

Seminar with national specialised bodies to combat racism and racial discrimination on mediation and other forms of dispute resolution in cases of racism and racial discrimination

**16-17 February 2006
Strasbourg, Human Rights Building
Salle de la Direction**

EXPLANATORY NOTE

Introduction

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

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

Participants

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

All attendees will be expected to actively participate in discussions by commenting on interventions and providing examples of the situation in their own country.

Programme and structure of the Seminar

The seminar will take place over one and a half days. According to the wishes of specialised bodies the main emphasis of this Seminar will be on mediation as an alternative tool for conflict resolution.

The seminar will therefore be split into the following six sessions:

Session 1: Setting the frame

Session 2: Dispute resolution through mediation – general principles

Session 3: Dispute resolution through mediation – the role of specialised bodies

Session 4: Dispute resolution through a formal decision of a specialised body

Session 5: Dispute resolution before the courts and other competent authorities

Closing Session

Session 1: Setting the frame

Both the Council of Europe and ECRI, its independent monitoring body in the field of combating racism and racial discrimination, have developed important standards for facilitating dispute resolution in cases of racism and racial discrimination. In its General Policy Recommendations No.2 and No.7 ECRI describes in detail the functions and responsibilities of specialised bodies and gives them a key role in resolving disputes in their area of competence. Other Council of Europe standards, such as the Committee of Minister's Recommendation No. R (99)19 on Mediation in Penal Matters and Recommendation Rec (2002)10 on Mediation in Civil Matters provide very important guidelines concerning the mediation process itself. These standards serve as a source of guidance and inspiration for policy makers and other relevant bodies.

Session 2: Dispute resolution through MEDIATION – General principles

Mediation is a very well developed mechanism for resolving disputes in which an impartial party (the mediator) helps people in conflict to find a mutually acceptable solution. This method of alternative conflict resolution has a number of advantages, including that it is less costly and time consuming than a judicial procedure and enables the parties involved to rebuild a positive relationship. This is also why mediation enjoys great popularity in particular in the field of employment and commercial relations, and there are very clear and well defined rules as to when and how mediation should be carried out. Besides certain basic principles of mediation, these include rules on the role

of the mediator and the mediation procedure, the form of the mediation settlement, as well as the profile and training of mediators.

These basic principles also apply to mediation in cases of racism and racial discrimination. However, there are certain specificities to this process, which demand special attention. The concept of restorative justice for victims of racism and racial discrimination, which seeks to repair the harm of a crime that the victim has experienced and the offender has caused through mediation, has a special place in this context. This method, which could be further developed in many European countries, can – as practical case studies have shown - be a very efficient way to respond to racist crime and to provoke positive change within society.

Session 3: Dispute resolution through MEDIATION – the role of national specialised bodies

Although a considerable number of specialised bodies in Europe have the mandate to settle disputes concerning racism and racial discrimination via mediation, experience is still rather limited in this field. This is partly due to the fact that many specialised bodies have only recently been set up, have only limited resources and/or do not yet possess the necessary expertise. In fact, mediation is a very complex process, which demands special skills on the part of the mediator, as well as a supportive organisational infrastructure. Specialised bodies experienced in this field have therefore put into place a more or less formal system of mediation, according to their mandate, their degree of specialisation and their existing national legal framework for mediation. Important elements of this system include the structure and the procedural rules of the mediation process, the legally binding or non-binding nature of the mediation settlement and the role and training of their mediator/s.

Questions:

Does your specialised body provide mediation services?

If yes, under which circumstances do you use mediation for resolving cases of racism and racial discrimination?

Does the existing legal framework in your country favour dispute resolution through mediation?

On which basic principles is the mediation process based in your institution?

How is this mediation service organised within your institution?

What does a typical mediation procedure look like? What are its different steps?

What is the role of the mediator?

What kind of specific skills does a mediator need in this context?

What kind of training should be offered to mediators?

What does a mediation settlement look like in your institution?

Is this mediation settlement legally binding or can it be challenged before the courts or other competent bodies?

What are benefits of mediation compared to other methods of dispute resolution?

Session 4: Dispute resolution through a formal DECISION of a national specialised body

One of the most important powers a specialised body may possess is the power to act as a quasi-judicial body making formal decisions in cases of possible discrimination. Its decisions can be either of an advisory nature or legally binding. Closely connected to this function is the question of what kind of investigative powers a specialised body possesses. Some specialised bodies have a statutory power to conduct formal investigations and request access to relevant information. Special rules normally also exist with regard to the complaints procedure itself, sometimes facilitating victim's access to it by trying cases free of charge or making legal representation non-mandatory.

When dealing with individual cases of discrimination specialised bodies usually aim to ensure non-repetition of discrimination. This can be achieved either by providing training to the person concerned as part of the settlement or by imposing other corrective action, including the payment of compensation or the imposition of specific orders of action, such as for example the instruction to establish a diversity policy in a company. Finally, special attention has to be paid to the implementation and follow-up of these decisions, including the important question of how and under which circumstances legally-binding and non-binding decisions can be appealed.

Questions:

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

If your decisions are of an advisory nature, are they usually followed and if yes not what, in your opinion, are the reasons for this?

What kind of investigative powers does your specialised body have?

Do you have special powers for requesting information from all parties involved?

Do the procedural rules of your institution's complaint procedure facilitate access for victims of racism and racial discrimination? If yes, how?

What is the usual content of the decisions of your specialised body?

Do you follow up the decisions of your specialised body?

How is the implementation of your decisions secured?

Can the decisions of your specialised bodies be appealed before the courts or other competent bodies?

Session 5: Dispute resolution before the courts and other competent authorities

Under certain circumstances, including the existence of effective legal remedies and sufficient evidence and the availability of legal aid, a specialised body might advise a victim of racism and racial discrimination to initiate legal proceedings against a

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perpetrator of a racist or discriminatory act. In such cases specialised bodies usually provide complainants with preliminary advice on the legislation and their legal position and refer them, where possible, to other organisations (e.g. NGOs, trade unions etc.) able to support them during the proceedings.

Sometimes, however, specialised bodies themselves take over the representation of victims of racism and racial discrimination before the courts. This is often in cases where there is serious and widespread injustice or where the case could establish a precedent. This is also the starting point for the action of certain specialised NGOs, which engage in strategic litigation.

In strategic litigation the court system is used to achieve broad social change in particular for the most vulnerable groups in society. In this type of case, the potential impact on public policy in general takes precedence over the victim of racism and racial discrimination. Practical case studies show that under certain circumstances strategic litigation can be a very powerful tool in the fight against racism and racial discrimination, as it can help to stabilise and clarify anti-discrimination laws, raise awareness about these issues among judges and lawyers, document injustices, increase government accountability and finally, contribute to changing public attitudes and empowering vulnerable groups.

Questions:

Does the existing legal framework in your country encourage bringing cases concerning racism and racial discrimination before the courts or other competent bodies?

Does your specialised body give legal advice to victims of racism and racial discrimination?

Do you encourage other organisations (e.g. NGOs, trade unions etc.) to bring cases before the courts?

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

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

What is your experience in taking up legal representation of victims of discrimination?

Does your institution engage in strategic litigation?

In your opinion, is strategic litigation an important tool in the fight against racism and racial discrimination? If yes, why?

Documentation

[ECRI General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.](#)

[ECRI General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.](#)

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[ECRI's Examples of good practices on specialised bodies to combat racism, xenophobia, antisemitism and intolerance.](#)

[Recommendation No. R \(99\)19 of the Committee of Ministers on Mediation in Penal Matters.](#)

[Recommendation Rec \(2002\)10 the Committee of Ministers on Mediation in Civil Matters.](#)