

Making equality legislation work for Roma and Travellers

An Equinet opinion
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Introduction

Equinet – the European Network of Equality Bodies – brings together more than 30 organisations from 28 European countries. These organisations are the statutory equality bodies empowered to combat discrimination and promote equality across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Most Equinet members deal with discrimination cases lodged by members of Roma and Travellers communities living in their countries. The experience of the equality bodies demonstrates the high level of unequal treatment and exclusion of Roma and Traveller people across the European Union. This experience is the reason why Equinet launched an initiative to provide peer support to enhance equality bodies' capacities in their work of responding to the inequality and discrimination experienced by Roma and Traveller people. In this opinion, which is part of the initiative, Equinet also seeks to identify and communicate the learning from this work of the equality bodies on these issues.

This Equinet initiative has involved networking between equality bodies working on Roma and Traveller issues to support them to maximise the positive impact of their work on the situation of Roma and Traveller people. This networking was organised in a series of two roundtable meetings. Equinet set up a steering group for the initiative consisting of a number of national equality bodies led by the Greek Ombudsman. The networking has also assisted in preparing this opinion to the European Commission as a resource for the forthcoming high-level summit on Roma people in 2010 in Spain. The opinion also draws from a survey carried out by Equinet on the work of the specialised equality bodies on Roma and Traveller issues. Twenty equality bodies responded to a detailed Equinet questionnaire circulated in 2009 and provided valuable insights into the work of equality bodies on Roma and Traveller issues.

This opinion focuses on the theme of 'Making equality legislation work for Roma and Travellers'. It provides a summary of the discussions carried out within the framework of Equinet's initiative on Roma and Traveller equality. It makes available the results from the survey of Equinet members on their work on Roma and Traveller issues. It sets out good practice by equality bodies in responding to Roma and Traveller issues as well as highlighting approaches that equality bodies could take to enhance their work on these issues and to provide a safe space for Roma and Travellers. The opinion also contains ideas for the European Commission, Member States and civil society on steps they could take to ensure equality legislation makes a positive impact on the situation and experience of Roma and Traveller communities.

Equinet roundtables

Two roundtable events were organised by Equinet during 2009 on Roma and Traveller discrimination and the work of the equality bodies in responding to this discrimination. Fifteen equality bodies were represented. The aim of the roundtables was to identify the main areas of discrimination for Roma and Travellers in the different European countries and to explore the approaches and means that equality bodies have deployed in combating Roma and Traveller discrimination and exclusion. The first meeting took place in Athens in June 2009 and the second in Paris in December 2009. The discussions were focused on:

- ▶ The identification of the nature of Roma and Traveller cases each institution receives;
- ▶ The definition of the main priorities on the basis of the cases received;
- ▶ The identification of the institutional barriers that prevent effective solutions;
- ▶ The presentation of good practices or measures that can be used by equality bodies to address properly the problems; and
- ▶ The presentation of successful national case handling by equality bodies.

A number of issues emerged from the discussions. These included:

- ▶ Addressing the “Roma issue” presents significant difficulties compared to other minority issues in Europe. These difficulties are due to the complex combination of issues related to ethnicity, socio-economic status and culture of the Roma and Traveller population, of institutional discrimination and of political and popular hostility.
- ▶ Roma and Traveller discrimination is strongly related to structural and systemic inequalities which can render action confined to individual handling of cases less effective and requires a strategic and holistic approach.
- ▶ Despite initiatives taken at national, international and European level over the past years, there remains a gap between the standards aspired to and the situation prevailing in practice for Roma and Traveller communities.
- ▶ Formal legislation is necessary but insufficient to fully substantiate Roma and Traveller rights. Policies or positive initiatives aiming at promoting Roma and Traveller rights cannot easily reach their objectives, mainly due to the lack of a prior basic framework of regulations, institutions and infrastructures able to monitor the expected outcome and to neutralise the factors that undermine the effectiveness of the positive initiative.
- ▶ The anti-discrimination legislation, even though not specifically targeting Roma and Travellers, is providing important legal tools for combating direct and indirect discrimination experienced by Roma and Traveller people. However, the anti-discrimination provisions allow for the initiation of legal proceeding mainly ex post factum. Taking into consideration the deep marginalisation of Roma and Travellers from social and economic life, only limited members of

the Roma and Travellers, mainly those well-integrated, can secure the protection offered under the anti-discrimination legislation.

- ▶ There are significant and problematic differences in the situation and experience of Roma and Traveller people who have migrated into a Member State and Roma and Traveller people who are citizens of that state.
- ▶ Despite the fact that, in principle, national authorities should handle the Roma issue in a holistic perspective, comprehensive measures within specific fields such as civic registration, housing, health and education, could shape a piecemeal approach that can produce realistic short term solutions to each of the issues at stake.
- ▶ National authorities usually prefer the implementation of national strategies on Roma or Traveller people, where the objectives are defined in a loose and abstract way. However, it could be more effective to take into account the particularities of different areas of the same country and to focus on specific solutions addressing better the particular needs of the Roma or Traveller group concerned.
- ▶ The role of local authorities is vital for the progress and success of any action aiming at the promotion of Roma and Traveller rights. Their role is crucial for promoting social cohesion and security in local communities. It is vital that their role is played in a manner that is free from discrimination, takes account of cultural differences and advances equality. The inhuman and sub-standard living conditions of Roma and Traveller people unavoidably affect the living conditions of other citizen's residing in the area where Roma and Traveller settlements are established for years. The long-term lack of action on the part of the competent authorities makes it easier for the local residents to demand expulsion of Roma or Travellers from the area, instead of reminding public authorities their duty to take action to combat Roma and Traveller exclusion and isolation.
- ▶ A positive obligation on the part of the state to proactively work for non-discrimination, equality and the social integration of Roma and Travellers is a prerequisite in order to ensure substantive equality and to remove the obstacles hampering Roma and Traveller access to fundamental rights. The eradication of discrimination, and mainly of indirect discrimination, necessitates not only the obligation to abstain from discriminatory actions and the provision of remedies where discrimination happens, but also requires proactive actions to prevent discriminatory practices happening and to advance equality. This is why positive obligations are required within equal treatment legislation.
- ▶ Little can be achieved without the actual involvement of the Roma and Travellers themselves and their organisations. This is the prerequisite for the success of every plan or action that concern them. In this regard, the role of equality bodies can be proven of importance, building relations of mutual trust and making their place a safe place for Roma and Travellers.
- ▶ Specific examples of the work of equality bodies were presented in this regard, as well as examples of successful case handling and good practices that underline that even existing, though insufficient, legislation can work, if the agencies involved have a creative strategic approach.

- ▶ The experience of the equality bodies has demonstrated the importance of the coordination of actions and the active involvement of all competent authorities (central, local) in an ongoing cooperation where the Roma and Travellers themselves also actively participate.
- ▶ The promotion by equality bodies of familiarisation among national and local authorities with the relevant European Court of Human Rights (ECHR), European Committee of Social Rights (ECSR) and Court of Justice of the European Union (ECJ) case law is important in establishing new standards and policies. Equality bodies could also disseminate this case law with a view to contributing to the creation of a European legal culture on the issue.

Equinet survey

Twenty equality bodies in sixteen different Member States responded to a detailed questionnaire over the summer months of 2009 to assist in the preparation of this opinion. The questionnaire explored the following areas in relation to their work with Roma and Traveller people:

- ▶ Vision and objectives of the equality body
- ▶ Legal work
- ▶ Work in promoting equality
- ▶ Research work
- ▶ Communication work
- ▶ Strategic planning on Roma and Traveller issues

The survey provides valuable insights into the work of the equality bodies with Roma and Traveller people and into the Roma and Traveller issues that the equality bodies are prioritising in their work. The survey provides a qualitative rather than a quantitative picture of this work. This is because of the different way that equality bodies gather data in the various Member States.

Work with Roma and Travellers emerges as a significant commitment in about 60% of the bodies surveyed. In part, this is due to the limited Roma and Traveller presence in some Member States. In part, it reflects a challenge to the equality bodies to further develop this focus in their work.

The challenge to equality bodies that emerges from the survey is threefold. The first challenge is to develop a programme of work specifically on Roma and Traveller issues. In some bodies this work was subsumed as part of wider work on issues of racism and ethnic difference. However the particular situation, experiences and identities of Roma and Traveller people suggests the need for a specific focus within this wider remit.

The second challenge emerging for equality bodies is to deploy all of their various powers in a strategic manner on the issues of Roma and Traveller people. Many of the equality bodies report a focus that is limited to litigation and individual Roma and Traveller litigants. Litigation is a cornerstone of the work of equality bodies. However, given the structural and systemic nature of the inequality experienced by Roma and Traveller people, a wider strategic response is required that would combine all the different powers and functions of the equality body if impact is to be achieved. Few of the equality bodies had strategic plans for their work with Roma and Traveller people. Such planning would enable this wider strategic response.

The third challenge emerging for equality bodies is to focus effectively on the situation of Roma and Traveller people. This issue of effectiveness raises questions about the analysis that equality bodies bring to inform their work with Roma and Traveller people. There are instances where this analysis is assimilationist, based on an understanding that Roma and Travellers have first to conform to the dominant norms and traditions of their society before there can be any progress towards equality. This is a problematic analysis that hinders effectiveness in any work with Roma and Traveller people. It is clear that effectiveness requires an analysis based on a valuing of cultural diversity and on an understanding of the twin problems of institutional and individual racism.

A wide range of examples of good practice emerge in the survey alongside these three challenges. A significant number of equality bodies demonstrate a strong commitment to work with Roma and Travellers, bring a particular creativity to this work, and have a focus that is strategic, effective and specific to Roma and Travellers.

In exploring the vision and objectives of the equality bodies, there is a valuable and necessary emphasis on the structural nature of the discrimination experienced by Roma and Travellers. Equality bodies emphasise the need to change the way institutions go about their business if institutional discrimination is to be eliminated. They emphasise the need to change societal structures and systems if equality is to be advanced for Roma and Travellers. Of interest is the emphasis of some equality bodies in ensuring that their own institutions are available to Roma and Traveller people and therefore of making sure that they are not a source of institutional discrimination.

A number of issues emerge consistently in the legal casework of the equality bodies across the Member States. Employment cases are rarer than cases in relation to the provision of goods and services. In the employment arena the dominant issue is claims of discrimination in recruitment or in seeking access to the labour market. Discriminatory dismissal also emerges as a casework issue in this arena.

The bulk of legal casework developed by the equality bodies relates to the provision of goods and services and in particular to provision by the public sector. The dominant issues in this regard in the public sector relate to housing and accommodation, education and social services. In the private sector, dominant issues in this regard relate to access to insurance, to shops and to a wide range of recreational and leisure services.

The survey reveals that the equality bodies are also grappling with a number of issues that fall outside the provisions of the equal treatment directives. In particular stereotyping in the media and a negative culture within the police forces arise as important issues that need to be covered under equal treatment legislation if equality is to be advanced coherently for Roma and Travellers.

Under-reporting arises as a significant barrier to the legal work of the equality bodies with Roma and Traveller people. There can be low levels of awareness of rights within Roma and Traveller communities. Trust is a significant barrier where Roma and Traveller communities have lost trust in statutory bodies. Time limits for cases to be brought also serve as a barrier in this context of low levels of awareness and confidence. Poverty and marginalisation also serve as a barrier to bringing forward cases under the equal treatment legislation. Power inequalities, between the Roma or Traveller complainant and the public sector organisation accused of discrimination, is also identified as a barrier to bringing forward cases – Roma and Traveller people can be fearful of reprisal and can be uncertain of any success.

Mutual knowledge development is put forward in the survey as one innovative response by equality bodies to this issue of under-reporting. This is a process that allows for mutual education through direct contact between Roma and Travellers and the equality body. Roma and Travellers learn about their rights under the equal treatment legislation. The equality body learns about the situation, experience and identity of Roma and Traveller people and can therefore better understand and respond to the discrimination they experience.

Outreach activities have also been developed by equality bodies in seeking to address this under-reporting. Specific leaflets and DVDs have been prepared targeting advice on Roma and Traveller communities. Training on right targeted on Roma and Travellers has been supported. Most innovative has been work involving direct contact between equality bodies and Roma and Traveller communities. This has involved visits to Roma and Traveller encampments as well as regional visits by equality body staff to secure the face to face contact which can be essential in building trust.

Research and promotional work has been developed by equality bodies with the valuable outcome of making the discrimination experienced by Roma and Traveller people visible. Research work has been carried out on the discrimination experienced by Roma and Traveller people. Research has focused on the specific areas of education and housing and issues of discrimination in these fields. A prize was established in one instance to stimulate pioneering research into Roma and Traveller issues.

Non-governmental organisations emerge as a key resource to equality bodies in this work. Roma and Traveller organisations have a particular importance. The equality bodies emphasise the participation of those affected by discrimination in the work of equality bodies. This participation can be enabled and supported by non-governmental organisations. Instances where non-governmental bodies are hampered in making this contribution due to lack of resources are highlighted in the survey. Dialogue with all key actors is also emphasised in ensuring the work of equality bodies is effective. These actors include national and local authorities, state agencies, trade unions, employer organisations and non-governmental organisations.

The equality bodies report a number of barriers they themselves experience in progressing this work. There is widespread concern evident from the survey in relation to the limitations imposed by insufficient human and financial resources available to the equality bodies. In some instances inadequate powers and functions are accorded to the equality bodies to be effective in this work. A number of equality bodies note the need to develop powers and methodologies for situation testing as a means of uncovering institutional and systemic discrimination.

The survey highlights the limitations in equal treatment legislation confined to individual enforcement in a context of under-reporting and of institutional discrimination. In some jurisdictions the issue of institutional discrimination has been valuably taken on by imposing positive duties or obligations on the public authorities to have due regard to equality in carrying out their functions. Equality bodies have played a central role in supporting and monitoring compliance with these positive duties.

Analytical approach

Four key principles emerge from the work of equality bodies on Roma and Traveller issues. These are:

1. The work of any organisation with Roma and Traveller people needs to be based on the recognition of their distinct identities and cultures. Policy making and service provision should be designed in a manner that takes into account the practical implications of this distinct identities and cultures. The promotion of equality for Roma and Traveller people should also be concerned with eliminating the inequalities of recognition these groups experience. These inequalities are evident in the low status and standing that their identities and cultures experience in popular perceptions and in the thinking of those who hold power in society. Work with Roma and Traveller people needs to generate and to reflect a new and more equal status and standing for their identities and cultures.
2. The work of any organisation with Roma and Traveller people needs to involve a dual strategy of mainstreaming and targeting. Mainstreaming is concerned with ensuring that the policies, procedures and practices that govern employment and service provision to the general public are designed in a manner to secure the inclusion of Roma and Traveller people. Targeting is concerned with developing and implementing programmes of positive action that could eliminate the current inequalities experienced by Roma and Traveller people and that would meet needs that are specific to these groups.
3. The work of any organisation with Roma and Traveller people needs to address the inequalities of power and influence experienced by these groups. These inequalities present barriers to engaging effectively with Roma and Traveller people. The promotion of equality for Roma and Traveller people will not advance equality without addressing these inequalities of power and influence. Work with Roma and Traveller people needs to empower Roma and Traveller people and their organisations by enabling them to participate in decisions that impact on their communities.
4. The work of any organisation with Roma and Traveller people needs to be based on the recognition of their human rights including the right not to be discriminated against. Organisations need to be proactive in ensuring that their policies, procedures and practices are in line with the basic principles of non-discrimination, equal treatment and human rights.

These principles need to inform the work of equality bodies, just as they need to inform the work of other service providers and policy making work of European, national and local authorities.

Making equality legislation work for Roma and Travellers: achieving good practice by equality bodies

Most of the equality bodies in the European Union have the competence to deal with cases of Roma and Traveller discrimination and to promote equality for Roma and Traveller people. There are many instances of good practice in making the legislation work in order to counteract unequal treatment of Roma and Traveller people. These instances are acknowledged below to promote a wider uptake by equality bodies of these practices in seeking to make equality legislation work for Roma and Travellers.

1. Platforms for dialogue

Action promoting equality and combating discrimination can only be fully effective and achieve desired change if Roma and Traveller people and their organisations are actively included in them. Equality bodies as specialised public institutions created to promote equality and to enforce anti-discrimination laws can play a valuable role in securing the involvement of Roma and Traveller people in the process of planning implementation and evaluation of activities combating discrimination. One way to achieve this participation is to create platforms for dialogue involving Roma and Traveller people and organisations. Dialogue platforms should bring together all the relevant stakeholders in the field of equality – national and local authorities, civil society and Roma and Traveller people and organisations. These platforms for dialogue should provide space to work out the most suitable solutions and strategies to promote equality and combat discrimination. This working method secures open dialogue with Roma and Travellers, it results in improvement of national and local authorities' awareness and understanding of the Roma/Traveller situation and it makes Roma and Travellers more aware of the legal protection available and legal redress open to them.

In 2007 the Greek Ombudsman launched an open pilot communication network with NGOs and other civil society institutions for the protection of Roma. The main goals were to gather and disseminate information on vital problems faced by Roma groups and to coordinate the activities undertaken by the participating agencies that are active in the field of protecting the rights and offering social support to Roma living in Greece. Within the framework of the EUNOMIA project, the Greek Ombudsman also organised, in cooperation with the Council of Europe, a European workshop in Nafplion (7-8 December 2007). The members of the aforementioned network took part in this workshop and focused on the regulatory and legislative developments in Europe with respect to Roma and Traveller populations. The issues of education and accommodation as well as the issues pertaining to the contact of Roma and Traveller people with public services were particularly emphasised.

2. Mutual education

Equality bodies are national organisations working with experts and possessing specific knowledge on human rights and on legal tools for achieving and promoting equality. These institutions can be one of the main sources of information for Roma and Traveller people looking to enhance their capacity to achieve their rights. Rights based education provided by equality bodies should strengthen Roma and Traveller people's chances of successfully combating discrimination and promoting human rights. It should also improve their prospects of engaging in collaboration and dialogue with national and local authorities.

Equality bodies need to be aware of the situation and experience of Roma and Traveller people. They need to develop their analysis of this situation and experience through an understanding of cultural difference and of the practical implications of this cultural difference for their work. In this way, equality bodies can be more effective in promoting equality for Roma and Traveller people based on the recognition of their distinct cultures and identities.

Equality bodies need to develop processes of mutual education to achieve both these goals. Mutual education involves a process of contact between the equality body and Roma and Traveller people and their organisations. It requires mutual listening, mutual challenge and mutual learning.

Since 2001, a mutual education process involving the former Swedish Ombudsman against Ethnic Discrimination and Roma women and men has been a central component of the non-discrimination strategy concerning the Roma. An important part of this dialogue involved education seminars with Roma about the existing legislative protection against discrimination. The seminars were directed at specific groups of Roma people, in particular at Roma women and Roma young people. This dialogue has increased the Ombudsman's ability to reach Roma with its work. The Ombudsman has benefited from this dialogue by developing a more insightful knowledge base concerning the Roma. This has assisted the Ombudsman in understanding and dealing with the complaints from Roma women and men which often express and describe complex situations.

3. Safe space

The long history of social, economic and cultural exclusion of Roma and Traveller people, as well as the racism they have experienced over generations, inevitably leads to a lack of trust in the good will or effectiveness of statutory authorities or bodies. This presents a barrier to the work of the equality bodies and leads to under-reporting of incidents of discrimination. It presents a barrier to any statutory body seeking to advance equality for Roma and Traveller people and can lead to failure in the implementation of good policies and programmes.

This situation of mistrust needs to be addressed. Trust must be gained by the equality body in order to advance their activities in more effective ways. Equality bodies need to engage directly with Roma and Traveller people. This needs to be done through outreach activities where equality body staff are present in Roma and Traveller spaces. It needs to be done by enabling Traveller and Roma people and their organisations to be present in, and make use of, the equality body premises. Equality bodies need to actively demonstrate that they mark a break with the tradition of exclusion, discrimination and racism experienced by Roma and Traveller people. They need to be visible defenders in the public domain of equality and rights for Roma and Traveller people. In this way, equality bodies can develop as a safe space for Roma and Traveller people.

The equality bodies have a valuable starting point in creating this safe space as they are independent institutions. As a safe space, equality bodies could then offer not only their expertise to Roma and Traveller people, but also provide a place to bring together all stakeholders necessary to secure the elimination of discrimination and to find suitable solutions to the situation and experience of Roma and Traveller people. Equality bodies could take proactive measures in this respect and this should lead to creation of mutual understanding, learning and trust.

The Hungarian Equal Treatment Authority (ETA) started a project combating discrimination and shaping social awareness supported by the European Union in 2009. One of the most important features of the programme is the setting up of a network of equal treatment rapporteurs, with qualified anti-discrimination lawyers in every county. The lawyers provide victims with the necessary information and help to channel in complaints to the ETA. Moreover, they travel regularly even to distant parts of their county to guarantee that the expert advice is available to all.

The ETA also carried out a pilot project in 2009, whereby a number of its legal staff held successful public hearings in two middle-sized cities in the north of Hungary with a high Roma population.

4. Information strategies

Many equality bodies usefully prepare, develop and disseminate specific information materials targeted at Roma and Traveller people. These materials support a higher level of awareness of rights under equal treatment legislation among Roma and Traveller people. This work can be effective where an equality body collaborates directly with Roma and Traveller organisations in preparing, delivering and disseminating the materials. Information materials prepared in this manner can be particularly effective when combined with training initiatives for Roma and Traveller people.

HALDE, the French equality body has completed a project 'Discrimination concerning Traveller communities; the mobilisation of European and national law' in 2008. The objective of this initiative was to make Traveller people more aware of the discrimination they are often subjected to as well as of the existing legal means and the existence of the HALDE to counter these actions.

This campaign was conducted in partnership with the FNASAT (Fédération nationale des associations solidaires d'action avec les Tsiganes et les Gens du voyage). During the project, HALDE's legal services collaborated with FNASAT and compiled a support document which was used at 5 regional network training sessions organised by the FNASAT. In addition, a DVD and an informative brochure collecting Travellers' experiences of discrimination in the fields of education, housing and employment and elaborating on the rights of individuals belonging to Traveller communities was produced.

5. Capacity building within the equality body

Capacity building work by equality bodies needs to address not only the need to build capacity of Roma and Traveller people, organisations and communities, but also the need to build the capacity of all staff and systems within the equality body itself in relation to Roma and Traveller issues. Steps need to be taken to ensure that the equality body as an institution and the staff of the equality body as individuals has an understanding of, and skills in, working in an intercultural and anti-racist approach. In this way, the equality body can be free from any forms of discrimination and effective in advancing strategies of equality for Roma and Traveller people.

The Irish Equality Authority requires all new employees – no matter what their function in the organisation might be – to undergo a series of one-day sensitivity training modules in their first year in the organisation. This training is provided by an NGO from each of the grounds named in the equality legislation. There is a specific training seminar provided by a Traveller NGO.

6. Strategic litigation

Under EU and national equality legislation, equality bodies have the power to provide independent assistance to victims of discrimination.¹ This assistance is provided by respective equality bodies in very different ways depending on the legal framework and culture they operate under. Most of Equinet members offer legal counseling, mediation and support in judicial proceedings in discrimination cases. This creates a valuable and broad opportunity to bring forward individual cases successfully.

This power to provide legal advice and representation also offers the opportunity other than for equality bodies legally obliged to handle all cases lodged to develop a strategic approach to individual cases that uses casework to seek legal and social change as well as individual redress. By litigating Roma and Traveller cases strategically, it is possible to use scarce resources to best effect. Strategic litigation can secure change in national laws, policies or programmes that contribute to a wider impact on Roma and Traveller communities from the individual case. Strategic litigation can build a culture of compliance with equality legislation that serves to prevent discrimination occurring. Strategic litigation involves the use of carefully selected criteria for choosing which cases to support. Strategic litigation means also using innovative legal tools and communication tools in order to achieve social change. Tools such as situation testing are deployed to uncover systemic or institutional discrimination. Cases are chosen because they capture issues of systemic or institutional discrimination. Cases are given a public profile that enables them to have a ripple effect beyond the individual respondent or claimant involved.

EMPLOYMENT

A Lithuanian woman of Roma origin faced direct discrimination while seeking employment.

In 2007, directed by the Labour Exchange, S.M. applied to a café for a job as a dishwasher. A representative of the administration in the enterprise claimed that the position of a dishwasher was already occupied.

For the first time in Lithuania, the situation testing method was applied in this case. This method was instrumental in identifying the discrimination fact: after a Roma woman had been refused employment, a Lithuanian woman was asked to apply for the same job on the same day (within a couple of hours). She was immediately offered the job in contrast to the Roma woman. While negotiating the employment contract with the Lithuanian woman, the employer's administrator revealed that on that same day they had a woman sent by the Labour exchange, saying that she was a "gypsy" and as the staff did not want a "gypsy", they could not therefore employ her.

S.M. filed a complaint to the Office of Equal Opportunities Ombudsperson. Having conducted an investigation, the Ombudsperson ascertained direct discrimination in the sphere of employment and imposed an administrative sanction.

¹ Article 13 of Council Directive 2000/43/EC [29.06.2000]

The case investigation was challenged when S.M. lodged the complaint to the court. On 30 June 2008, the court adopted the ruling, stating that a person of Roma origin had faced direct discrimination while seeking employment and adjudging from the defendant 864.98 Lt (an average wage) and 2000 Lt compensation for non-material damage.

On 10 December 2008, Vilnius District Court confirmed the decision of the lower instance court.

EDUCATION

The Complaints Committee for Ethnic Equal Treatment in Denmark noted via the press that a municipality had applied to the Ministry of Education for permission to continue working with special classes for students with a high level of absence. The Committee decided to investigate the matter ex officio.

The municipality stressed, inter alia, that the purpose of the classes was to reduce students' absences rates and to alleviate students' poor schooling skills through special training. Moreover, the municipality indicated that only students with Roma background were placed in the classes.

The Committee found that the system of placement of students with a high level of absence in special classes could be objectively justified only by a legitimate aim of reducing the students' level of absence and improve their poor schooling skills through special training. However, the municipality had failed to produce adequate justification as to why such a conduct was appropriate and necessary. The Committee considered that the establishment of special classes on the basis of an absence criterion was an inappropriate, unnecessary and excessively intrusive tool to achieve a reduction in the absence among students. The Committee found that the municipality's system of special classes was an example of indirect discrimination and a violation of the prohibition against indirect discrimination on the grounds of race or ethnic origin in the Act on Ethnic Equal Treatment.

HOUSING

The complainant protested for the unreasonable delays of a municipality in Greece to provide her with the Certification of Municipal Taxes for the real estate which she had inherited and intended to sell to a person of Roma origin. This certification is necessary to conclude a valid bill of sale.

The Greek Ombudsman's Office (GO) in its intervention underlined the mandatory obligation of municipal authorities to provide citizens with the certification and asked for its immediate issuing, mentioning at the same time that such practices arise suspicion of discrimination.

After the intervention of the GO, the certification was granted immediately to the complainant. However, the GO decided to scrutinise the practices of the municipality on the issue, given that in the past the GO has received complaints of similar nature. In all those cases related to purchases, the purchasers were members of the Roma community. In a recent similar case, the GO used the tool of shifting the burden of proof, calling for the municipality to prove that the systematic delays in similar cases do not constitute discrimination.

Equinet has placed a wider range of casework outcomes on its website, www.equineteurope.org.

7. Monitoring

The Equal Treatment Directive 2000/43/EC empowers equality bodies to conduct independent surveys and to publish independent reports concerning discrimination.² This is important in making the situation and experience of Roma and Traveller people visible and in providing the detailed information on specific problems of Roma and Traveller communities that is necessary for equality bodies to design tools for combating discrimination and promoting equality, and to get involved in stimulating the necessary process of social change for Roma and Traveller communities.

To engage in this work, equality bodies need access to necessary skills and methodologies. They also necessitate access to funds for large scale research projects. Research may be needed on the level of awareness of members of the Roma and Traveller communities of their legal rights under anti-discrimination law, and on barriers that members of those communities experience in accessing those rights. Research may be needed on the attitudes of employers and service providers to Roma and Traveller people and on the barriers they put in the way of Roma and Travellers seeking employment or services.

The UK Equality and Human Rights Commission's (EHRC) 2009 research report "Inequalities experienced by Gypsy and Traveller communities: A review" confirmed that accommodation provision is the key to tackling other inequalities and human rights denial experienced by Gypsies and Travellers (e.g. the right to health and the right to education for Gypsies and Travellers). The EHRC undertook further research to assess the progress being made by local authorities in England (separate studies in Scotland and Wales) in meeting the accommodation needs of Gypsies and Travellers. In March 2009, EHRC published this research alongside a statement focusing on accommodation provision for Gypsies and Travellers and promoting best practice and good relations between the settled and Travelling communities – 'Gypsies & Travellers: Simple Solutions for Living Together'. This report also makes a series of strategic recommendations to local and central government and national agencies. This research found that although the government has made some progress in making legal sites available for Gypsies and Travellers, most local authorities are far from meeting targets for housing provision by 2011 and at the current rate it would take 18 years for local authorities in England to create enough permanent pitches.

The EHRC has committed itself to further research in 2010 to assess progress on accommodation provision and reserves the right to use its legal powers where necessary.

The reports can be downloaded:

http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

<http://www.equalityhumanrights.com/en/publicationsandresources/Pages/localhousingauthoritiesmeetingaccommodationneedsGypsyandTraveller.aspx>

<http://www.equalityhumanrights.com/en/publicationsandresources/Pages/GypsiesandTravellers-simplesolutionsforlivingtogether.aspx>

8. Promoting Equality

In the Equinet report "Promoting equality. Overview of positive measures used by national equality bodies" it was highlighted that an equality body strategy based exclusively on litigation and court decisions was not adequate to meet the challenge of achieving equality in

² Article 13 of Council Directive 2000/43/EC [29.06.2000]

practice and of significantly reducing discrimination. It noted that a combination of legal enforcement and good practice development activities appeared to be more effective. These two types of activity are complementary and should be used in a strategic manner by equality bodies in order to prevent and counteract inequalities.

Many Equinet members have established their own departments in charge of promotion of equality in order to implement the promotional activities of their institutions. This example could be followed by all equality bodies within the means at their disposal. Equality bodies could be one of the key players in activities such as:

- ▶ Eradicating deeply rooted stereotypes and prejudices against Roma and Travellers;
- ▶ Giving practical supports to public sector bodies to adapt their institutional structures and systems so that Roma and Traveller people have access to and benefit from their service provision;
- ▶ Giving practical supports to employers to develop policies and practices to recruit and advance the career of Roma and Traveller employees; and
- ▶ Promoting and supporting the development and implementation of positive action measures, designed to compensate the historical exclusion of Roma and Traveller people and to address their specific needs.

These are the types of activities that a promotional department within an equality body could progress. These are the types of activities that need to be pursued by equality bodies alongside their legal casework in a strategic approach to equality for Roma and Traveller people.

The Equality Commission for Northern Ireland operates a specialised Promotion and Education Division that provides a wide range of information and advisory services to members of the public and other key stakeholders. The Division provides relevant advice and information to the public via the website and publications; it organises training and publicity campaigns; and it undertakes a range of special projects.

One of these special projects is the Anti-Racist Workplace Week which promotes good practice initiatives among enterprises to respond to cultural diversity and to create integrated workplaces. The main focus of the week is to raise awareness around the issue of racism in the workplace and to encourage employers and trade unionists to develop strategies to achieve equality of opportunity in a culturally diverse workforce. The project has a particular focus on Travellers and it mobilises trade union and employer networks.

9. Diversity within Roma and Traveller communities

The Equinet roundtable events on Roma equality identified Roma and Traveller women and Roma and Traveller young people as a focus for consideration and action by equality bodies. Other intersecting identities must also be considered in the work of the equality bodies including Roma and Traveller people with disabilities, Roma and Traveller people who are lesbian, gay, or bisexual, Roma and Traveller people who are immigrants or are (or perceived to be) of a (further) national minority in the country where they currently reside, and older Roma and Traveller people.

Three points of view need to be considered:

1. How services targeted on other groups such as women, people with disabilities, gay and lesbian people etc are designed and delivered in a manner that accommodates the needs of the Roma or Traveller members of these groups. For example, how inclusive of Roma and Traveller people are LGBT organisations or services; how well do services for older people accommodate the needs of older Roma or Traveller people, etc.
2. How Roma and Traveller organisations and services that target Roma and Traveller people accommodate the needs of the diversity of Roma and Traveller people who are women, people with disability, young people, etc.
3. How “mainstream” services that target the general public such as hospitals or schools accommodate the needs of members of the Roma and Traveller communities who have these “intersecting identities”.

These are challenges that need to be met by equality bodies themselves in their own work of promoting equality for and combating discrimination against Roma and Traveller people. They are challenges that equality bodies need to bring forward in their work with policy makers, employers, service providers and NGOs so that these bodies have a capacity to respond to these intersecting identities.

10. Roma and Traveller staff

Equality bodies should be at the forefront in their own policies and practices in advancing diversity and equality. Their policy and practice should be a model for other employers and service providers. This means that they should work out and introduce internal policies and procedures allowing for the inclusion and participation, as employees and clients, of people from all the grounds they cover.

The employment of Roma or Traveller employees by equality bodies where possible not only serves as an example but also generates valuable additional possibilities to fully benefit from their expertise as well as to gain the trust of the Roma and Traveller communities.

The Bulgarian Commission for Protection against Discrimination (CPD) does not have any written paper or policy concerning employing Roma people in the staff but it implements effectively the principles of the European Commission against Racism and Intolerance (ECRI) Policy Recommendation No. 2 regarding the diversity of the staff. Having a Roma person as deputy chair facilitates the trust and access of Roma people to the equality body. Moreover, the CPD has one expert in its staff who is Roma.

Making equality legislation work for Roma and Travellers: achieving good practice at Member State level

Equality bodies can play a valuable role in stimulating and supporting statutory authorities and civil society organisations in taking relevant action to make equality legislation work for Roma and Traveller people. The very nature of the structural discrimination faced by the Roma and Traveller people necessitates effective action taken by other statutory authorities and by actors in the civil society.

1. National and local authorities

It is for the respective governments to ensure that the national equality legislation in place relating to Roma and Traveller people conforms to the EU acquis and other international legal standards and that it is properly implemented. Although the deadline for the transposition of the Race Directive has expired almost seven years ago, there are still some problems in this field with national laws failing to provide the full protection for Roma and Traveller groups foreseen by the Directive. Some Equinet members also report difficulties due to inadequate resourcing of equality bodies or political interference with equality bodies.

The Equinet survey has highlighted that a significant number of the cases being taken under the equality legislation concern allegations of discrimination against public sector bodies. In seeking to make equality legislation work for Roma and Traveller people therefore a first priority for national and local authorities must be the elimination and prevention of all forms of individual and institutional discrimination against Roma and Traveller people by public sector organisations and institutions.

There are a number of further actions that could be usefully advanced by national/local authorities in making equality legislation work for Roma and Traveller people. These include:

► **Support to advocacy initiatives**

There is evidence of high levels of under-reporting of incidents of discrimination by Roma and Traveller people. It is therefore important to support a range of advocacy initiatives to enable Roma and Traveller people to seek redress for discrimination through litigation.

The Roma and Traveller communities experience a low level of political influence. In this context, it is important that national and local authorities support advocacy initiatives that enable Roma and Traveller people to voice their interests in public debate and at negotiations or consultations.

National and local authorities could usefully invest in funding independent organisations (including Roma and Traveller organisations) to set up, support or provide advocacy services that bring forward the interests of Roma and Travellers, that raise their rights awareness, and that assist them in engaging in legal proceedings.

► **Support to positive action initiatives**

Positive action initiatives are valuable tools in fighting discrimination. Equality legislation allows for positive action to achieve full equality in practice for Roma and Traveller people and to prevent or compensate for disadvantages they experience.³ Positive action measures are an essential instrument to level up the social and economic situation of Roma and Traveller people and thus to create a new context where there is no space for discrimination.

³ Article 5 of Council Directive 2000/43/EC [29.06.2000]

It would be valuable for national and local authorities to resource, promote and implement positive action initiatives. The Equinet roundtable events underlined the importance of continued and reliable state implementation of, and funding for, positive action measures and pointed out the dangers of ceased or discontinued support. Positive action is required in all fields including employment, labour market services, education, accommodation and health. Positive action is indispensable in removing the legacy of past discrimination and in achieving the objectives of equality legislation.

► **Policy mainstreaming**

The structural nature of the discrimination experienced by Roma and Traveller people means that it is impossible to address all their problems on an individual basis. National and local authorities could usefully make sure that the interests of Roma and Traveller people are taken into consideration in all their policy decisions.

Equality mainstreaming in policy making and programme design is an essential and effective tool in this regard. This tool ensures that national and local authorities assess the implications of any planned action, including legislation, policies or programs, for Roma and Traveller people and ensure they are designed in a manner that advances equality for Roma and Traveller people and takes account of the practical implications of their cultures and identities and contains no discrimination. This makes Roma and Traveller communities' concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of all policies and programs. This will have a particular benefit in preventing discrimination, eliminating institutional discrimination and thus reducing the need for Roma and Traveller people to seek legal redress on an individual basis.

► **Training for public officials**

National and local authorities could usefully encourage their employees to take part in awareness-raising and sensitivity trainings. This training would develop awareness, knowledge and skills of participants in combating discrimination and promoting equality. The authorities could, by organising such events, secure a better observation of the equality principles within the relevant state bodies and provide for a better understanding of the Roma and Traveller community's problems. This training would support the prevention of discrimination in the public sector and build the capacity of the public sector to promote equality for Roma and Traveller people.

2. Civil society – Employer networks, trade unions, NGOs

Civil society can play a valuable role in seeking to eliminate the widespread and deep structural discrimination against Roma and Travellers. Employers, trade unions and NGOs could serve as champions for good practice, as advocates for equality for Roma and Traveller people and as catalysts for the full and effective implementation of equality legislation. They should also ensure that any forms of discrimination against Roma and Traveller people present in their own organisation are eliminated.

Members of the civil society represent a wide spectrum of players, ranging from employer networks through trade unions to NGOs. These different organisations have different interests and approaches to the challenge of equal treatment, but all need to be aware that the systemic and structural discrimination of Roma and Traveller people is a concern not only for Roma and Traveller people but also for the wider society. Different actors within civil society, acting together or individually, can achieve change that is good for Roma and Travellers, good for business and good for society.

Special attention in this regard needs to be given to Roma and Traveller NGOs, which are indispensable in making equality legislation work. These organisations are of course challenged to take special care to represent all sections of the Roma/Traveller society. This will guarantee that the interests of those Roma and Traveller people facing multiple

discrimination (Roma and Traveller women, Roma and Traveller with disability, etc.) will be also addressed.

► **Collaborate with equality bodies**

Employer networks, trade unions and NGOs could usefully commit resources to working jointly with equality bodies. Equality bodies and actors in the civil society can profit from a fruitful cooperation. This enables mutual understanding, shared learning and joint action against discrimination. An ongoing dialogue between equality bodies and civil society actors will promote good practice that prevents discrimination and will enable individual victims of discrimination to channel their complaints to best effect. NGOs, trade unions and employer networks can work together with equality bodies to gain new trust from the Roma/Traveller communities and to create a new context within which to advance equality.

► **Implement positive action**

Positive actions are important ingredients of any successful strategy to achieve equality for and prevent discrimination against Roma and Traveller people. Some actors in civil society have already implemented and supported positive action measures aimed at improving education, housing or labour market conditions for Roma and Travellers. These measures can include equality plans to promote diversity at the workplace, or investment to provide better housing or educational chances to Roma and Traveller families. Employer networks and trade unions could emerge as champions for this positive action. In this way they can lead support and resource positive action measures in all workplaces.

► **Build competence**

Civil society actors could usefully make sure that they are aware of the actual situation of Roma and Traveller people and that they have the knowledge and skills necessary to respond to that situation. Competence building and awareness raising training within civil society organisations are useful to ensure that organisations do not discriminate against Roma and Traveller people, can respond to the practical implications of their cultures and identities and can champion equality for Roma and Traveller people.

This training could be the cornerstone of an equality competence within civil society organisations. The training needs to be underpinned by an equality policy that sets out the standards to be achieved by the organization in its employment, service provision and core business processes. The training needs to be made use of through an equality action plan that sets out objectives that the organisation wishes to achieve in relation to equality and the steps that it will take to achieve these objectives.

Employer networks, trade unions and NGOs also have a key role to play in building this equality competence within their different sectors. Equality competent organisations will be central in ensuring that discrimination against Roma and Traveller people does not happen.

► **Support advocacy**

NGOs and trade unions can make a valuable contribution in developing and supporting advocacy for and by Roma and Traveller people. Advocacy initiatives can raise the rights awareness within the Roma and Traveller communities, can support individual Roma and Traveller people to exercise their rights and can build a culture of compliance among employers and service providers by making them aware of cases taken under equality legislation. NGOs across the EU have identified a number of effective advocacy tools, providing good practice examples for NGOs and other actors in this field of supporting advocacy by and for Roma and Traveller people. These tools involve the use of collective action (or *actio popularis*) rights, strategic litigation, situation testing as well as training for potential victims of discrimination.

Making equality legislation work for Roma and Travellers: achieving good practice at EU level

The European Commission has undertaken a wide range of actions to eradicate inequalities faced by Roma and Traveller people in Europe. A positive legal framework consisting of the instruments of both hard and soft law has been established enabling all relevant actors to be involved in combating discrimination against Roma and Traveller people. In the current context the EU institutions are the key players in creating and sustaining a momentum for equality for Roma and Traveller people.

1. Addressing situations where law does not currently fit – functions of the state, taking account of difference and positive duties

Equal treatment legislation has been a valuable tool in addressing the situation of Roma and Traveller people. It is clear from the work of the equality bodies that this legislation could be further developed to be more effective in the fight against discrimination. In particular the legislation needs to explicitly address the systemic nature of the discrimination experienced by Roma and Traveller people. There are gaps in the legislation in this regard.

The first relates to the functions of the state – where the state is exercising its power rather than providing a service. Examples of such functions include policing and immigration control. It is important that equal treatment legislation would explicitly prohibit discrimination in the functions of the state. The functions of the state are already covered under equal treatment legislation in a small number of Member States.

The manner in which cultural difference is addressed can be very important for Roma and Traveller people. In some instances there is a disregard for cultural difference or disrespect for cultural difference. This is evident in policy making based on assimilationist approaches and in processes of stereotyping of Roma and Traveller cultures. It would be valuable if an explicit duty was imposed by equal treatment legislation on employers and service providers to make reasonable accommodation of Roma and Traveller cultures and identities provided this does not impose a disproportionate burden.

Stereotyping can limit the choices that Roma and Travellers make in relation to their lives. Stereotyping can also influence policy makers, employers and service providers in their decision making. It can be a causal factor in discrimination. Equal treatment legislation does not currently address this issue. Legal provisions could be introduced to prohibit stereotyping of Roma and Travellers.

The Gender Equal Treatment Directive in relation to employment and occupation offers a valuable example of the introduction of positive duties into equality legislation. The Directive requires Member States to introduce gender mainstreaming into the policy areas covered by the Directive and to support employers to be planned and systematic in their approach to gender equality⁴. Similar provisions could be introduced into the Race Directive covering both employment and service provision.

2. Equality mainstreaming

The European Commission has implemented a programme of work to advance equality and/or non-discrimination mainstreaming. This will be reinforced with the provisions of Article 10 of the Lisbon Treaty which require a focus on non-discrimination in all EU policy making. It

⁴Articles 21 (3) and 29 of Directive 2006/54/EC of the European Parliament and of the Council [05.07.2006]

will be important to include a specific Roma and Traveller dimension to the templates developed on foot of this requirement to implement this mainstreaming. This should ensure that Roma and Traveller issues are fully included in all EU activities, plans, policies, programmes and strategies, in a way that respects and accommodates their distinct cultures and identities.

Policy initiatives such as EU 2020, the Open Method of Coordination on Social Inclusion and the Structural Fund regulations could bring the practice of equality mainstreaming into Member State policy making in areas such as employment, social inclusion and Structural Fund programmes. This would enhance the goal of preventing discrimination which is so important in a context of under-reporting of discrimination by Roma and Traveller people.

3. Positive action

Positive action is a tool explicitly enabled by European equality legislation⁵. However, the concept of positive action is still misinterpreted and is not sufficiently used in practice. There is a need to promote positive action as an instrument to fight past and present discrimination and to raise awareness about its usefulness among policy makers, employers and service providers. The European Commission has advanced important work in this regard and could usefully maintain its focus on positive action in order to eradicate the impact of a legacy of discrimination experienced by Roma and Traveller people. Emphasis could be put on supporting the proper understanding of positive action and its various forms, providing financial support for positive action and peer learning in relation to positive action. Positive action could be promoted as a way of breaking the cycle of disadvantage and discrimination associated with membership of the Roma and Traveller communities.

4. Training judiciary, legal profession, police

Full enforcement of anti-discrimination legislation cannot take place without those who apply the law. This means that in order to achieve the highest possible protection against discrimination legal practitioners and judiciary have to be involved in the process. The EU could maintain its focus on these professional groups and invest its resources in capacity building in these sectors. There could continue to be special training actions designed for those jurists representing victims of discrimination and for professional NGOs providing legal assistance for people facing inequalities. There could be an ongoing support for representatives of national judiciaries when it comes to trainings and academic seminars on concepts of discrimination enshrined by EU equality laws. The focus on national courts representatives is especially crucial since they are the only ones competent to apply the EU laws directly in case the national legislation is not in line with *acquis communautaire* standards.

According to the recent survey on discrimination in the European Union (Eurobarometer 2009) the majority of EU citizens prefer to report cases of harassment or discrimination to the police. That means that special anti-discrimination trainings as well as awareness tools should be carried out for enabling national security forces to be competent and responsive to the needs of victims of discrimination. The EU could facilitate and support relevant international exchanges between national professionals in order to disseminate good practices and examples fight against unequal treatment.

⁵ Article 5 of Council Directive 2000/43/EC [29.06.2000]

5. Situation testing

Proving discrimination cases is always a challenge due to their complexity. In many cases, it is difficult to collect appropriate evidences since discriminatory behaviours are often hidden and unofficial. In order to enable victims of discrimination or those standing for their rights (NGOs, trade unions and equality bodies) to reveal the reality of the unlawful action and to present it before national courts, situation testing could usefully be accepted and promoted as a tool for proving unequal treatment. Situation testing is both legal and effective. It is a mean through which the targets of discrimination can empower themselves and test rights already enshrined in law and transform them into reality. Used in a strategic way, situation testing also helps to ensure that the changes on foot of casework are sustainable over time⁶. The European Union could valuably promote this instrument as well as to support exchange of good practices between NGOs, legal professionals and Roma and Traveller groups to create the opportunity of mutual learning in relation to situation testing.

6. Promoting advocacy

The European Commission could play a number of valuable roles in promoting and supporting advocacy initiatives by and for Roma and Traveller people, in particular advocacy initiatives to enable a wider usage of equality legislation by Roma and Traveller people. The European Commission could fund pilot initiatives in this area, promote exchanges of good practice between Member States in this field, and develop and disseminate models of good practice in providing such advocacy.

⁶ Proving Discrimination Cases. The Role of Situation Testing, I. Rorive, CFER / MPG 2009

Equinet making equality legislation work for Roma and Travellers

Equinet is committed to sustaining its commitment to enhance the work of equality bodies on Roma and Traveller issues and to further promoting and supporting the ideas developed in this opinion among equality bodies and among policy makers at EU and Member State level.

1. Sustain dialogue between equality bodies

Equinet as a network bringing together more than thirty equality bodies from all over Europe creates a unique opportunity for mutual learning and support among equality bodies in the field of effectively combating discrimination against Roma and Traveller groups. It is also a source of information about the national situation and specific problems that Roma and Traveller communities face in respective countries as well as about steps being used to challenge these problems through the use of equality bodies' powers.

Equinet and its members will seek to maintain an ongoing exchange and collaboration with respect to Roma and Traveller discrimination and the contribution to be made by equality bodies. Equinet and its members will also seek to maintain collaboration with Roma and Traveller organisations on meeting the challenge of making equality legislation work for Roma and Traveller people.

Specifically, Equinet will contribute to positive change in the situation of Roma and Traveller people by providing a forum for its members to share the successful good practice by equality bodies in responding to Roma and Traveller issues.

2. Disseminate casework

Most equality bodies in Europe are competent to deal with discrimination cases of Roma and Traveller people. Dissemination of successful cases will be strengthened in order to promote good examples of effective redress against Roma and Traveller discrimination by using litigation. This will also enable analysis of how implementation of the Race Directive has affected the experience of discrimination of Roma and Traveller people. Equinet will also draw attention to the judicial processes embarked on in the European Courts and in various European countries.

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