



***The Role of Equality Bodies in
Strategic Litigation and in Supporting
Persons with Disabilities in Claiming
their Rights***

2019 Work Forum on the implementation of the UN Convention on the Rights of Persons
with Disabilities in the EU and its Member States, Brussels, 13 May 2019

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www.equineteurope.org

Equinet Members

Network of national **equality bodies**
(49 members from 36 European countries)

Equality bodies on the basis of **EU Equal Treatment Directives**

(2000/43/EC; 2004/113/EC; 2006/54/EC; 2010/41/EU)

Diversity among national equality bodies in terms of size, mandate, grounds, resources, structure and experience



The work of equality bodies

Hard and soft powers

Functions laid down in EU Directives:

- Independent assistance to victims of discrimination
- Independent surveys and reports concerning discrimination
- Recommendations on discrimination issues
- Exchange of information with European bodies

Wider functions accorded to Equality Bodies:

- Awareness-raising and promotion of values
- Promotion of good practices
- Work with stakeholders
- Monitoring and supervision

Equality and non-discrimination

- ❖ Equality and non-discrimination are fundamental values of the EU and in the constitutional traditions of all MS
- ❖ International obligations (ECHR, CRPD, SDGs, etc.)



- ❖ Equality bodies in **24 EU Member States** already provide protection from **discrimination based on disability beyond employment**, covering other areas of life, such as access to goods and services (including housing), education and social protection.

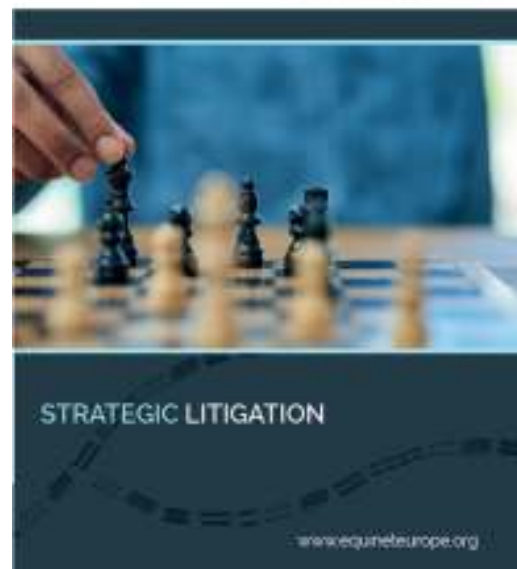
Fields/Grounds	Race	Gender	Sex-orientation	Age	Disability	Region
Employment	YES	YES	YES	YES	YES	YES
Education	YES	NO	NO	NO	NO	NO
H & A, housing	YES	YES	NO	NO	NO	NO
Soc. Protection (Healthcare)	YES	YES	NO	NO	NO	NO
Soc. advantages	YES	NO	NO	NO	NO	NO

Strategic litigation and equality bodies: definition and objectives

- ❖ **Method** used to select suitable cases ('test cases') to bring to court in order to achieve a specific outcome.
- ❖ **Intra-legal objectives** concern the interpretation, application and content of the law in question, for example establishing whether certain treatment is direct or indirect discrimination.
- ❖ **Extra-legal aims** - typically serves to raise awareness and/or put pressure on relevant actors to take measures to prevent discrimination by for example attracting media attention to shed light on a particular problem, sector, or group.

 Equinet
European network
of equality bodies

An Equinet Handbook



Strategic litigation and equality bodies: the available toolbox

- ❖ An equality body's ability to select cases and tactical approach may be limited by national legislation;
- ❖ The strategic litigation toolbox includes the following options:
 - ❖ Alternative dispute resolution (ADR)
 - ❖ Prosecution of case where the discriminatory act is a crime
 - ❖ Litigation through quasi-judicial bodies
 - ❖ Discretionary power to intervene in legal proceedings (through amicus curiae and other written statements given to courts of law)
 - ❖ Discretionary power to provide legal assistance to victims
 - ❖ Provide funding for external lawyers/a private law firm to represent a victim in legal proceedings
 - ❖ The equality body's own initiative procedures, injunctions and judicial reviews



Strategic litigation and equality bodies: examples from the available toolbox

❖ The power to intervene in legal proceedings

Maaïke was unable to work for a long time due to cancer. When she asked her employer to gradually start working again, he refused. She was fired shortly afterwards. That's why Maaïke turned to **Unia, who acted as intervener in the court case**. The Brussels Labour Court ruled in February 2018 that the employer should have provided reasonable accommodations to enable Maaïke to do her job. It was the first time that a court recognized the lasting effects of cancer as a disability. Maaïke received a compensation of 12,500 euros for discrimination.



Strategic litigation and equality bodies: examples from the available toolbox

- ❖ The provision of legal assistance – through providing funding for lawyers or using the equality body's in-house lawyers to represent the victim in legal proceedings.

Example #1: The Swedish Equality Ombudsman brings a claim for a child with a hearing impairment who has been denied health insurance coverage.

Example #2: The UK Equality and Human Rights Commission providing funding for a claimant requesting disability pay from his employer



Beyond strategic litigation: independent monitoring of the UN CRPD implementation

- ❖ In 2017, 17 Equinet members were designated as independent mechanisms to promote, protect and monitor the implementation of the CRPD under article 33(2);
- ❖ Proactive engagement with DPOs and persons with disabilities (PWD) throughout the CRPD monitoring cycle, in particular during the development of the parallel report;
- ❖ In addition to engaging with DPOs in the drafting and follow-up to the reports to the CRPD Committee and/or on ad hoc basis, some equalities bodies have also established formal structures for engaging with DPOs on a continuous basis.

REPORTING CYCLE and PARTICIPATION of DPOs



Beyond strategic litigation: equality bodies supporting PWDs as rights-holders

❖ Beyond casework, equality bodies employ a wider mix of interventions in implementing their mandate under equal treatment legislation such as:

- ❖ support for good practices
- ❖ research and knowledge development
- ❖ communication and awareness raising activities
- ❖ policy work



Beyond strategic litigation: examples of equality bodies supporting PWDs as rights-holders

❖ Examples of equality bodies providing support for good practice, particularly in making reasonable accommodation for persons with disabilities in employment and in service provision:

- ❖ Equality bodies promoting inclusion with awards – the German Federal Anti-discrimination Agency (FADA);
- ❖ Equality bodies delivering training events and providing guidance – the Irish Human Rights and Equality Commission and the French Defender of Rights;



Beyond strategic litigation: examples of equality bodies supporting PWDs as rights-holders

- ❖ Examples of communication and awareness raising activities of equality bodies to support PWDs to claim their rights:
- ❖ **Activities targeting the general audience** – have the objective to challenge the stereotypes of and stigma associated with people with disability. Examples include mainstream media initiatives and activities within schools.
- ❖ **Activities targeting PWDs** - include training people with intellectual disabilities how to be advocates for their rights, providing modules in schools for PWDs, producing a video to inform people with intellectual disabilities and their families of their rights under equal treatment law .

Creating the conditions
for equality bodies to
achieve substantive
equality for people with
disabilities

The potential of equality bodies

- ❖ Developing national and European jurisprudence to ensure that **all persons with disabilities** are protected against **all forms of discrimination** (including denial of reasonable accommodation and multiple and intersectional forms) in **all areas of life**.
- ❖ Promoting **disability mainstreaming** in public policy development and programme design;
- ❖ Ensuring the **continuous involvement of DPOs** in the development, implementation and monitoring of laws, policies and programmes aimed at promoting equality;
- ❖ Providing **broad awareness-raising** on equality and the rights of persons with disabilities, in particular training on the **concept of reasonable accommodation** applicable to **all areas of life**.
- ❖ Ensuring a sustained focus on **multiple and intersectional forms of discrimination** in all national and EU policies and programmes, in particular addressing the **situation of women and girls with disabilities, children and young persons with disabilities, older persons with disabilities, asylum seekers and refugees with disabilities, LGBTI persons with disabilities, persons with intellectual and/or psychosocial disabilities**.

International and European standards for equality bodies



THANKS FOR YOUR ATTENTION!