

Specialist bodies, protection against victimisation, positive action

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I. Specialist bodies (Article 13 of the Directive)

In Chapter III, the Directive deals with the issue of bodies for the promotion of equal treatment. Article 13 defines the form and areas of competence these bodies should have. According to the Directive, this may involve one or more bodies which could form part of agencies charged with defending human rights or safeguarding individuals' rights. Thus, it does not require the creation of a separate institution specifically dedicated to the promotion of equal treatment.

The Directive establishes three areas of competence to strengthen protection against discrimination on grounds of race or origin:

- analysis of issues related to discrimination;
- studying of potential solutions based on the development of recommendations aimed at the public authorities;
- provision of assistance to victims in pursuing complaints.

Therefore the main role of these bodies is to monitor the effective application of the legislation which is established.

The Directive is rather vague with regard to the functions of the specialist bodies, especially concerning their remit in relation to complaints. However, in its proposals for legislative measures to combat racism and to promote equal rights in the European Union, the Starting Line Group insisted that certain tasks should be assumed by the specialist bodies, in particular with regard to complaints¹. To ensure effective assistance for victims, the Starting Line Group proposed that the bodies should be empowered as follows:

- to receive complaints;
- to have the power to investigate complaints;
- to be invested with sufficient powers to institute an inquiry;
- the Starting Line also envisaged the possibility of the body issuing recommendations.

In comparison, the provisions of the Directive are very disappointing and fall considerably short of expectations although, in the majority of Member States, it is precisely in this area that the deficiencies are most glaringly obvious. The system as it is set out in the Directive continues to weigh heavily on the individual, who has to bear responsibility for the financial costs of the action and for initiating proceedings, two heavy burdens which could be alleviated. Article 13 of the Directive in fact even falls short of the initial text proposed by the Commission, which called for the establishment of independent bodies charged with receiving complaints and taking part in legal proceedings, and initiating inquiries and research into discrimination.

The Directive appears to be the result of a political compromise, established to protect specialist bodies which already exist in the Member States and to avoid them having to be restructured. This is why it sets out minimum requirements, taking care to avoid defining the role, status and exact functions of the specialist body. Furthermore, the motivations for this compromise become even clearer when an examination is made of the different specialist bodies already operating, in the Member States where they exist (see section A).

On the basis of a number of national examples and the suggestions contained in the table below, ENAR wishes to put forward a model for a specialist body, which NGOs can draw on when the Directive is implemented into their national legislation. This model has two aims: to ensure that the minimum requirements contained in the Directive are included in the national model; and to go beyond the Directive when it is implemented, drawing on the best of the existing national examples (see section B).

First, it may be useful to provide a summary table.

	Directive	Starting Line	ECRI
Statuts			<ul style="list-style-type: none"> • Contained in a law confirming its independence • Defining the composition, statutory powers, competences, responsibilities and funding
Forms	<ul style="list-style-type: none"> • the specialist body may be: • a body charged with defending human rights or safeguarding the rights of individuals 		Commission for Racial Equality <ul style="list-style-type: none"> • Or ombudsman against ethnic discrimination • Or centre/office for combating racism • Or bodies protecting/promoting human rights
Functions	<ul style="list-style-type: none"> • Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination • Analysing the phenomenon • Putting forward recommendations • Publishing independent reports 	<ul style="list-style-type: none"> • Receiving complaints • Power to investigate complaints • Sufficient powers to institute an inquiry • Recommendations regarding the complaints • Public character of these recommendations 	General: <ul style="list-style-type: none"> • Combat discrimination and promote equal opportunities • Monitor the content and effect of the legislation • Formulate recommendations to improve practice and regulations Legal: <ul style="list-style-type: none"> • Provide aid and assistance to victims • Power to file complaints • Receive and analyse complaints and suggest conciliation or an enforceable judgement • Have the power to receive evidence and information Educational: <ul style="list-style-type: none"> • Provide information and advice to institutions • Promote and contribute to training for certain target groups Information: <ul style="list-style-type: none"> • Publish advice on standards of anti-discriminatory practice • Raise awareness among the general public about issues linked to discrimination • Help and encourage organisations which have a similar aim and take account of and reflect their concerns
Principles			<ul style="list-style-type: none"> • Independence • Responsibility • Accessibility

The table illustrates the content of the Directive compared with the above-mentioned requirements formulated by the Starting Line and the recommendations from the ECRI on this subject². The table should make it easy to identify, in each national context, the elements which exist or are missing in relation to the Directive and those which might be added to the existing structure or created in order to go beyond the minimum requirements established by the Directive.

The bodies charged with combating discrimination in the Member States

There are very few Member States which already have specialist bodies for combating discrimination. Generally speaking, the countries which have relatively well-established legislation in this sphere have bodies charged with monitoring its application. This is the case in Belgium, the United Kingdom, Ireland, the Netherlands, Sweden and, more recently, Finland.

In Belgium the objectives of the **Centre for Equal Opportunities and Opposition to Racism** include combating racism and xenophobia and developing integration policies for aliens and individuals of foreign origin. It is an autonomous public service created by the law of 15 February 1993, which ensures that individuals who are victims of racism are heard and supported.

In its current form, the Centre undertakes the following activities:

Regarding complaints, a team of experts is responsible for helping any individual who asks for information and advice about how to assert their rights. In addition, the Centre is entitled to receive complaints and institute legal proceedings in any disputes arising from the application of the law of 30 July 1981 on the prevention of certain acts inspired by racism or xenophobia. It can also instigate mediation between the victims of racism and the perpetrators of discrimination or racist acts.

The Centre has decentralised its reception services by opening local offices to combat racism in all the large and medium-sized towns and cities of Belgium.

- In terms of monitoring the application of the laws relevant to its sphere of competence, the Centre gives expert advice and recommendations to the authorities, with a view to improving the provisions in force. Thus, it put forward suggestions on legislative amendments regarding the law against racism and the acquisition of Belgian nationality etc.
- It also carries out surveys and research as necessary to fulfil its objectives and, based on the results of this research, puts forward recommendations to the authorities, individuals and private institutions.
- Finally, the Centre fulfils its objectives in relation to training and awareness raising among the general public. The aim of the training, which is targeted, among others, at the police and public servants, is to engage in dialogue and to promote mutual understanding between the immigrant populations and these bodies.

Summary: the Centre for Equal Opportunities and Opposition to Racism performs the role defined by the Directive and even goes beyond it in some areas. The Centre is soon to see its remit extended to combating other types of discrimination on the basis of Article 13 of the Amsterdam Treaty³.

In the United Kingdom, the **Commission for Racial Equality (CRE)** was set up under the Race Relations Act 1976, amended in April 2001.

The CRE works in three areas: eliminating discrimination, promoting equal opportunities and monitoring the application of the Race Relations Act, which involves establishing proposals for the amendment of this act.

In order to do this, the Commission has the following roles:

→ *Assistance for victims of discrimination* which may consist of providing information or advice. But the Commission can also provide direct assistance if this is requested by an individual. In this case, it can seek settlement of the case or provide legal assistance or representation.

→ *Official inquiries:* the Commission can conduct official investigations into companies or organisations on its own initiative. It thereby has the power to compel any individual involved to communicate information, in the form of documents or a verbal statement.

If the investigation proves that racial discrimination has taken place, the CRE has the power to impose changes to the policies and practices in force in the company or organisation. It issues a non-discrimination notice and the company or organisation is then obliged to inform the CRE of the measures it has taken to conform with the notice.

→ *Information and advice:* the CRE advises the government on the enforcement of the law. It publishes an annual report on its own work where it publicises the observations and recommendations arising from its own official investigations.

The CRE provides training to different organisations, such as employee councils, local authorities and housing services, to prevent discrimination and promote equal opportunities. It is also responsible for promoting racial equality and diversity by running public awareness-raising campaigns and events.

→ *Publication of codes of practice:* these codes, which come into force once they have been approved by Parliament and the Home Secretary, contain advice on combating discrimi-

nation. The CRE is now entitled to publish this type of code for all spheres, to reinforce the obligation to promote racial equality.

Summary: The CRE performs the role described by the Directive and even goes beyond it, particularly in terms of its powers in relation to complaints. The recent reform of the 1976 Act (RR [A]A), introduced in 2001, also strengthened the power of the CRE: it can now institute official investigations without an individual complaint having to be filed first. This allows the CRE to extend its scope considerably.

In the Netherlands, the **Equal Treatment Commission** (Commissie Gelijke Behandeling) is an independent body created by the Government to interpret the Law on Equal Treatment (LET) introduced in the Netherlands in 1994. Discrimination on grounds of race or ethnic origin represents just one of the grounds for discrimination dealt with by this organisation⁴. The scope of the law is vast: it covers industrial relations (from job advertisements to the actual employment contract and all aspects of working life), the provision of goods and services and education.

Its role is essentially jurisdictional:

- It investigates complaints on the request of the complainant and issues a decision for each case. In order to do this, it hears the testimony of both parties and witnesses too, if necessary. Refusing to give evidence is an offence.
- It has the power to conduct its own investigations into a public service or into certain sectors of society.
- It has the power to institute legal proceedings.
- It can put forward recommendations.

Summary: the Commission offers a number of advantages over taking a complaint to an ordinary court. The procedure is free of charge and the services of a lawyer are not required. It is also swift – decisions are made within a maximum of eight weeks. Its main shortcoming is due to the fact that its decisions are not enforceable. Thus, it cannot compel the party declared guilty of discrimination to comply with its decision. In order to obtain a penalty, the victim must go to court. The Commission is also entitled to take these cases to court.

At the same time, the Commission, like the LET to which its work is dedicated, suffers from a severe information deficit. The general public seems to have little awareness of its existence and this has a negative impact on its effectiveness. Finally, the Commission does not have any other role, for instance in promoting equal treatment.

Ireland recently introduced a series of texts into its legislation on equality and human rights. As far as our

area of interest is concerned, the Employment Equality Act 1998 (EEA 1998) and the Equal Status Act 2000 (ESA 2000) are of particular relevance. The EEA 1998 established an independent body called the **Equality Authority**.

Its remit is:

- to work for the elimination of discrimination and conduct prohibited by the legislation on equality;
- to promote equal opportunities in the spheres covered by the scope of the legislation on equality.

Its role consists of promoting equal treatment and providing information on the EEA 1998 and the ESA 2000 (Section 39[1][b] & [c]).

In addition, the Human Rights Commission Act 2000 creates a Commission of the same name, the remit of which is to promote, protect and develop human rights. Its aim is to undertake, sponsor, commission or give financial assistance to research or educational activities relating to discrimination.

Regarding help for victims of discrimination, the EEA 1998 invests the Director of Equality Investigations and the Labour Court with the power to:

- receive complaints;
- investigate and interview any person whom it would seem appropriate to hear, as well as those who wish to be heard;
- issue a decision at the end of the investigation.

The decision must be made public.

A decision which is not respected may be made compulsory. The Equality Authority, with the consent of the complainant, may then intervene if it considers that the decision will not be enforced without its intervention. The ESA 2000 states that the complainant may file a complaint with the Director of Equality Investigations. Some cases may also be submitted to the Equality Authority by delegation. The two institutions have the same powers to conduct investigations, hear witnesses and issue decisions as under the EEA and the decision is published.

Summary: The institutions set up in Ireland conform with the Directive.

In Sweden, it is the institution of the **Ombudsman against Ethnic Discrimination** (DO - Ombudsmannen mot Etnisk Diskriminering) which is the specialist body charged with monitoring the correct application of the law against ethnic discrimination in working life, adopted in 1999⁵. This law, together with the law defining the remit of the DO (law 1999:

131), was adopted in order to correct the ineffectiveness of the previous law on ethnic discrimination. The office of the DO is an independent government agency, which is responsible for intervening to combat all types of ethnic discrimination in the field of employment and in any other area of everyday life.

Its role is as follows:

Individual assistance for victims of discrimination in employment:

- To help any individual who is a victim of ethnic discrimination, by means of support and advice to enable individuals to exercise and assert their rights;
- To assume the role, where necessary, of mediator between the two parties, which the DO calls together in order to achieve a settlement;
- To assist and represent individuals at employment tribunals in cases which come under the scope of the 1999 law.

Demanding active measures to promote ethnic diversity in the workplace:

- The DO can make recommendations to the employer with regard to measures which might be taken, in order to comply with the legal obligation to undertake concrete measures for the promotion of ethnic diversity. Thus, the DO may act following a complaint filed by an employee or on its own initiative. If the employer refuses to accept the DO's recommendations, they may be compelled to adopt them by the Board against Discrimination under penalty of a civil fine.

Ethnic discrimination outside the sphere of employment:

- The DO must combat ethnic discrimination in all spheres of society but its power is considerably reduced such that it no longer has the right to institute legal proceedings.
- If it receives information about an instance of repeated discrimination, it can bring together government authorities, companies and organisations, with the aim of preventing discrimination and in order to introduce the changes necessary to eliminate this discrimination.
- It also has the power to make proposals to the government regarding amendments to the relevant laws and other preventative measures necessary to combat ethnic discrimination.
- In addition, the DO plays a role in providing information (it is often in the media) and raising awareness among the general public and key players, both public and private, in order to combat ethnic discrimination.

Sweden also has another institution, the remit of which

includes promoting equal rights, duties and opportunities for all, regardless of ethnicity or culture and preventing and combating xenophobia, racism and discrimination. This body is the *Swedish Integration Board*, which was set up in 1998. The Board works in partnership with the public authorities and organisations which are active in public life, with the aim of identifying the obstacles which stand in the way of the successful promotion of equal rights in society.

Summary: The institution of the DO, as reformed by the law of 1999, appears to be more effective than its predecessor. This effectiveness can be measured by the increase in the number of discrimination in employment cases settled since 1999, which has risen to around 400. Employers seem to prefer to come to a negotiated settlement with the victim, before the case comes before an employment tribunal. This solution has the advantage for the individuals concerned that they usually manage to keep their jobs, but the disadvantage is that they cannot receive compensation, as only the tribunals are entitled to award compensation.

Nevertheless, it is regrettable that the powers of the DO beyond the sphere of employment are restricted to providing advice to victims of discrimination.

In Finland, the Minister of Justice and the Ombudsman, elected by the government, are both responsible for ensuring the respect of fundamental rights and the rights of the individual and, to this end, exercise a role of promoting equal treatment between individuals.

A law of 13 July 2001 led to the creation of the **Ombudsman for Minorities**.

Its remit is as follows:

- to promote good ethnic relations in society;
- to monitor and improve the status and rights of foreigners and ethnic minorities;
- to produce reports on the application of the principle of equal treatment for different ethnic groups and to take initiatives to eliminate discrimination;
- to provide information on the legislation and practices which relate to discrimination and the status of ethnic minorities and foreigners;
- to enforce its objectives, particularly concerning decisions on the granting of the right of asylum and the detention of foreigners.

To do this, it has the right to assist (if it considers that the case represents a significant issue for the prevention of ethnic discrimination) or to require a public servant to assist an individual who is the subject of discrimination, by guaranteeing their legal rights. It can also *take initiatives and formulate recommendations* to promote the status of

ethnic minorities and *raise questions* in relation to this issue which will be referred to the relevant authority.

Summary: the Ombudsman fulfils the remit contained in Article 13 of the Directive but does not go beyond it. Since it was only appointed on 1 November 2001, it is difficult to assess the effectiveness of its role in combating discrimination.

The other Member States do not have specialist bodies as such. The aims of combating discrimination have generally been dispersed among much larger bodies, which are responsible for the enforcement of policies on immigration and the integration of aliens. These bodies have an advisory role or publish recommendations but have no power to receive and process complaints relating to discrimination.

This is the case in Portugal where the specific functions with regard to discrimination are shared between the High Commissioner for Immigration and Ethnic Minorities, the Consultative Council on Immigration and Interministerial Committee to Support Immigration Policy.

In Luxembourg, two bodies have been set up to promote social action and integration on behalf of foreigners⁶. The role of these two institutions is more to provide information and advice on action against all forms of racial discrimination than to give help and support to victims of discrimination.

In Spain, there are a number of bodies responsible for protecting fundamental rights and freedoms, as well as the institution of the Ombudsman (*Defensor del Pueblo*) whose role is, however, restricted to ensuring constitutional rights are respected by the administration.

In the majority of countries in Europe, the effective enforcement of anti-discrimination laws remains an aspiration. The prosecuting authorities and courts record very few complaints of racial discrimination and rulings in this area are yet more unusual. It therefore seems all the more important to set up bodies with clear spheres of competence which genuinely respond to the need for the established laws to be applied correctly.

The lack of effectiveness of the laws is due to a number of complex factors. They include the lack of information for victims, both about the existence of the laws and about how to take action, the gravity and cost of legal action which often discourage victims, and the absence of effective legal support.

Consequently, ENAR recommends that a single specialist body for combating discrimination should assume all the following functions:

- ***A. Ensuring anti-discrimination legislation is respected;***
- ***B. Monitoring the effective application of the law and proposing recommendations for its improvement;***
- ***C. Promoting equal treatment.***

1.2. Proposed model for a specialist body

Below is a proposed model for a specialist body which expands one by one on the above-mentioned functions.

1. Ensuring anti-discrimination legislation is respected

As we have already indicated, the Directive states that the bodies should have the power to provide independent assistance in pursuing complaints of discrimination. We believe that their remit should go beyond this. The powers of the specialist body in legal matters should be as follows:

a. Competence in relation to individual assistance for victims

Currently, the situations in the different Member States vary considerably. In some cases competence regarding assistance for and representation of victims is not held by any body. This is true of Luxembourg, Portugal, Denmark and Germany. In other countries, these powers exist, but they are restricted to one sphere, as in Sweden where the specialist body provides assistance and representation to victims, but only in cases relating to employment. In Italy, competence for providing legal assistance to victims has been devolved to the regions, which are required to provide information centres and legal assistance for aliens who are victims of discrimination owing to their race or ethnic origin. However, there are major differences between the regions and it is very often dependent on the good will of the political majority in the region.

Finally, the United Kingdom, the Netherlands and Belgium have specialist bodies with very wide remits in terms of direct assistance for victims and we have drawn on them in order to establish the following list of functions:

- The power to receive and investigate complaints:
This includes reception and support for victims of discrimination, involving listening to them, putting together a case file and, where necessary, directing them to the appropriate services. Support in legal proceedings may consist of helping or representing the victim in court.

- I The power to institute legal proceedings in any disputes arising from the application of anti-discrimination law.

b. Recognition of an independent right of investigation

The specialist bodies should have the power to investigate businesses, organisations or public services. This power to conduct investigations may result from a complaint being filed, but the body must also be able to conduct investigations on its own initiative, to determine whether there has been any illegal, institutional difference in treatment within a public service or in particular sectors of society.

This right of investigation must be accompanied by the power to request information, including securing documents and oral evidence. Refusing to provide the information requested could constitute an offence.

c. Power to issue decisions

The body must have the power to issue decisions, in the manner of the Equal Treatment Commission in the Netherlands. After hearing the parties, giving them an opportunity to respond to one another and, where appropriate, hearing the witnesses, the body would be able to deliver a swift decision, within eight weeks of the hearing.

The decisions issued should be enforceable and public, without revealing the identity of the individuals or the organisations involved. The decisions could also be published on the website of the specialist body.

Conclusion

The introduction of such powers would eliminate the main obstacles to filing complaints about discrimination, such as high legal costs, because the proceedings before the specialist body should be free of charge and should not require the presence of a lawyer.

At the same time, it would mean that a decision could be obtained more quickly, a fact which is not without significance, considering that the slowness of decisions within the conventional legal system means that victims are reluctant to start proceedings.

2. Proposals to the public authorities for measures to combat discrimination

The Directive stipulates that the body should publish independent annual reports and make recommendations on any issue relating to discrimination⁷. The ECRI, in its recommendation which was mentioned above⁸, states that

the specialist bodies should monitor the content and effect of legislation and make proposals for amendments where they deem this to be necessary.

In general, in contrast to the function of assistance with complaints, all the Member States have bodies charged with producing reports and making recommendations, and some of them have several such bodies. There is an issue about the coherence of the work of all these bodies, for which work on discrimination often only forms a very small part of their overall remit, devolved to protecting human rights or to policies on the integration of aliens and persons of foreign origin. It often happens that the information required by these bodies is scattered to different locations. It thus seems essential, in order to ensure a coherent and universal anti-discrimination policy, that all the information and statistics on these issues be centralised and held in one place, such as with the specialist body.

At the same time, we believe that these bodies must be qualified to assess the impact of the anti-discrimination laws and to identify the deficiencies of the current legislative provisions in the sphere of anti-discrimination.

The specialist body might also undertake work on future legislation: it could indicate to the authorities those provisions which might, directly or indirectly, have discriminatory effects on ethnic minorities in future legislation and suggest provisions which would guarantee ethnic equality.

ENAR supports the idea of a single specialist body, which would combine both support in relation to complaints by victims and the right to formulate recommendations on issues linked to discrimination. It seems important to unite "under one roof" the daily practice of the law in the form of individual complaints with improvements which could be made on the theory side.

3. Promoting equal treatment

On this subject, Article 13.1 of the Directive indicates that the specialist bodies are responsible for "the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin". The vagueness of the way this is formulated suggests that the idea was to give Member States plenty of room for manoeuvre in fulfilling this requirement of promoting equal treatment.

ENAR is in favour of a proactive policy in this area, including training and awareness-raising campaigns undertaken by the specialist body.

- I These training sessions should be targeted at the representatives of the public authorities and, in particular, the police, the armed forces and public servants, including the basic training centres for the police and armed forces.

Training might also be aimed at the local councils, since they play a major role in the lives of aliens and individuals of foreign origin, as well as at schools and teachers.

- I Another important area is in providing advice on non-discriminatory practice. An example of this is the guidelines published by the Minister of Justice in the Netherlands⁹ for the public prosecutor. The guidelines contain advice on how to deal with cases of discrimination, with the aim of establishing a coherent prosecution policy. They concern the general ethical conduct which should be adopted in any organisation where non-discrimination is a factor.

Awareness-raising campaigns could concentrate either on particular issues or on specific groups and would be targeted at the general public. Their role would be to show that discrimination on the grounds of race is socially unacceptable and legally punishable. Such campaigns might be carried by the media, through advertisements or inserts in newspapers.

Conclusions:

The profile and functions of the bodies established in each Member State will largely depend on the financial resources made available by the governments. Yet the existence of these bodies is vital in order to ensure the effectiveness of legislation to combat discrimination, both in terms of concrete assistance provided to victims and through monitoring the legislation. However, while legislation is essential to ensure that individuals are protected from discrimination, it is not sufficient – it must be accompanied by a series of measures, for which the impetus and implementation should come from the competence of these bodies.

Finally, a universal policy for combating discrimination must be established, so as to make the issues visible and to co-ordinate the necessary measures. Here also, the specialist body is ideally suited to assuming these responsibilities at all levels of society and in all spheres, both in the public and in the private sector.

II. Protection against victimisation (Article 9 of the Race Directive)

A. Definition of victimisation according to the Race Directive

Provision is made for protection against victimisation in Chapter II of the Directive which concerns remedies and enforcement of the law. At the end of Article 9, the Directive requires the Member States to introduce into their national legal systems the concept of protection against victimisation in connection with the filing of a complaint or legal proceedings with the aim of enforcing compliance with the principle of equal treatment.

The situation in the different Member States varies considerably in relation to this concept. In some countries, such as Spain, Greece, Luxembourg and Finland, there is no definition of this concept in national legislation. In others, protection against victimisation only exists in the sphere of employment. This is the case in Portugal, Sweden, Italy, Germany, Belgium and the Netherlands. However, this protection generally only relates to the termination of employment contracts motivated by a complaint having been filed or legal action having been taken (as in the Netherlands and France where employment law protects the employee from unjustified dismissal). On the other hand, there are also general provisions, as in Germany where the Civil Code contains a clause forbidding the employer to put at a disadvantage employees who exercise their rights, such as the right to strike.

As can be seen, therefore, the current provisions on protection against victimisation are either incomplete, inadequate or lack coherence because, in many cases, they are dispersed throughout national legislation. Only the United Kingdom has anti-discrimination legislation which includes not just a definition of the concept of protection against victimisation but also a wide scope for this legislation. Thus we have drawn broadly from this model for our recommendations.

B. Need for the concept

To make the implementation of the principle of equal treatment more effective, it seems essential to provide legal protection against victimisation. In fact, it is not sufficient simply to have anti-discrimination legislation: the victims must be empowered to make use of the legislation without fear of reprisals. Indeed, this is one of the factors which explains the ineffectiveness of anti-discrimination legislation. All too often, very few proceedings are initiated on the basis of discrimination experienced in the workplace, even though action before an industrial tribunal is legally

possible, to assert the rights of individuals discriminated against and to obtain compensation. However, the individuals involved, whether they are victims or witnesses of instances of discrimination, fear they might lose their jobs or be hindered in their careers¹⁰.

The examples could be multiplied and extended to other areas apart from employment. It is thus important to be aware of this issue when the Directive is implemented into national legislation.

ENAR recommends the introduction of a system of protection against victimisation into national legal systems:

1. *In relation not just to the victims of discrimination but also to witnesses or any other persons involved in the filing of a complaint or in prosecutions;*
2. *Covering the scope of discrimination as defined by the Directive;*
3. *Taking account of the issue of the burden of proof.*

Below we outline a model which includes all these aspects.

1. Protection for any individual against any adverse treatment or adverse consequence as a reaction to an action aimed at enforcing compliance with the principle of equal treatment

This means ensuring protection:

- for the individual who files a complaint or institutes legal proceedings, whether this is the victim or another person;
- for the witness who gives evidence or provides information in relation to the proceedings;
- for the individual who alleges an instance of discrimination, whether or not this allegation is upheld.

It is also necessary to make provision for the victim who has not yet taken any action but intends to do so and who suffers reprisals from the perpetrator of the discrimination in question. Inspiration for this can be drawn from British anti-discrimination legislation¹¹. It states that victimisation is established if an individual is treated in a less favourable way than another in comparable circumstances, because the perpetrator of the discrimination **knows** that the victim intends to take action or **suspects** that he or she has already taken action or intends to do so.

2. The need to cover the entire scope as defined by Article 3

Protection against victimisation is not included in the definition of the concept of discrimination (Article 2).

According to this article, discrimination as contained in the definition includes direct and indirect discrimination, harassment and instruction to discriminate. Article 2 (3) of the Starting Line proposes that victimisation should be included in the general definition¹². However, it considers that the definition contained in the Directive is sufficiently broad to ensure adequate protection and even goes beyond what it proposes in one respect: the Directive protects all complaints, even though it only called for protection to be applied to bona fide complaints.

However, as has been pointed out above, protection against victimisation, where it exists in the Member States, is aimed in the majority of cases solely at the sphere of employment. When the Directive is implemented, it will be important to check that all the fields of application are covered which are defined by the Directive in Article 3.

Thus, in terms of employment, victimisation should cover:

- the conditions of access to employment, including selection criteria, recruitment conditions and promotion;
- access to all types and to all levels of vocational training and vocational guidance;
- employment and working conditions, including dismissal and pay.

Currently, protection is principally provided against termination of employment contracts. It thus seems important for this protection to be extended to cover the whole sphere of employment, as well as (and perhaps above all) job applicants. It is of use here to consider the example of an individual who witnesses an instance of discrimination and does not dare to give evidence for fear of losing an employment opportunity.

But apart from the employment sphere, protection against victimisation should also cover non-paid activities, such as union activities, the education sector and social protection, including social security and health care, as well as access to and provision of goods and services. Regarding the individuals targeted by the Directive, those working in both the private and public sectors are covered.

Thus, ENAR recommends that when the Directive is implemented, the NGOs should ensure that protection against victimisation covers the whole of the scope of the Directive as it is defined in Article 3.

3. The burden of proof of victimisation

Some national experts consider that if the punishment of discrimination is still rather modest, this is because it is difficult to provide proof of discriminatory conduct. The non-existence of the principle of the reversal of the burden of proof makes the remedies ineffective.

This is why Article 8 of the Directive establishes that, when persons believe that the principle of equal treatment has not been applied to them and they provide facts from which it may be presumed that there has been direct or indirect discrimination, "it shall be for the respondent to prove that there has been no breach of the principle of equal treatment". In other words, it is for the individual who is suspected of having perpetrated the discrimination to prove that it did not happen. This system is clearly in the victim's favour. It should be applied to all the types of discrimination set out in Article 2. However, the Directive does not clearly establish that allegations of victimisation may be subject to this rule, even though this is called for by the Starting Line¹³.

This is why ENAR recommends that NGOs ensure the provisions on the burden of proof contained in the Directive are also applied to protection against victimisation.

Conclusion:

In practically all the Member States, the concept of victimisation will have to be defined and introduced into the legislation. It will be essential, when the Directive is implemented, to ensure that the concept covers all areas where discrimination may arise and not only to the sphere of employment, and that the principle of the reversal of the burden of proof be applied to victimisation.

III. Positive action (Article 5)

Article 5 the Directive stipulates that, in order to ensure complete equal treatment in practice, the Member States may retain or adopt specific measures aimed at **preventing** or **compensating** for disadvantages connected with race or ethnic origin. Thus, real and complete equal treatment must be ensured or promoted through the adoption of specific measures, generally known as positive actions.

In Recital 17, the Directive specifies that these measures permit the existence of organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons. Article 5 thus allows Member States to establish positive actions in order to ensure equal treatment but it does not oblige them to do this.

We shall look first at the situation in the different Member States of the European Union (A). Then we shall establish models for positive action, which might used as good practice examples for implementation in other states (B).

A. Positive actions — the situation in Europe

A number of positive actions have already been introduced in the Member States. However, in this sphere, as in others, the states have different notions of the definition of positive action and of the aims of such action.

In general, the positive actions established in the 1990s were aimed at compensating for disadvantages associated with race or ethnic origin. The prevention of unequal treatment is a more recent idea which will be examined further.

For the most part, these compensation measures cover the areas of education (1) and employment¹⁴(2). While actions are generally aimed at an ethnically non-specific group, some states prefer to target their actions more precisely, by establishing positive actions aimed at a specific ethnic group (3).

1. Positive actions in the education sector

In relation to education, France has established Education Priority Zones (*Zones d'Éducation Prioritaire*) which are congruent with the areas which have large populations of immigrants or French people of immigrant origin.

There is a similar system in Belgium for positive discrimination in education, in both the French and Flemish communities. In the French community the decree of 30 June 1998 makes provision for additional resources for a specific group of pupils at primary and secondary level who come from deprived areas, determined on the basis of socio-economic criteria. In the Flemish community positive action takes the form of non-discrimination programmes. These are derived from a "Community Declaration on a Non-discrimination Policy in Education", signed jointly by the Ministry of Education for the Flemish Community and the authorities representing different education networks. The aim is to attempt to eliminate "ghetto schools" with large numbers of foreign pupils and pupils of foreign origin, by dispersing these pupils to different schools.

Portugal has a system of designated schools for priority education.

The 1990 law on the education system in Spain makes provision for "compensatory actions aimed at persons, groups and territorial regions with unfavourable situations..."¹⁵.

Nonetheless, it is important to examine the effectiveness of the priority zone systems which, in some states, have already been in place for a decade. In spite of the difficulties inherent in carrying out an objective evaluation of such systems, it

would appear that the inequalities experienced by some groups still persist. In order to be really effective, these actions must be accompanied by adequate financial and human resources. Some priority zones are also "victims of their own success". This is the case in France where the progress achieved in some areas, according to objective evaluation criteria, have prompted the public authorities to remove the Education Priority Zone designation, even though these zones still have economic problems and have a continuing need of these positive actions in order to maintain their level of education.

2. Positive actions in employment

Positive action in this sector is widespread. In some cases the aim is to compensate for unequal treatment, as in the education sector, while other measures are intended to prevent discrimination rather than to compensate for it.

Positive action measures aimed at compensating for unequal treatment motivated by race or ethnicity

In Portugal, a law-making judgement of 1993 establishes that vocational training will have, as a preferential target group, ethnic minorities and immigrants, among others¹⁶. The aim of this training is to facilitate the entry into employment by this sector of the population. It may be organised by various bodies which are active in the social sphere, including associations, employment and vocational training centres and local councils. Because they are so dispersed, it is difficult to assess the effectiveness of these measures.

In Luxembourg, the introduction of positive action measures is intended to "favour certain groups which are, in fact, disadvantaged because of their racial or ethnic origin... with a view to eliminating existing inequalities and to encourage real equal opportunities for all members of society"¹⁷.

One example is the law of 29 April 1999 determining the regulations governing the employment of foreign workers. On the basis of this text, refugees coming from a country at war, as determined by the government, may be granted a work permit more easily than other aliens. One may question whether this actually counts as positive action as it is understood by the Directive, insofar as this is a system of temporary benefit aimed at a population which is not expected to stay in the country in the long term.

In Belgium the Flemish government signed an agreement with the social partners, the aim of which is to develop positive actions in business. The aim is to achieve "proportional and complete participation of migrants at all levels and in all occupations, in both the private and public sectors".

In Denmark a special measure introduced on 1 April 1998 by the "Law on the prohibition of unequal treatment in the employment market", nicknamed the "ice-breaker scheme", allows financial aid to be granted to any private company which recruits a young graduate of non-Danish nationality. There are doubts about the real impact of this type of measure, since individuals who are of foreign origin but have Danish nationality are not entitled to benefit from this scheme.

Finally, the United Kingdom has been practising positive actions in the employment sphere for a considerable time. The legal basis of these measures is the 1976 Act (Sections 37 and 38) and the 1997 Order (Article 37). The aim of these measures is to combat the under-representation of certain ethnic groups in certain forms of employment, at both national and regional level. The measures allow individuals who belong to a specific ethnic group to have access to facilities for vocational training, in order to fit them for particular work. Other measures concern training and promotion during professional life and function on the same principle of demonstrating the under-representation of certain ethnic groups.

Sweden, on the basis of the "Law on measures for combating ethnic discrimination in working life", provides an excellent illustration of preventative measures¹⁸. According to Article 4-7 of this law, employers must take active measures to prevent ethnic discrimination. These measures should relate to access to employment, working conditions and career development. However, the law does not authorise employers to select an applicant or employee in preference because of their ethnic identity, as is the case with positive actions aimed at combating discrimination on grounds of sex.

Some politicians are in favour of extending the preferential system to cover ethnic discrimination. Positive actions would then authorise preferences in restricted cases with the aim of achieving ethnic diversity. There is also the issue of requiring companies which employ more than ten people to set up an ethnic diversity programme established according to the company workforce. The employer would thus have to set targets, with the aim of achieving a greater balance of people, so that employees of ethnic origin would not be under-represented.

There are two initiatives which should be mentioned in relation to the public sector. One of them is in Sweden and aims to promote equal treatment in the public sector by including anti-discrimination clauses in public service contracts. The other originates from Denmark and is a circular dated August 2000 from the Ministry of Finance which stipulates that a clause encouraging, among other

things, aliens or persons of foreign origin to apply for jobs in the public sector, should be inserted into advertisements for jobs in government.

3. Positive actions aimed at a specific ethnic group

Germany and Greece have both opted for this type of measures.

There are only a few examples of positive actions in Germany. They only relate to specific minorities and are organised within the Länder where these minorities live. Thus, the Sorbian minority, which is recognised by the Land of Brandenburg, has the right to protect, preserve and maintain its national identity and its traditional area of settlement. It is due to this measure that the Sorbian language is taught in schools. The ethnic groups of Sinti and Romanian Germans and the Friesians also benefit from this type of measures.

In Greece, positive actions are determined on a community basis: the Muslim minority in Thrace and the Roma/Gypsy community benefit from such measures. In the first case a quota of university places was reserved for members of this minority. This has allowed large numbers of young people from this minority, who were previously effectively deprived of access to higher education establishments, to pursue university courses. The State also covers all travelling costs for the young people from this community who live in the mountain regions, so that they can continue their secondary education at the schools nearest to where they live. The measures relating to the Roma/Gypsy community operate in the spheres of education, health and living conditions. Finally, as a general measure, a 1996 law makes provision for the establishment of multicultural primary and secondary schools, the aim of which is to adapt the teaching to the specific needs of these children¹⁹.

In addition, in Ireland there are positive actions in a number of sectors but there are two provisions which specifically relate to travellers:

- The EEA 1998 authorises measures to be taken to reduce or eliminate the effects of discrimination in relation to the traveller community, as well as specific provisions introduced by or on behalf of the State in the field of training and work experience for a disadvantaged group of persons.

The Housing (Traveller Accommodation) Act 1998 requires the preparation and adoption of a five-year programme by the housing authorities for the provision and management of sites for travellers.

It seems that these measures aimed at specific groups are successful. Targeting the specific needs of each community must be one of the keys to the success. Nevertheless, the question is raised as to their real objective: it seems to be the case that particular minorities are being promoted in virtue of their special relationship with the country, a relationship not only established but also highlighted. The reason these minorities are favoured is because they are part of the nation through their sometimes distant links with it. Viewed from this perspective it does not seem to us that these positive actions can be seen as measures to combat ethnic discrimination, as it is defined in the Directive. They would become so if all the minorities represented in the State were able to benefit from them.

Conclusion:

It is difficult to evaluate positive actions for a number of reasons. However, it is clear, particularly in the education sector, that the measures taken over recent years are inadequate and have not succeeded in eliminating the inequalities linked to ethnic origin. The societies of Europe which tend to respond to issues of unequal treatment with general actions should perhaps refine and adapt their method of working. The issue which must be tackled today is the cultural diversity which makes up our societies. The needs of each of these communities must be assessed and an appropriate response must then be made.

Nevertheless, there is a tendency emerging among the Member States: the implementation of policies based on the promotion of equal opportunities and the prevention of discrimination. The following models draw on these policies.

B. Models for positive action

In terms of employment, there are, on the one hand, the codes of good practice adopted in the Netherlands and in Belgium and, on the other hand, the "Law on encouraging the participation by minorities in the labour market" which is in force in the Netherlands (1). France has moreover established an institutional anti-discrimination system of a preventative nature which should also be mentioned (2). Finally, we felt it would be opportune to mention the measures aimed at combating institutional racism. For this reason, we have also included the British model for combating institutional racism (3).

1. Innovative provisions in employment

Codes of good practice

In the Netherlands these codes involve the establishment of guidelines on ethical conduct for adoption within an organisation aimed at management and staff. The codes also

include clauses on staff conduct and the treatment of people who belong to ethnic minorities.

In Belgium non-discrimination codes have been concluded in the HORECA (hospitality) industry and the field of temporary work. Staff commit themselves to refrain from all forms of discrimination on grounds of race, an individual's colour, descent, national or ethnic origin or nationality. These practices have a very strong symbolic value. However, it is important to ensure that they are actually implemented and do regulate the everyday life of the organisations concerned.

The Law on encouraging participation in employment by ethnic minorities

In the Netherlands anti-discrimination legislation has been in force for many years and the State has considerable experience in this field. Yet the majority of discrimination complaints concern employment. This is why in 1998 the Netherlands passed a specific law, the Wet SAMEN or the "Law on encouraging participation in employment by ethnic minorities". Its aim is to achieve a proportional representation of ethnic minorities in the workforce.

It requires both private and public companies and professional organisations with more than 35 employees to aim to have a workforce which is representative of the whole of the population in the region where they are based. In order to do this, the organisation must establish a staff register which indicates the number of employees who belong to ethnic minorities. In addition, it must produce a public report on the representation of ethnic minorities among its employees.

Finally, the organisation must also commit itself to producing a plan, to be submitted to the regional employment authority, in which it indicates the proactive measures which have been adopted in order to increase the number of ethnic minority employees. If the annual report is not submitted or any other of the requirements of the law are not respected, sanctions may be issued by the labour inspectorate: the authority may issue a warning and, in the event of a lack of response, it may inform the company's employee council and the unions, thus making public the conduct of the employer.

An evaluation of the Wet SAMEN was carried out in spring 2000. There are certain deficiencies. The first of these regards the recording of minorities in the organisations. It is difficult to gain a reliable picture of this, as many employees refuse to declare their origin. However, even though the number of annual reports submitted and the measures taken to achieve proportional representation are weak, they are nevertheless increasing steadily.

In spite of the fact that its symbolic impact is significant, the impact of the law within society is poor: very few organisations have changed their recruitment or selection policies to benefit ethnic minorities. In order to make the law effective, it would be necessary to increase the penalties incurred by companies if they do not respect the law.

Following the evaluation, a series of recommendations were made. Some of these recommendations relate to improving the provision of information about the law. Thus, the role of the Office of Information responsible for responding to questions from the various parties involved was extended to provide more effective support for employers. The public services have developed a website which provides policy information on the intercultural workforce and the Wet SAMEN. A list of companies which conform or do not conform to the requirements of the law is also to be published on this site. Finally, an evaluation tool allowing a comparison of companies' performance in respect of the law will be available on the public employment services website.

2 The French system of discrimination prevention

Considering that its legal dispositions against discrimination are without doubt indispensable but not satisfactory, France recently established a package of institutional measures aimed at preventing the occurrence of discrimination. This involves identifying the instances of discrimination, recognising the causes and developing strategies to combat it.

Responsibility for the first of these aims is assumed by GELD (the Group for Studying and Combating Discrimination – Groupe d'Etude et de Lutte contre les Discriminations) which analyses discrimination suffered by populations because of their ethnicity and formulates proposals to combat such discrimination.

114 is a free phone number set up for victims. The role of the helpline staff is to pass files on cases of discrimination on to the CODAC (Departmental Commission for Access to Citizenship – Commission Départementale d'accès à la Citoyenneté). These are the local co-ordinators for the free phone helpline 114. Amongst other objectives, they must deal with the cases of discrimination or pass them on to a rapporteur.

Summary: this institutional system for combating discrimination is too recent (1999) to enable many clear lessons to be drawn from it. Nevertheless, it does provide an alternative to discrimination being dealt with as a criminal matter, which is sometimes ineffective. Instead it employs mediation or other assistance in the practical resolution of the issue faced

by the individual.

3. Combating institutional racism in the United Kingdom

After the tragic murder of Stephen Lawrence, amendments were made to British anti-discrimination legislation.

There were two aspects to this:

- Protection against racial discrimination was extended to cover the public authorities, including the police;
- A new positive obligation was imposed on the public authorities.

The public authorities must not practise discrimination based on racist motives, either direct or indirect or in the form of victimisation, in the execution of any of their duties. The definition of the public authorities is very broad, it covers *any* individual whose work involves duties of a public nature (including private agencies who provide a public service).

Moreover, chief police officers are directly responsible for the potentially racist and discriminatory conduct of any officer under their command.

The new positive obligation requires the public authorities to promote racial equality. This is a direct response to the institutional racism, with the aim to combat it. The public authorities must "promote equality of opportunity and good relations between persons of different racial groups in the exercise of their duties"²⁰. The aim of this proactive obligation is not to avoid illegal discrimination but to prevent discrimination in a positive way, by promoting equality.

In addition to this general obligation, the Home Secretary can impose specific obligations on certain bodies so that they conform better with the legislation. The obligation is **enforceable**: if an authority does not fulfil its obligation, it may be penalised by the Commission for Racial Equality (CRE). It is the CRE which is charged with drawing up codes of good practice which should provide guidance to the authorities regarding the manner in which the positive obligation is to be implemented.

Summary: Again, because of its recent nature, it is difficult to evaluate the law, which came into force in April 2001. However, it is very positive that the obligation applies to all the public authorities and in the exercise of all their duties. The enforceable nature of the measure should also serve to strengthen its impact.

Conclusion:

ENAR actively encourages the States to establish positive action measures in order to promote equal treatment of all people. However, this overview of the measures in place in the different Member States encourages us to exercise caution regarding the effectiveness of these actions.

- ¹ Cf.: *The Starting Line and the Incorporation of the Racial Equality Directive into the National Laws of the EU Member States and Accession States*. Isabelle Chopin and Jan Niessen (eds.), London/Brussels: CRE & MPG, 2001.
- ² Cf.: European Commission against Racism and Intolerance, General Policy Recommendation no. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, 1997, CRI (97) 36.
- ³ According to Article 16 of the Mahoux bill, the Centre will carry out the same sort of activities as those listed above for discrimination based on sexual orientation, birth, disability, current or future state of health, wealth, age, religious or philosophical convictions, physical characteristic and civil status.
- ⁴ It also deals with the following areas: religion, personal views and opinions, political orientation, gender, nationality, sexual preference and marital status.
- ⁵ Cf.: Lag (1999:130) om åtgärder mot etnisk diskriminering i arbetslivet.
- ⁶ The National Council for Aliens (*Conseil national pour étrangers*) and the Special Permanent Commission against Racial Discrimination (*Commission spéciale permanente contre la discrimination raciale*).
- ⁷ Last part of Article 13 of the Directive.
- ⁸ See note 2.
- ⁹ Cf.: Equal treatment in the Netherlands. Dick Houtzager. In *From Principle to Practice*, pp. 27-35. Brussels, ENAR, 2002.
- ¹⁰ Cf.: Sophie RECHT, report on France. In *Anti-discrimination Legislation in EU Member States. A comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives. The Netherlands*. Report prepared by Marcel Zwamborn under the guidance of Migration Policy Group on behalf of the EUMC. Jan Niessen and Isabelle Chopin (eds.). Vienna, 2002. J. Niessen and I. Chopin (eds.), MGP/EUMC: Vienna, 2002.
- ¹¹ Cf.: Section 2 of the 1976 Act and Article 4 of the 1997 Order.
- ¹² Cf.: Victimisation. In *The Starting Line and the Incorporation of the Racial Equality Directive into the National Laws of the EU Member States and Accession States*, op.cit., p 27-28.
- ¹³ Victimisation, op. cit., p.28.
- ¹⁴ They also exist in relation to housing, for example in France, where a policy of specific assistance for migrants has been established. It consists of a measure providing aid and maintenance in housing. The organisation of this assistance is derived principally from the circulars of 9 June 1988 and 15 February 1988.
- ¹⁵ Art. 63 of the law on the education system of 1990.
- ¹⁶ Law-making judgement 140/93, 6 July.
- ¹⁷ Cf.: A. FATHOLHAZADEH, O. LANG, National anti-discrimination legislation as regards Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, report on the Grand Duchy of Luxembourg. In *Anti-discrimination Legislation in EU Member States*, op.cit., p.23.
- ¹⁸ Lag (1999:130) om åtgärder mot etnisk diskriminering i arbetslivet.
- ¹⁹ Law 2413/1996, JO 124/A, 17 June 1996.
- ²⁰ Home Office publication (2001) p. 15.

Conclusions

The Directive 2000/43/EC must be transposed into national law by 19th July 2003 at the latest. Consequently, the Member States have just over a year to take the necessary measures to comply with the Directive's content.

Several Member States have already begun consultations with NGOs and social partners and/or are working on specific legislative changes. In other countries, more particularly Southern European Member States, the transposition process seems more difficult and less transparent.

The transposition of the Directive is crucial in the 15 EU Member States. In fact, each of the 15 countries must amend their existing laws to bring them into line with the content of the Directive on racial and ethnic equality. The racial and ethnic equality directive represents a unique opportunity to make good the shortcomings in existing legislation in order to increase and improve the protection of victims of racism. The role of the NGOs in this transposition process is primordial. Since they are often closer to the victims, they have more direct and concrete knowledge of the obstacles, shortcomings and needs. It is indispensable that the NGOs are consulted by their governments; if necessary, they themselves should initiate the consultations.

It is also indispensable that the consultations should be an opportunity for a real exchange on possible problems at legislative level, with a view to exploring the different options available and putting forward concrete proposals.

It should be borne in mind that the Directive establishes minimum levels of protection to be put in place, but there is nothing to prevent the Member States from establishing more stringent provisions.

This publication contains certain recommendations, notably that nationality and religion should be included in the forms of discrimination. There are also grounds for calling for the scope of the Directive to be extended to areas that it does not cover: for example, culture, sport and access to political rights.

It would also be worthwhile reflecting on the type of law that translates most appropriately the victim's interests. Although criminal law is indispensable to punish serious offences, civil law is often more effective and less restrictive for victims. In this regard, it should not be forgotten that the Directive provides for a shift in the burden of proof in any non-criminal proceedings. This aspect also requires reflection and proposals should be put forward on the

concrete application of this principle as well as on the means of proving indirect discrimination.

The Directive allows associations to institute proceedings in order to enforce the rights of victims in accordance with the Directive. In a large number of countries this possibility still does not exist. NGOs must take this opportunity to explore the possibilities of implementing it in concrete terms.

The Directive allows the Member States to develop positive action measures but it does not make this an obligation. This publication reviews measures considered as positive actions in certain Member States and emphasises their limits and relative ineffectiveness. The transposition of the Directive is an opportunity to put in place more effective and more appropriate tools.

One of the Directive's most important aspects is the creation of bodies responsible for promoting equal treatment. In addition to our recommendations on the powers and responsibilities of such bodies, we should not lose sight of other equally essential aspects, such as the way in which these bodies will be financed, their legal status and the composition of their governing body.

We would re-iterate that the Directive on racial and ethnic equality offers new possibilities to strengthen the legal protection of victims of racial or ethnic discrimination. Over and above the more technical aspects, it is important to ensure that these legislative changes are accompanied by other measures.

First of all, a huge effort must be made in the area of raising awareness and training people charged with ensuring the correct application of the laws. Judges, magistrates, lawyers, civil servants should systematically be given specific training on questions related to equal treatment and non-discrimination.

Potential victims and more generally the public at large must be better informed concerning the legislative tools that exist. Too often victims are unaware of their rights of redress, the procedures to be followed or even whom they should approach in case of need. Public opinion must be made aware for example that it is illegal to refuse accommodation or access to a discotheque for racial or ethnic reasons.

The Directive 2000/43/EC represents the first step forward in combating racial and ethnic discrimination within the EU. We must make the most of this opportunity. The NGOs have played an extremely important role in the adoption of this Directive and they must continue their work to ensure that the Directive is transposed concretely in the 15 Member States.