

## „Establishing a comprehensive system for anti-discrimination protection“ – Achievements and challenges ahead

Combating discrimination is one of the most urgent targets of a pluralistic and open-minded democratic society. Discriminating people on any ground by unjustified treatment or harassment may create harm and will violate them in their human dignity which is – as an overarching principle – the determining source of all human rights as well as of the principle of equality. *Liberté* and *égalité*, based on the ideas of the philosophy of the enlightenment, are since the French Revolution two sides of the same coin – this coin is called human dignity, which is immanent to all people and the indispensable and non-disputable premise of liberty and equality. But, since we all are very individual and spirited, and never abstract human beings with various characteristics, feelings, desires, passions as well as political and religious beliefs equality means and requires recognition of otherness. Fundamental rights and the prohibition of discrimination provide for open spaces and margins of appreciation giving as the possibility of being different. That's the frame we are talking about and working on.

Therefore, International Organizations set into force various legal instruments – as ‘rules of the game’ of society in order to find appropriate and effective ways of protecting people from being discriminated. All human beings, independent of certain important individual characteristics and statuses, should be able to participate equally in daily and professional life. That leads us to our Twining project which is now coming to a successful end:

The overall objective of this Twining project was to establish an efficient and effective system for combating discrimination, thus raising the level of protection against discrimination in the Republic of Croatia. The project strengthened the capacity of the two beneficiary institutions – the Office of the Ombudswoman as the central body responsible for combating discrimination and the Office for Human Rights and the Rights of National Minorities as the state body directly involved in combating discrimination. The Office of the Ombudswoman, as the central equality body of Croatia, plays a crucial role in supporting potential victims of discrimination in gaining access to justice. The project aimed at strengthening this capacity along the lines of the 2000/43/EC Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which specifies providing independent assistance to victims of discrimination as one of the core tasks of equality bodies. Suggestions for a comprehensive system for supporting victims of discrimination have been elaborated. Finally, an efficient system for monitoring reported cases of discrimination and for collecting equality data has been developed, which will be beneficial for fulfilling another core task of equality bodies specified in the 2000/43/EC Directive – namely the publishing of independent reports and the issuance of recommendations.

The project consisted of 50 activities, which closely followed the specifications developed by the beneficiary institutions which had very concrete concepts and ideas about the activities to be implemented within this project. 38 activities were carried out together with the Office of the Ombudswoman, 11 with the Office for Human Rights and the Rights of National Minorities and one was a joint activity with both institutions. All the activities interlink with each other and the staff of



both beneficiary institutions had put a lot of efforts and working hours into developing, participating and giving feedback on the results of the activities. The activities have resulted in reflecting about a lot of internal procedures and about the cooperation with important stakeholders like the specialized Ombuds and NGOs. The project forms the basis and sets the framework for possible future developments in the field of anti-discrimination. After the project finishes the ideas, procedures and products that have been developed within the project can be seen as a large pool of resources from which the management can choose and which can be tested in everyday work.

The project specifically centred around the procedures for providing independent assistance to victims of discrimination. The mandate of the Office of the Ombudswoman for supporting victims of discrimination is based on the Anti-discrimination Act (ADA), which was amended in September 2012. It is a very comprehensive law prohibiting discrimination on 17 grounds and in almost all areas of life. The ADA is not the sole legal provision prohibiting discrimination, but there are a lot of other laws including provisions on non-discrimination, which makes it difficult for potential victims of discrimination to find their way through this legal patchwork. That is why it is specifically important that the Office of the Ombudswoman, as the central body combating discrimination, is very visible and known among groups more prone to discrimination but also among the general public, so that victims of discrimination can easily gain access to the Office and get independent support in gaining access to justice.

In supporting victims the office plays a crucial role in supporting people who have experienced discrimination in gaining access to justice. A research project that was commissioned by the FRA and implemented by the Ludwig Boltzmann Institute of Human Rights together with other discrimination experts looked at access to justice for victims of discrimination. In the framework of this project victims of discrimination that had launched complaints either with equality bodies, NGOs or had taken their cases to court were interviewed. It was very important for all these victims that they

- got the opportunity to tell their story to somebody at best in a face-to-face contact situation,
- could be active participants in the proceedings,
- wanted to be part of developing a possible solution,
- wanted to be kept informed about the next steps within the proceedings.

These are quite demanding expectations equality bodies have to fulfil, which should be accompanied by activities changing the culture of rights in organisations and among the population as a whole. So that they become aware of discrimination and inequality and are supportive of equality, the case for a more equal society, diversity and the different groups which make up society, rights and the importance of people exercising rights, equality legislation and the institutions established to implement this legislation.

That is why other activities of the project aimed at covering some of these aspects. The activities have led to the development of data bases allowing for the systematic collection and evaluation of reported complaints, case law and trends in the development of equality concerns. Last but not least



important stakeholders in combating discrimination and promoting equality – such as judges, state attorneys, trade unions, gender equality and human rights coordinators as well as ethic commissioners – have been targeted by way of trainings and by publications that will later on be presented in this final event, aiming at raising awareness for the concepts of discrimination and for the role these stakeholders can effectively play in supporting institutions like the Office of the Ombudswoman in promoting non-discrimination in the Croatian society.

Although the project contributed to equipping the beneficiary institutions with concepts, guidelines and tools for more effectively combating discrimination, there are still challenges ahead that do not only relate to the set-up of these institutions but also to the legal framework and the public resources made available to support victims of discrimination and to increase awareness among society in order to really reach the people.

The European Commission in its latest Monitoring Report states that Croatia has completed legal alignment in the fields of anti-discrimination and equal opportunities. However, some of the provisions in the current Anti-discrimination Act (ADA) might still make implementation difficult. Among these provisions are the exceptions (Article 9). Although the Commission has testified that the exceptions are now in line with the EU *acquis*, the exceptions going beyond the grounds and areas defined by the EU Directives are still very wide and might need further consideration. Additionally, those exceptions covering occupational requirements for individuals entering into a professional or employment relationship with a religious congregations (para 5) and nationality (para 9) are still formulated in too broad a way. Especially these exceptions should be tested by case law, in order to see how they are interpreted and whether further amendments to the ADA are necessary.

Regarding social dialogue the EU Directives specify that Member States shall encourage dialogue with appropriate NGOs which have a legitimate interest in contributing to the fight against discrimination with a view to promoting the principle of equal treatment. However, the ADA only picks out the Office of the Ombudswoman and obliges this institution to consult relevant NGOs and social partners when drafting reports, opinions and recommendations on the occurrence of discrimination. The Office of the Ombudswoman as the central equality body is a key player in the field but should not be the only official institution involved in the social dialogue, as policy development falling within the remit of many different ministries concerns non-discrimination and equality issues. So the Office of the Ombudswoman could take on the role of facilitator and coordinator in the social dialogue including NGOs and other relevant state institutions. Institutionalizing social dialogue can also be supportive of international human rights mechanisms like reporting to Committee on the Elimination of Racial Discrimination (CERD) or participating in the Universal Periodic Review (UPR).

In order to identify more people who are experiencing discrimination and to encourage them to complain about it to the Office of the Ombudswoman, as well as to increase the number of victims assisted on discrimination and the cases resolved and increase the number of discrimination cases taken to court further efforts are necessary:



- Continuously test and further develop the guidelines and principles for complaints handling as well as the criteria identified for selecting cases most eligible for mediation or strategic litigation within the Office of the Ombudswoman,
- Continue to work on lowering the threshold for potential victims of discrimination to gain access to the Office of the Ombudswoman and specialized Ombuds to report cases of discrimination,
- Continue raising awareness for the concepts of discrimination and for EU case law on discrimination among judges, who play a key role in developing domestic case law on discrimination issues,
- Define, institutionalize and further work on the cooperation with specialized Ombuds and NGOs on individual cases, awareness raising and the Annual report on occurrences of discrimination,
- Intensify and continuously work on outreach to key stakeholders at the local and regional level (including trainings),
- Further increase the visibility of the discrimination strand of the Office of the Ombudswoman among key stakeholders, the general public but also among vulnerable groups.

Increasing the visibility of the discrimination strand of the Office of the Ombudswoman is specifically important for supporting potential victims in gaining access to justice. Visibility is closely linked to the case work of the legal advisers as publicising information on concrete cases in an easily understandable way might encourage other persons who have experienced similar situations to report these cases. Furthermore, visibility also depends on the image of the Office of the Ombudswoman as a strong hold and engine in driving change in the field of anti-discrimination.

Before finishing my speech, I would like to thank all of you who worked on and contributed to the project and who supported us. I think that we made some important steps forward bringing us closer to one of the most important and urgent common goals of the European integration process: to create a region in which people don't have to be afraid of being discriminated because of being different and where their otherness is appreciated as diversity makes our society more dynamic and prosperous.

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