation, K.K, B.I., and T.Kh. relating to a case of hate crime based on religion³⁶. The population of the city of Kobuleti, who belong to the Orthodox congregation, tried to hinder the opening and operation of the boarding school for the Muslim pupils. They had slaughtered a swine near the school territory and nailed the head of the animal to the building’s door. According to the applicants, the protestor population had controlled applicant’s movement within the building. Besides, they had also built artificial barricades in front of the school entrance, constantly patrolled and restricted their freedom of movement through systematic threats and verbal abuses. The applicants also mentioned that the law enforcement officials failed to dismantle the barriers and ignored occurred offenses. Respectively, due to the demonstrations of individual defendants and failure of the State to enforce its positive obligations, it had been impossible to open the boarding school.

Amicus Curiae prepared by the public defender of Georgia focused on two main legal issues – the standards defined by the European Court of Human Rights for evaluating the possible discriminatory treatment on religious grounds on the one hand perpetrated by private individuals and on the other hand perpetrated by the State. Based on the analysis of international agreements in the field of human rights and the precedents of the European Court of Human Rights, the Georgian Equality Body explained that the rights, which were possibly hindered in the discussed case, were allegedly related to the right to the uninterrupted use of property and the right to religious freedom. The Ombud also addressed the issue of the shift of the burden of proof: In compliance with the Law of Georgia on the Elimination of All Forms of Discrimination and the European Convention on Human Rights, the defendants were obliged to prove that their actions had not been provoked by the applicants’ religion. In order to reveal the possible religious motivation of their actions, it was

³⁵ Case described in European network of legal experts in gender equality and non-discrimination, Croatia, Country Report, Brussels, 2015, http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/15/2015-hr-country_report_nd_final.pdf

³⁶ Case described in Special Report on combating discrimination, its prevention and the situation of equality in the country of the Public Defender of Georgia, September 2015, http://www.theioi.org/downloads/abad/Georgia_Special%20Report_combating%20discrimination_2015_EN.pdf.

necessary to evaluate the public statements made by the defendants, religious rituals accompanying the demonstrations, the fact of slaughtering a swine, an impure animal for the Muslim population, and nailing its head to the door of the boarding school. If the defendants pointed out that the boarding school was paralysed in order to defend the public order, morality or other rights and freedoms, then they would have to prove how the operation of the boarding school violated public order and abused morality. As for the positive obligations of a State, the Public Defender of Rights stated that the Ministry of Interior was responsible to prove that they had applied all measures to ensure the proper enjoyment of the right to property and religious expression without discrimination.

- ✓ Make an important legal argument not likely to be raised by the parties, but that is relevant to the public interest

In its third-party intervention before the European Court of Human Rights in Eweida, Chaplin, Ladele and Mc Farlane cases in 2012³⁷, the British Equality and Human Rights Commission explained that the interpretation of domestic discrimination legislation by the British courts did not satisfy Article 9 of the European Convention of Human Rights, in particular by setting too high a threshold for interference and therefore failing to properly address justification. The British courts have construed Article 9 in a narrow way, and rarely accepted that a restriction on an individual's religious practice must be justified under Article 9(2). The Commission argued that UK case law had failed to protect adequately individuals from religious discrimination in the workplace. It was particularly concerned by the inconsistency of outcome between cases in which the manifestation of a person's religious belief was also a manifestation of his/her racial identity and could therefore be brought under the statutory race discrimination provisions and those cases which did not raise any element of race discrimination. The courts in UK have had, in effect, guaranteed different levels of protection for individuals asserting a purely religious identity (R (SB) v Denbigh High School) as a case brought purely under Article 9, as opposed to those whose religious and racial identities were intertwined (see R (Watkins-Singh) v. Governing Body of Aberdare Girls' High School [2008] EWHC 1865 (Admin)) [2008] ELR 561). This illustrated an unsatisfactory legal position.

- ✓ Seek to develop the law in a particular way (e.g. putting an alternative view of the law not being advanced by either party)

In its third-party intervention before the European Committee of Social Rights in 2018³⁸, the Swedish Equality Ombudsperson proposed to introduce a different, more effective and truly dissuasive sanctions regime to prohibit gender pay discrimination that would better suited to addressing issues at a structural level. The Ombudsperson has suggested that the existing legal framework in areas such as competition law and data protection law could serve as inspiration.

³⁷ <https://www.equalityhumanrights.com/en/legal-casework/human-rights-legal-cases>.

³⁸ Observations by the Swedish Equality Ombudsman, 15 March 2018, *University Women of Europe(UWE) v. Sweden Complaint*, No.138/2016 before the European Committee of Social Rights

- ✓ Analyse academic literature

In France, the Defender of Rights presented its observations before Paris Labour tribunal in 2017 about a case of sexual harassment³⁹. Adopting a legal and sociological approach, the French Equality Body looked at sexual harassment in a holistic way, considering the deep economic vulnerability of the victims who were working as cleaners in trains. The Defender of Rights based its third-party intervention on a sociological survey it had commissioned for the purpose of the case. This survey highlighted that being in permanent contact with dirt, female cleaners were considered as invisible and forgotten. Therefore, working in this sector of activity could induce acts of domination because they could also remain invisible. Moreover, the alleged female victims were the only ones to clean the toilets and very few were in a managerial position. This demonstrated a gendered hierarchy of functions and positions that also fostered a culture of sexual harassment.

- ✓ Provide evidence / research / legal reasoning that the parties may not present particularly where you can rely on your own research or policy work

In its third-party intervention before Lord Tyre (a judge of the Court of Session and High Court of Justiciary, the Supreme Courts of Scotland) in 2018⁴⁰, the British Equality and Human Rights Commission (EHRC) addressed the issue of the difficulties experienced by successful claimants in enforcing awards made by the Employment Tribunal as their current or former employer had tried to evade payment of dues. EHRC showed that it was readily apparent from the reports that had been lodged that there was a recurrent problem, especially in Scotland. A 2013 study indicated that in Scotland, even where the claimant had taken enforcement action, 46% had received no payment and a further 13% had been paid in part only. A 2014 report contained similar findings. Certain other EU jurisdictions had protective procedures in employment-related claims. The existing system in UK also breached the principle of equivalence of procedures. The Court should be required to identify the comparable domestic action and then, if it was governed by different procedural rules, examine the justification for the difference. In the present case the petitioner's situation should be compared with a claimant seeking redress for harassment, victimisation or discrimination on the grounds of religion in a non-employment context, such as in the provision of a service or in the context of further or higher education. Such a claimant would be required by the Act to pursue her claim in the sheriff court and would have the benefit of being able to seek arrestment on the dependence. In the absence of justification, the principle of equivalence was not met. In addition, article 21 of the European Charter of Fundamental Rights prohibited discrimination on any ground in the implementation of community law. The Act discriminated in its implementation of the Gender Goods and Services EU Directive and the Equal Treatment EU Directive by selecting different fora for different disputes. The Directives contained no justification for such discrimination.

³⁹ Decision MLD-2015-247 of 12 October 2015 ; the tribunal found that sexual harassment occurred in its judgment dated 10 November 2017, https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=16219

⁴⁰ https://www.equalityhumanrights.com/sites/default/files/aa_v_advocate_general_0.pdf?utm_campaign=Scotland+Equality+Law+Bulletin+-+July+2018&utm_source=emailCampaign&utm_content=&utm_medium=email

It was for the respondent to justify the difference in treatment under reference to article 52(1) of the Charter, which stated that limitations on the exercise of rights recognised by the Charter could be made only if they were necessary and genuinely met objectives of general interest or the need to protect the rights and freedoms of others.

- **Send a particular message**

Submitting an amicus brief may also be the opportunity for the Equality Body to send out a signal to the national or European judicial institutions. For example, it may refer to the Equality Body's lack of financial/human resources/powers or the weakness of the existing sanctions in case of discrimination. This kind of third-intervention may thus be a way to put indirect pressure on the government to change the law in order to make it more effective. It is particularly true when the Equality Body intervenes at the international level.

In its third-party intervention before the European Committee of Social Rights in 2018⁴¹, the Swedish Equality Ombudsman explained that according to its experience, the litigation of individual cases of gender-based pay discrimination offers only limited possibilities to address the issue. Even disregarding the fact that individuals may often be unaware that they are subjected to this type of discrimination, there are many reasons for the difficulties encountered in bringing such cases to a successful conclusion. These include, but are far from limited to, the problem of identifying the appropriate comparator in sectors where wages are individually set. In more general terms, the existence of unwarranted pay differentials between women and men in a workplace at the structural level does not necessarily translate to a successful legal course of action for gender based pay discrimination in an individual case.

The Equality Ombudsman has further expressed its view that the existing sanctions regime for violations of the prohibition of discrimination is insufficiently effective. For a sanction to be imposed upon an employer which maintains discriminatory wage differences between women and men, it is necessary to identify an individual employee which is not only aware of having been discriminated against but also prepared to engage in legal proceedings against the employer – a situation many persons may not feel comfortable with. Unless such an individual can be identified, an employer may thus, in principle, engage in systematic gender-based wage discrimination without any sanction being imposed. The situation is compounded by the fact that even if an individual claimant were to be identified and a legal action successfully brought, the amount of compensation awarded may be expected to be too low to have the requisite deterrent effect.

⁴¹ Observations by the Swedish Equality Ombudsman, 15 March 2018, *University Women of Europe(UWE) v. Sweden Complaint*, No.138/2016 before the European Committee of Social Rights

3. Conclusion

Many amicus briefs do not particularly contain a conclusion; therefore you may consider skipping it, in particular if you need to go into long discussion to address the issue at stake and that would lead you to exceed the number of pages allowed, e.g. before the ECtHR.

However, if you are not in this situation, it is important to claim your aims and expectations about the future ruling. After a brief synopsis of the discussion, this final part should draw everything together and tie it into your findings. The amicus brief should thus try to answer the questions, as succinctly as possible, that are raised before the Court.

In its third-party intervention before the European Court of Human Rights about the deprivation of the right to vote of a person with intellectual disabilities⁴², the Commissioner of Human Rights concluded that the number of Member States of the Council of Europe still fail to guarantee the right to vote to persons with disabilities in general, and persons with intellectual and psychosocial disabilities in particular and that the situation in Spain is representative of a far more general pattern still prevailing in Europe. A clarification of the obligations of Contracting States with respect to persons with disabilities under Article 3 of Protocol 1 to the Convention at this juncture could have a profound positive impact on on-going debates in many countries, including in Spain, and accelerate the necessary changes. The Commissioner has thus stated that she is of the opinion that:

- as regards persons with intellectual and psychosocial disabilities, Article 3 of Protocol 1 of the European Convention of Human Rights should be interpreted in the light of Article 29 of the CRPD and other international standards which provide that the right to vote of persons with disabilities should be upheld without exception;

- the practice of depriving persons with intellectual and psychosocial disabilities of their right to vote on the basis of a judicial decision cannot be considered to be compatible with a legitimate aim in a modern democracy and amounts to discrimination. It has serious negative effects on the persons concerned, on society and on democracy, by interfering with the free expression of the opinion of the people;

- States should be reminded of their positive obligations to ensure that persons with disabilities, including intellectual and psychosocial disabilities, can effectively exercise their right to vote, through general measures relating to accessibility of electoral procedures, reasonable accommodation, and provision of individual support where necessary.

⁴² Observations of the Commissioner of Human Rights, 9 July 2018, in the case *María del Mar Caamaño Valle v. Spain*, Application No. 43564/17, Strasbourg, CommDH(2018)16, <https://rm.coe.int/third-party-intervention-before-the-european-court-of-human-rights-cas/16808c3253>

APPENDIX

**Sample letter:
Submission of the Equality Council before the ECtHR to intervene
as a third-party**

Day/Month/Year

Judge Guido Raimondi
President of the European Court
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Re: Application for leave to intervene in *XXX v. Moldova or CoE State* (Application no. XXX)

Dear Judge Raimondi,

Pursuant to Article 36 of the European Convention of Human Rights and Rule 44 § 4(a) of the Rules of the Court, the Council to Prevent and Combat Discrimination and Ensure Equality (Equality Council) respectfully requests leave to submit written observations before the Chamber/Grand Chamber of the Court, [if need be, and make oral representations], as a third-party intervener in *XXX v. Moldova/another CoE State*, Application no. XXX case. The case was communicated on *[dd/month/year]*.

I. Presentation of the Equality Council

The Council Equality, set up in 2013 under the Equality Act no. 121 dated 25 May 2012, is an independent authority that has been designated as the central body for the elimination of discrimination and ensuring equality in Moldova. In accordance with its founding legislation, the Equality Council is mandated to engage advocacy and public policy, to prevent discrimination, including awareness raising; to examine individual complaints and to issue recommendations to the Government, as it deems appropriate in relation to the measures, which the Equality Council considers, should be taken to strengthen, protect and uphold equality.

II. Brief outline of the case before the Court

The case originated in the application no. *[XXX]* against Moldova/other CoE State lodged with the Court under Article 34 of the ECHR by *[M./Ms XXX]* on *[dd/month/year]*. This case raises a particular issue in relation to non-discrimination law *[to be completed according to the facts of the case]*. It requests the Court to decide whether there has been a violation of Article 14 of the European Convention on Human Rights, combined with Article XXX. *[Explain briefly the issue at stake]*

III. The Equality Council's contribution

The Equality Council is in a strong position to assist the Court in understanding the implications of the coming ruling on the law or practice. In particular, it can provide relevant background information on the situation in law and in practice focusing on the implementation of measures /legal insights related to Moldova. *[Sketch your main arguments in this respect in 2/3 paragraphs].*

IV. Conclusion

The Equality Council respectfully requests leave to submit written comments, *[it is in exceptional circumstances only, that the Equality Council may request to participate in the hearing making short oral submission]*. If leave is granted, it will accommodate whatever schedule suits the Court's needs in the provision of the written comments.

Sincerely,

Ian FELDMAN
President of the Equality Council



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