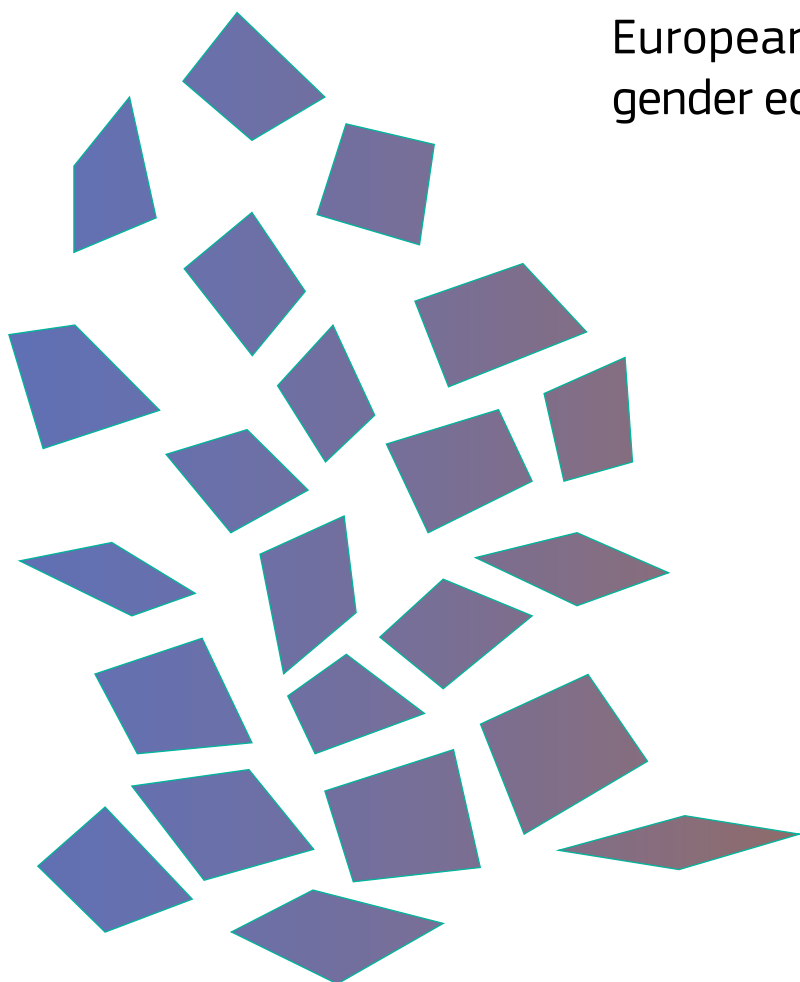




European
Commission

European network of legal experts in
gender equality and non-discrimination



NGOs and trade unions supporting the enforcement of EU non- discrimination law

Including summary

Justice
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EUROPEAN COMMISSION

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Unit D2: Non Discrimination: Anti-Racism and Roma Coordination

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Detailed information on the 27 Member States was provided by the country experts in the non-discrimination field in the form of 'country briefs' based on a standardised questionnaire. This report has been coordinated by Catharina Germaine and Isabelle Chopin from the Migration Policy Group, for the European network of legal experts in gender equality and non-discrimination.

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NGOs and trade unions supporting the enforcement of EU non-discrimination law

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Acronyms

CJEU	Court of Justice of the European Union
CSO	Civil society organisation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
LGBTI/LGBTI+	Lesbian, gay, bisexual, transgender and intersex
NEB	National equality body
NGO	Non-governmental organisation
NGOPD	Non-governmental organisation for persons with disabilities
RED	Racial Equality Directive

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Executive Summary

When I was a boy and I would see scary things in the news, my mother would say to me, ‘Look for the helpers. You will always find people who are helping.’

— Fred Rogers

In the European Union, non-governmental organisations (NGOs) and associations as well as trade unions have played and continue to play a vital role in advancing non-discrimination law. National and pan-European organisations and trade unions contributed in essential ways to the adoption of Article 13 of the Treaty of Amsterdam and, subsequently, of what we see today as the corpus of EU equality law. But the role of NGOs and trade unions in promoting non-discrimination law in Europe is not limited to the past or to advocating for better European standards. They also continue to have a broader role in advancing equality, preventing and combating discrimination, and in advocating for equality and human rights by contributing to the effective enforcement of the national norms implementing the Equality Directives – the **Racial Equality Directive (2000/43/EC)** and the **Employment Equality Directive (2000/78/EC)**.

Through their direct or indirect support for victims of discrimination, the strategic litigation they bring before national equality bodies (NEBs), national courts or European courts, through their continuous monitoring, reporting and advocacy at national and European level, through the capacity-building work they provide for their own constituencies as well as other stakeholders and through their awareness-raising work targeting the general public, NGOs and trade unions are key actors, contributing to a more equitable and inclusive Europe. This report aims to provide a picture of their substantive efforts, the limitations and challenges they encounter and some of their inspiring successes, as well as the promising practices put in place by some Member States to help the helpers meet their mandate.

EU equality law has set out a specific legal framework that supports the active engagement of NGOs, associations and trade unions in enforcing non-discrimination legislation, firstly by including an obligation for Member States to establish legal standing and secondly by recommending to Member States that they foster social dialogue with social partners and civil society organisations as a priority. Departing from prior approaches in international and European norms, the **Racial Equality Directive (2000/43/EC)**, the **Employment Equality Directive (2000/78/EC)**¹ and the **Gender Equality Directive (2004/113/EC)** explicitly require Member States to establish legal standing so that NGOs, associations and trade unions can play a role in legal proceedings concerning discrimination.

By creating the opportunity for NGOs, associations and trade unions to engage in judicial or administrative procedures on behalf or in support of victims of discrimination, the EU legislation took a proactive step in ensuring the effectiveness of the non-discrimination norms. The academic literature defined this special feature of the Equality Directives as ‘a collective actor defence of rights requirement’,² thus recognising the essential

¹ Article 7 of Directive 2000/43/EC and Article 9 of Directive 2000/78/EC. Also, Article 15 of Directive 2023/970 of the European Parliament and the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work, OJ L132/21.

² Muir, E., Kilpatrick, C., Miller, J., de Witte, B., (eds) (2017), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

role of NGOs in defending these rights. The roles of NGOs, associations and trade unions in supporting the enforcement of non-discrimination law are, however, far more diverse and go beyond legal support provided before national equality bodies (NEBs), courts or other adjudicating bodies as shown by the mapping of national practices presented in this report.

But how does this work in practice? What are the legal and policy arrangements enabling or limiting NGOs, associations and trade unions in achieving their legitimate interest in supporting the enforcement of the Equality Directives? What are the promising models and what are the constraints encountered when making this promise real?

In order to collect recent, accurate information (in the structure of a comparative framework) on how NGOs, associations and trade unions use non-discrimination provisions and make them more effective, a detailed questionnaire was circulated to the EU national non-discrimination law experts who are members of the European network of legal experts in gender equality and non-discrimination for the 27 EU Member States. The questionnaire focused on the different roles NGOs, associations and trade unions can play, covering national highlights/ promising practices, challenges encountered and key strategic cases, as well as their impact. This report is based on the responses and examples provided by the national experts to whom we are very grateful. The report also relied heavily on the comparative work which is carried out annually within the European network of legal experts in gender equality and non-discrimination for the 27 EU Member States.³ References to this valuable resource will be found in the report.

The first chapter introduces the different roles provided by the Equality Directives to NGOs and trade unions – as legal actors acting on behalf or in support of victims of discrimination but also as preferential partners in much-needed dialogue. In setting the scene of the legal standing of NGOs and trade unions (further defined and exemplified in the second chapter), the first chapter reviews the minimum standard, the different types of legal approaches taken at the national level and the requirements provided in the national legislation in order for collective actors to be recognised as having legal standing. Most Member States had to either adopt or amend their legislation to meet the basic requirements provided in the Directives and the chapter concludes with the finding that the Member States which acceded to the Union in 2004 or afterwards adopted a more progressive role for collective actors, often going beyond the minimum standards.

In assessing the requirements introduced in national legislation for the recognition of the legal standing of collective actors, it was important to clarify the meaning of ‘legitimate interest’ in the context of the qualifications for legal standing. This is a concept which is potentially wider and more far-reaching than direct/individual interest or ‘victim status’, given that legitimate interest can include persons who are not victims themselves and who have no direct or individual interest, but who nevertheless have been adversely affected by the act or omission complained against. In this regard, it could be concluded that in the Member States which introduced restrictive interpretations of legitimate interest, we can observe a paradox. NGOs and trade unions are often the only actors with accurate and up-to-date expertise in a specific field; their work allows them to see the broader trends as well as the structural challenges. Thus by denying their ‘legitimate interest’ the courts or equality bodies are deprived of helpful legal expertise and the communities at risk are left without the only defence they might obtain.

³ Chopin, I. and Germaine, C. (2025), *A comparative analysis of non-discrimination law in Europe in 2024*, European network of legal experts in gender equality and non-discrimination, Publications Office of the European Union.

A more restrictive approach appears in Member States in which additional qualifications have to be met by NGOs, such as a certain number of years of existence and/or explicit mention of the fight against discrimination in their statutes or by-laws, a certain number of members or a specific recognition by / registration with the relevant authorities. Additional requirements make it more difficult for NGOs and trade unions to engage in public interest litigation. As evidenced by the changes in Dutch legislation, if the procedural requirements are complicated and sometimes lack transparency, it means the NGOs have to invest more time and expertise in procedural aspects, to the detriment of dealing with substantive legal issues or directly supporting the victims of discrimination.

When briefly introducing the types of engagement, it is to be noted that the Equality Directives do not prescribe a specific standing for NGOs and trade unions, leaving it up to the Member States to identify the legal solution for a broad standing, leading to the possibility to act on behalf or in support of any victim in proceedings. In some Member States, the scope of the standing has been expanded to cover the right to collective representation when seeking collective redress, through *actio popularis* (claims by organisations acting in the public interest on their own behalf, without a specific victim to support or represent) or through class action (claims on behalf of an undefined group of claimants or identified claimants and multiple claims). Not only has the specific legal framework proved to be important in this regard but so has the legal culture, the resources and specificity of the domestic civil society actors and the changes in the legal and political climate. In some Member States, such as Greece or Malta, although the legislation allows for NGOs to have legal standing, there is no publicly available information regarding cases of NGOs or trade unions bringing cases of discrimination, while in Hungary there are no cases identified in which trade unions were engaged in 2020-2023. In spite of limited data collection in this respect, the overall picture seems to be one of moving from underutilisation of legal standing towards increased interest in public interest litigation. This positive trend is confirmed by the emergence of new actors such as legal clinics in Belgium or the Netherlands or of new strategies of pooling together resources in order to equip entities able to take on strategic litigation, as is the case in Austria and Italy.

The first chapter also includes a second section looking at the rationale for the recognition of NGOs and trade unions as partners in dialogue, thus bringing expert voices and voices of the vulnerable into the public deliberations. This section identifies other types of non-judicial engagement, either by trade unions or by NGOs, providing concrete, practical examples of effective partnership between the authorities and the civil society sector. Structured frameworks of engagement and cooperation are illustrated through examples from Portugal or Spain, but examples of ad hoc, temporary engagement are also mentioned, with the caveat that ad hoc engagement lacks sustainability and is often subjective, being defined by the current leadership of the institution.

After the general introduction on the role of NGOs and trade unions as embedded by the Equality Directives, the second chapter goes into greater depth to provide a picture of what has emerged under the collective actor defence of rights requirement. The picture which reveals itself based on the comparative research outlines the different roles NGOs and trade unions play before NEBs and courts and highlights the very different interpretation of locus standi, ranging from strict representation of the victim and submitting observations (e.g. *amicus curiae*) to the more proactive means of collective redress (*actio popularis* and class action). Each of the different types of standing is discussed in a sub-section presenting the legal standards and an overview of the practices in the Member States, as well as promising practices and difficulties encountered. While the Equality Directives only ask Member States to ensure that NGOs and trade unions have the right to represent individuals in administrative or judicial proceedings acting on behalf or in support of victims of discrimination, many

Member States have interpreted this rather limited requirement in order to also grant NGOs the right to use collective redress tools. Hence, this chapter is organised across distinct sub-sections treating the role of NGOs and trade unions. The first sub-section addresses the right to act on behalf of victims of discrimination. The second sub-section describes acting in support of victims and the third sub-section addresses the role of NGOs and trade unions as collective redress actors (*actio popularis* and class action). A fourth sub-section assesses the possibility established in some Member States for NGOs and trade unions to submit observations to the courts or before the NEBs by acting in support of the public interest and not of a preferred party.

The capacity of NGOs and trade unions to act on behalf or in support of the victims of discrimination or, in more progressive models, the standing to file *actio popularis* or class actions, participating in collective redress mechanisms varies across the European canvas. There are countries in which the legal framework allows for more intervention opportunities, while in other Member States there is limited standing for NGOs. The legal constraints are also mirrored by financial constraints – in very few Member States are there mechanisms to support NGOs with public funding so that they can continuously and qualitatively support potential victims of discrimination.

The challenges identified for NGOs in their access to proceedings on behalf of complainants range from lack of standing in the legislation or a standing limited to trade unions or to NGOs in relation to their own members only (thus a restrictive approach to standing), to lack of legal expertise and financial constraints. The latter arise in the form of requirements for mandatory representation by certified lawyers or litigation risks in the form of loser pays rules. The risk of retaliation and political and legal harassment against NGOs championing politically sensitive issues was also identified as a concern for some Member States, especially in periods of democratic regression.

The third sub-section of Chapter two shows that collective redress action is not covered by the two anti-discrimination directives but it has emerged in many Member States. Collective redress can be divided into class action or group action, on the one hand, and *actio popularis*, on the other. Some Member States acted upon the European Commission's 2013 recommendation to the effect that all Member States should introduce collective redress mechanisms to facilitate the enforcement of the rights that all EU citizens have under EU law.⁴ The 2013 Commission Recommendation defines collective redress as:

'(i) a legal mechanism that ensures a possibility to claim cessation of illegal behaviour collectively by two or more natural or legal persons or by an entity entitled to bring a representative action (injunctive collective redress);

(ii) a legal mechanism that ensures a possibility to claim compensation collectively by two or more natural or legal persons claiming to have been harmed in a mass harm situation or by an entity entitled to bring a representative action (compensatory collective redress).'

In addition, the Court of Justice confirmed the possibility for national legislators to provide for such a tool in *Firma Feryn*.⁵ In some countries specific provisions have been adopted and used. In other Member States

⁴ European Commission (2013), Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.7.2013, pp. 60–65.

⁵ Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, ECLI:EU:C:2008:397.

consumer protection norms might be interpreted to allow collective redress mechanisms. There are also countries in which neither *actio popularis* nor class action are permitted in discrimination cases. This is an area in which there are many ongoing developments and there is space for further progress.

One of the key findings of the review of different types of standing across Europe is that opportunity for NGO engagement in support or on behalf of the individual victim or when seeking collective redress (*actio popularis* and class action) not only brings in expertise and a broader equality perspective, but is also a means to boost the defence of rights – by easing concerns regarding uncertainties about the outcome of the case, the litigation costs or the risk of retaliation.⁶ The finding that legislation in some Member States does not provide the possibility for NGOs to file written observations (e.g. *amicus curiae* submissions) is problematic as this opportunity would allow organisations to engage to some extent in court proceedings without incurring the costs associated with a potential loss. In contrast to the status of intervenors, organisations submitting observations do not need to be parties in the case, enabling them to pursue human rights protection with fewer financial and human resources.

The other conclusion drawn in this chapter is that, regardless of the type of legal standing espoused by an NGO or a trade union, the engagement of a proactive actor in anti-discrimination proceedings has multiple advantages. From the perspective of the potential victim of discrimination, the engagement of an NGO or of a trade union helps to overcome many of the deterrent factors, such as lack of legal knowledge about rights and duty-bearers, lack of trust in legal processes and lack of financial resources, or personal deterrent factors, such as physical or mental impairments, linguistic barriers, privacy concerns, and fear of being outed and of victimisation. From the perspective of the court or national equality body, the engagement of an NGO brings in expertise, continuity and an additional shield of protection for the victim, as well as the possibility to see beyond the individual case of discrimination and look at the wider picture of discrimination as a societal phenomenon.

The third chapter introduces key cases in which the contributions of NGOs and trade unions have led to the reshaping of EU equality law. The chapter also includes a discussion of remedies and engagement in monitoring the enforcement of remedies in NGO-initiated litigation. The procedural provisions inserted into the 2000 Directives to grant standing to NGOs and trade unions proved to be the conditions which led to the enforcement of the Directives at the national level, thus further influencing the development of EU equality law by means of interpretation of the directives by the CJEU in preliminary referrals. In this virtuous circle of effective enforcement, NGOs as proactive actors behave as watchdogs monitoring transposition of the standards, as shields and defenders acting on behalf or in support of victims, and as friends of the courts and national equality bodies to which they lend their expertise. They also step in as initiators and facilitators of dialogue between the CJEU and domestic courts, a much-needed dialogue which in itself contributes to the development of EU law.

This chapter proposes the thesis that we are witnessing the development of a European brand of public interest litigation,⁷ with equality strategic litigation becoming an important tool used by NGOs to bring the standards of EU anti-discrimination law home and to contribute to changing society and to challenge the status quo.

⁶ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM(2021)139 - [Application of Racial Equality Directive and Employment Equality Directive](#).

⁷ Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds) (2025), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

Bringing forward landmark cases that challenge discriminatory laws or practices thereby helps to shape future legislation and judicial interpretations both at the national and European levels.

The examples of equality strategic litigation at the national and European level included in this chapter present the trajectory of cases led by NGOs or trade unions, looking not only at the litigation per se but also at the work with the beneficiaries, the coalition building and the strategic communication around the cases, as well as follow-up work. Acknowledging the transformative potential of European anti-discrimination law and the key role played by collective legal actors in its enforcement, this chapter concludes that locus standi for organisations is undoubtedly a huge achievement of EU non-discrimination law in that it encourages the litigating potential of active citizenship.⁸

NGOs, associations and trade unions cannot typically bring direct actions before the Court of Justice of the European Union (CJEU) unless they are directly and individually affected by an EU act. However, in their quest to promote substantive equality and ensure the effectiveness of non-discrimination mechanisms, NGOs, associations and trade unions may support legal actions brought by individuals or other organisations or – if the national legislation allows for this type of legal standing – they may engage in public interest litigation to seek collective redress. In this way, NGO/association or trade union input may influence the CJEU interpretations of EU law. This has already happened in several landmark cases, some of which are included in the third chapter as examples.

The third chapter also looks at the different types of remedies provided to NGOs and trade unions engaging in equality strategic litigation, highlighting approaches under which the remedies provided for individual or collective complainants are similar, diverse and comprehensive in their scope, with waivers for litigation costs which reduce the financial burdens or the risks of *bona fide* collective actors.

The fourth chapter provides a glimpse of other roles undertaken by NGOs and trade unions besides legal mobilisation. Examples from the national level show NGOs active in monitoring the transposition of EU equality law at the national level; the enforcement of domestic norms; advocating for improvements to national legislation or policies and subsequent monitoring and reporting of potential infringements; running public campaigns to educate disadvantaged groups, citizens, civil servants and legal professionals; providing comprehensive support packages including non-legal services such as social services and psychological support; and establishing the safe spaces which are required for community building.

The effectiveness of equality and non-discrimination provisions depends on the capacity of associations, organisations and trade unions to raise awareness with the general public, to monitor and document cases, to provide support services for victims and to make the rights of victims enforceable (through support for victims and by engaging in judicial or administrative proceedings), as well as to engage in dialogue with the local, national or European authorities through education and advocacy work.

The last chapter provides a brief overview of the highlights revealed by the mapping of national norms and practices and the key recommendations which emerged for how to fill the gaps. The main lessons focus on ensuring a legal framework that will foster legal activism by NGOs and trade unions, including in the form of granting collective redress standing. Linked to this conclusion is another one related to financial support: access

⁸ Belavusau, U. and Kochenov, D. (2016), *On the 'Entry Options' for the 'Right to Love': Federalizing Legal Opportunities for LGBT Movements in the EU*, EUI Working Paper LAW 2016/09.

to funding is generally an issue for NGOs in most Member States as there is no national source of funding to finance the administrative costs of NGOs or services to assist victims. In this regard, Austria, Portugal and Sweden are notable exceptions with dedicated programmes and funds. From the cases reported at the national level, it is important to note that, in order to be effective NGOs also need to develop other legal services connected to discrimination, such as in relation to hate crimes or by providing legal support with access to documentation or other complaints. Furthermore, they should also provide non-legal support, thus empowering their beneficiaries and building safe communities. Another key finding is the importance of coalition-building in formal or informal alliances, bringing together NGOs, trade unions and national equality bodies across general or specific concerns.

The common thread running through the recommendations is the need to identify and support the helpers so that they can continue to effectively support the victims in return. The recommendations are based on some of the promising practices revealed during the mapping of the legislation, policies and practices in EU Member States which means that they are doable and that these inspiring models are already functional. The recommendations are addressed at the European institutions, the Member States, the national equality bodies and the NGOs and trade unions themselves.

A caveat in the comparative analysis of the different types of roles NGOs have or have carved out for themselves in the national context is that NGO access to courts, equality bodies or quasi-judicial bodies enforcing anti-discrimination legislation is also determined by factors that fall outside the reach of EU law. The overall dynamic of the relationship between authorities and civil society is relevant. Other significant factors are the legal litigation culture, the availability of dedicated resources for NGOs and the whole financial package, including accessibility of legal representation costs, the rules on court fees, the availability of legal aid at national level, and (protection against) the risk of having to pay the litigation costs of the other party in the event of failing to convince the courts.

The underlying rationale of the preferential standing of NGOs and trade unions as a tool is that empowering ‘the helpers’ is meant to increase the enforcement of the Equality Directives. Did this rationale stand the test of the transposition into national legislation and follow-up practice? Given the diversity of opportunities and initiatives, it would be close to impossible to attempt to provide an exhaustive view of all the activities and achievements of NGOs, associations and trade unions engaging in promoting non-discrimination across Europe. This report instead aims to provide an overview of the different roles NGOs, associations and trade unions play in the effective enforcement of non-discrimination law both at the national and at the European level, mapping different approaches, promising practices and impact, as well as constraints encountered.

The mapping of key roles played in the Member States by NGOs and trade unions, highlighting practical examples, common approaches and significant differences at the national or even regional level, brought to light a very diverse picture, featuring different roles, different resources, different levels of engagement and different types of impact. Besides the gratitude and respect due to the voluntary sector for taking on this challenge and the inspiration some of the promising practices provide, this mapping of the role of NGOs and trade unions also allows us to conclude that the widening of the role of ‘the helpers’ is both symbolic and impactful. We can also conclude that the standing for NGOs and trade unions is already fulfilling its potential of enhancing the effectiveness of the enforcement of the Equality Directives. This potential is by no means exhausted and the European Union and Member States should continue to empower NGOs and trade unions, so that they can further fulfil their roles in combating discrimination and promoting equality in the EU.

1 Empowering NGOs, associations and trade unions to engage in equality and non-discrimination work

EU anti-discrimination law, originally meant to facilitate the establishment of the EU internal market, gained a life of its own, becoming a trademark of the Europeanisation package. As noted in the literature, ‘EU anti-discrimination law has progressively grown beyond its internal market origins. That law is no longer a means to an end but an end in itself which implements the value of equality on which the EU is founded’.⁹ With the fight against discrimination being a compelling priority across Europe, opening up the space for intervention for a diverse range of actors also became a priority. As a reminder, the Equality Directives were adopted at a moment when European institutions were reacting to the ascent in Austria of Jörg Haider’s Freedom Party, so the Equality Directives also served a symbolic function: ‘they were supposed to make a strong statement against racism, xenophobia and right-wing extremism’.¹⁰ Given the current context in Europe, this reminder seems all the more relevant; when illiberal forces attack the very fundamentals of the Union and of what being European means, recognising and supporting the role of civil society in affirming equality and protecting potential victims of discrimination is more necessary than ever.

Historically, NGOs and trade unions had a significant role in advancing equality, preventing and combating discrimination, and in advocating for equality and human rights by contributing to the adoption of Article 13 of the Treaty of Amsterdam (Article 19 of TFEU) and, subsequently, to the effective implementation of the national norms implementing the Equality Directives.¹¹ However, their role is by no means over – on the contrary, their standing has been consolidated and is gradually expanding.

National and pan-European organisations and trade unions contributed in essential ways to the adoption of the landmark Equality Directives: the **Racial Equality Directive (2000/43/EC)**,¹² the **Employment Equality Directive (2000/78/EC)**¹³ and the **Gender Equality Directive (2004/113/EC)**.¹⁴ The role of NGOs and trade unions in promoting non-discrimination law in Europe is not, however, limited to the past. More recently, NGOs and trade unions were involved in the consultations leading to the adoption of the **Standards for Equality Bodies Directives (2024/1499 and 2024/1500)**.¹⁵ This engagement has been sustained through the promotion of the Equality Directives, initially by pan-European and national NGOs, and it is now continuing in

⁹ Belavusau U. and Henrard, K. (eds) (2018), *EU anti-discrimination law beyond gender (Foreword and front matter)*, Oxford, Hart Publishing.

¹⁰ Oliveira, Á. (2017), ‘What difference does EU law make? The added value of EU Equality Directives on access to justice for collective actors’ in Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

¹¹ Schiek, D., Waddington, L. and Bell, M. (2007), *Cases, materials and text on national, supranational and international non-discrimination law*, Oxford, Hart Publishing.

¹² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180.

¹³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.

¹⁴ Holzhaacker, R. (2009), *The role of NGOs and trade unions in combating discrimination*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G4.

¹⁵ Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC, ST/10788/2023/REV/1 OJ L, 2024/1499. Council Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU, PE/92/2023/REV/1, OJ L, 2024/1500.

the context of assessing and monitoring the transposition of the 2024 Directives, in order to ensure the legal standards regarding equality are connected to reality.

To mark the interdependent relationship in this sustained dialogue between European institutions and NGOs and trade unions, EU equality law standards set out a specific legal framework that supports the active engagement of NGOs, associations and trade unions in enforcing non-discrimination legislation. The provision creating the possibility of access to courts or national equality bodies for associations and trade unions was introduced in 2000 in the Equality Directives. It was then picked up and included in 2002 and 2006 when the European legislator amended the Directive on sex equality in employment and further extended this provision to free movement of workers in 2014.¹⁶

This dynamic in which NGOs and trade unions are accorded a preferential status in order to increase access to justice is done in two different ways. Firstly, the role of the NGOs is recognised by setting out an obligation for Member States to establish legal standing for associations, organisations and other legal entities which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with the directives.¹⁷ Secondly, the directives confer on NGOs the role of partner in dialogue by recommending to Member States that they foster social dialogue with social partners and civil society organisations as a priority in facilitating democratic deliberation.¹⁸ Both lines of intervention are effectively empowering NGOs and trade unions to become proactive actors in ensuring the enforcement of the Equality Directives.

The innovation of the expanded legal standing for collective actors introduced in the transposition of the 2000 directives facilitated litigation before both national courts and national equality bodies and before the Court of Justice. Proactive collective actors were able to respond on behalf or in support of victims and this allowed the courts to further interpret and enforce the legal provisions, leading to a progressive interpretation.

One example from Bulgaria concerns discriminatory practices in relation to the electricity supply in Roma communities and triggered the *Belov* and *CHEZ* judgments of the Court of Justice of the European Union.¹⁹ The active role Bulgarian NGOs played in advocating for a comprehensive anti-discrimination framework during the transposition of the Equality Directives facilitated their domestic litigation work and subsequently led to the engagement in this dialogue of the CJEU. In the words of Lilla Farkas when describing the Bulgarian legal

¹⁶ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ L 128, 30.4.2014.

¹⁷ Article 7 of Directive 2000/43/EC and Article 9 of the Directive 2000/78/EC: 'Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.' Similarly, Article 15 of Directive 2023/970 of the European Parliament and the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work, OJ L132/21: 'Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with criteria laid down in national law, a legitimate interest in ensuring equality between men and women, may engage in any administrative procedure or court proceedings regarding an alleged infringement of the rights or obligations relating to the principle of equal pay. They may act on behalf of, or in support of, a worker who is an alleged victim of an infringement of any right or obligation relating to the principle of equal pay, with that person's approval.'

¹⁸ Article 12 of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180. Article 14 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303. Articles 21 and 22 of the Gender Equality Employment Directive 2006/54, OJ 2006 L 204/30.

¹⁹ Judgment of 31 January 2013, *Valeri Hariiev Belov v CHEZ Elektro Balgaria AD and others*, C-394/11, ECLI:EU:C:2013:48 and Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v Komisija za zashtita ot diskriminatsia (Nikolova)*, C-83/14, ECLI:EU:C:2015:480. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

context which allowed this legal mobilisation: ‘Having created an advanced legal opportunity structure, [NGOs] continued to play a significant role in its strategic enforcement’.²⁰

It has been noted that multidimensionality is one of the specificities of equality and non-discrimination law.²¹ Enlarging the playing field to include access to justice for collective actors such as NGOs and trade unions in courts and before equality bodies but also, more generally, their recognition as partners in dialogue, increases the number of relevant actors acknowledged as stakeholders. The multiple roles of the diverse stakeholders further add to the multiple layers which already combine diverse protected grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, different areas of application and various redress mechanisms. With this generous and ever-changing kaleidoscope of layers of protection, the equality and non-discrimination law clauses in the European Union have become increasingly effective at responding to the pervasive and complex challenge of discrimination. The widening of the role of ‘the helpers’ is both symbolic and impactful and it has the potential for continuous enhancement of the protection against discrimination in Europe.

1.1 Specific provisions on locus standi for NGOs and trade unions

‘Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of [these Directives] are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under [these Directives].’

Article 7(2) of the Racial Equality Directive and Article 9(2) of the Employment Equality Directive

Departing from prior approaches in international and European norms, the **Racial Equality Directive (2000/43/EC)** and the **Employment Equality Directive (2000/78/EC)** explicitly require Member States to establish legal standing so that NGOs, associations and trade unions can play a role in legal proceedings concerning discrimination. The result of advocacy by the network of NGOs and experts convened as the Starting Line Group, the provision on access for NGOs and trade unions to courts and administrative or quasi-administrative bodies was a novelty in EU law.²² Similar provisions authorising collective actors to take legal action if they are acting ‘either on behalf or in support of the complainant’ can be found in other EU directives adopted subsequently.²³

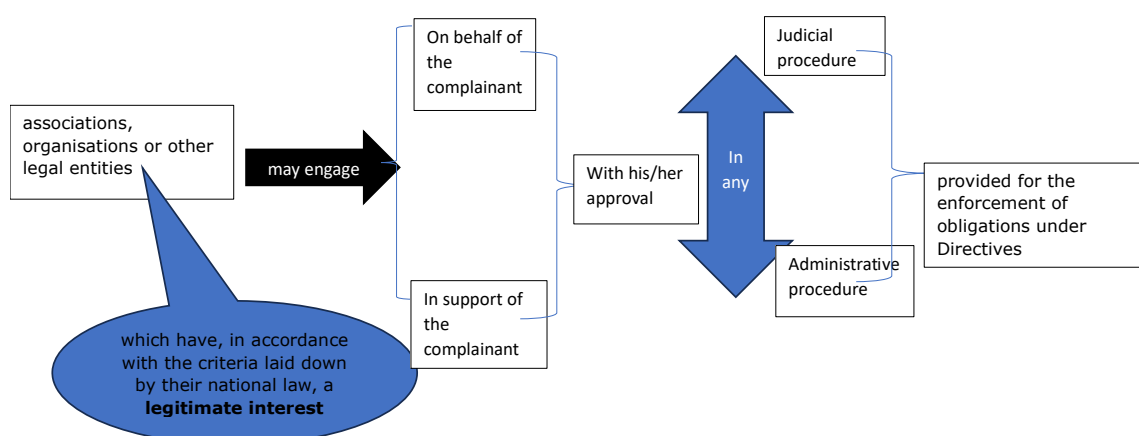
²⁰ Farkas, L. (2017), ‘NGO and equality body enforcement of EU anti-discrimination law: Bulgarian Roma and the electricity sector’ in Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

²¹ Schiek, D. and Chege, V. (2009), *European Union non-discrimination law: Comparative perspectives on multidimensional equality law*, London and New York, Routledge.

²² Lappalainen, P. (2022), ‘The role of civil society advocacy in equality law – Lessons for the Nordics’, in Carlson, L. and Lundstedt, L., *Scandinavian Studies in Law: Equality*, Vol. 68, Stockholm, Stockholm University Law Faculty, pp. 451-490.

²³ Article 17 (2) of the Equal Treatment Directive 2006/54/EC ([2006] OJ L204/23); Article 9(2) of the Directive 2010/41/EU on self-employed workers and equal treatment ([2010] OJ L180/1); Article 8(3) of the Equal Treatment in Goods and Services Directive 2004/113/EC ([2004] OJ L373/37).

Article 7(2) of the Racial Equality Directive and Article 9(2) of the Employment Equality Directive



The text of the Directives provides for limited guidance, being a rather cryptic minimum standard. Firstly, the subject of the locus standi are associations, organisations or other legal entities. It is a prerequisite that these legal entities comply with the criteria laid down in their country's national law on non-profit organisations in general or in the specific anti-discrimination legislation. Importantly, the directives require that such entities have 'a legitimate interest in ensuring that the provisions of [these directives] are complied with'. The legitimate interest assessment is also left to the national authorities which, in practice, means that usually, but not always as we will see, formal compliance is enough.

Secondly, concerning the type of standing granted, the Directives ask the Member States to recognise the standing for these entities so that they 'may engage, either on behalf or in support of the complainant.' Thus, the minimum standard required by the Directives opens different venues, for instance filing the complaint, advising or even representing the victims on their behalf, as well as intervening in the case in support of the complainant. The phrasing in the Directives opens the floor for the Member States if they want to take a proactive approach and expand this standing by activating the collective redress tool (*actio popularis* or class action), a route chosen by some Member States as discussed in the second chapter. NGOs and trade unions may also be allowed to submit observations to the courts or NEBs, not in support of any of the parties but in their own name in accordance with national law and practice.

Thirdly, the scope of engagement for NGOs is defined as 'any judicial and/or administrative procedure provided for the enforcement of obligations' under these directives. This means that the standing granted to NGOs and trade unions applies across the entire spectrum of proceedings provided in the domestic legislation – civil or administrative courts, national equality bodies and other quasi-judicial bodies responsible for enforcing anti-discrimination provisions (depending on the national institutional mechanism, these may be bodies such as labour inspectorates, education inspectorates or consumer protection agencies).

Fourthly, the engagement should be undertaken with the approval of the complainant. In this case the Equality Directives also leave room for interpretation during the transposition and in practice some Member States have found ways to accommodate potential limitations in this regard.

Under the Equality Directives, EU Member States had some discretion as to how these requirements were implemented in terms of the type of legal standing NGOs can have and whether this standing is established through specific anti-discrimination legislation or by the general means of civil or administrative procedures.

As noted in the comparative assessment of the legal standards at the European level, national legal orders present many different patterns that are difficult to compare:

‘In some countries, the relevant anti-discrimination legislation provides associations and/or trade unions or other organisations with some legal standing specifically in cases of discrimination. These include **Austria, Belgium, Bulgaria, Croatia, Cyprus,²⁴ Czechia, Estonia,²⁵ France, Germany, Greece,²⁶ Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden**. In a number of countries however, no such specific provision is made for cases of discrimination, although general provisions of civil, administrative or labour law provide some standing to associations under certain conditions (e.g. **Denmark, Latvia, the Netherlands and Poland**).’²⁷

In order to ensure the transposition of these provisions ‘most Member States had to change their legislation in order to comply with the new equality directives, notably regarding associations’ access to courts’ as noted by Álvaro Oliveira.²⁸ Some Member States built on prior legislation, as was the case in **Belgium, the Netherlands, Portugal, Spain** and the **United Kingdom**. Other Member States, such as **Bulgaria, Czechia, Greece, Italy** and **Romania**, had to fill a legal void and they either chose to do the minimum necessary during the transposition process or went beyond the minimum standards, expanding the scope of the NGO locus standi. Olivera also noted that:

‘the impact of the Directives was generally stronger in Southern countries and in those that acceded to the Union in 2004 or afterwards. Several among these countries lagged behind in granting collective actors, such as interested associations, the right to access courts. However, it was also the case that, when they transposed the Directives, often those Member States went beyond the strict minimum necessary to comply with them.’²⁹

The standing of NGOs and trade unions is also an area of continuous activity and of dialogue between local and central governments, where the legislation allows, as evidenced by a 2025 decision by the Spanish Constitutional Court which affirms the legal standing of associations in administrative proceedings after a dilution of the relevant standard by the Autonomous Community of Madrid. The case is quite symbolic in highlighting the constant progress towards a wider legal standing.

2025 case of the Spanish Constitutional Court affirming legal standing in administrative proceedings

The Law 3/2016, of 22 July 2016, on comprehensive protection against LGBTIphobia and discrimination on grounds of sexual orientation and gender identity adopted by the Autonomous Community of Madrid provided for measures to protect LGBTI persons against any infringement of their right to equality taking place in the

²⁴ In Cyprus, only in the private sector.

²⁵ In Estonia, the legal standing of organisations is limited to quasi-judicial proceedings before the Gender Equality and Equal Treatment Commissioner and conciliation proceedings before the Chancellor of Justice. No such standing is provided before the courts.

²⁶ In Greece, however, associations, organisations or trade unions acting on behalf of victims of discrimination must do so through an accredited lawyer, which is quite costly.

²⁷ Chopin, I. and Germaine, C. (2025), *A comparative analysis of non-discrimination law in Europe in 2024*, European network of legal experts in gender equality and non-discrimination, Publications Office of the European Union.

²⁸ Oliveira, Á. (2017).

²⁹ Oliveira, Á. (2017).

fields under the competence of the Community of Madrid.³⁰ The law established an administrative procedure for this purpose and recognised certain entities as ‘interested parties’ (interesados), effectively granting them legal standing to trigger or take part in such administrative protection procedures. Specifically, Article 65 stated that LGTBI associations, entities and organisations, as well as those having as their objective the defence and promotion of human rights, would be deemed to have collective legitimate interests and, consequently, legal standing to act as interested parties in administrative procedures aimed at protecting the principle of non-discrimination of LGTBI persons.³¹

In December 2023, the Community of Madrid amended this law so that these associations were excluded from having standing as ‘interested parties’ — and thus lost legal standing to act — in criminal proceedings in courts and in administrative procedures which might result in a penalty, even if the associations represented an explicit victim or injured party with their authorisation.³² The Spanish Constitutional Court notified by the President of the Government of Spain, found the exclusion of associations, entities and organisations representing the LGTBI community from having legal standing in criminal court of justice proceedings under the Madrid law to be unconstitutional.

Concerning the exclusion of LGTBI associations, entities and organisations from standing to act in administrative proceedings that may result in an administrative sanction, the Constitutional Court referred to Article 31.2 of Law 15/2022 on equal treatment and non-discrimination. This provision establishes that trade unions, professional associations of self-employed workers, consumer and user organisations, and associations and organisations legally constituted for the defence and promotion of human rights may be considered interested parties in administrative proceedings in which the administration must rule on a situation of discrimination covered by the Law, provided that they have obtained authorisation from the affected person(s). The Constitutional Court held that this grants collective legal standing to such entities in any administrative procedure (including sanctioning proceedings).³³

A specificity of EU equality law consists of the additional layer of fragmentation which is triggered by the way in which national legislation responds to the directives within a unified anti-discrimination law or through a legal anti-discrimination framework comprised of the interweaving of different norms. In such a case, the right of NGOs and trade unions to engage in litigation should be the same, even if the standing is fragmented based on the subject-matter of the specific legislation granting such a right. This is the case in **Italy** where different subject-matter litigation leads to a broader or a narrower standing for associations or in **Malta** where different pieces of legislation such as the Equal Treatment in Employment Relations Act, the Equal Treatment of Persons Order, the Equal Opportunities (for Persons with Disability) Act and the Employment and Industrial Relations Act provide for a similar standing for any association or organisation (or any legal entity that has a legitimate interest in ensuring that the specific anti-discrimination provisions apply) to institute any judicial or administrative procedure provided for the enforcement of the obligations under the specific regulations, on

³⁰ Spain, Law 3/2016 of the Autonomous Community of Madrid, of 22 July.

³¹ European network of legal experts in gender equality and non-discrimination, Spain, Flash report 31.

³² Spain, Law 18/2023 of the Autonomous Community of Madrid of 27 December 2023.

³³ Spain, Constitutional Court, Judgment of the Spanish Constitutional Court dated 9 April 2025 (Judgment 96/2025), which resolves an appeal of unconstitutionality brought by the President of the Spanish Government against the sole article of Law 18/2023, of 27 December 2023, amending Law 3/2016, of 22 July 2026, on Comprehensive Protection against LGTBIphobia and Discrimination on grounds of Sexual Orientation and Gender Identity in the Autonomous Community of Madrid.

behalf or in support of the person against whom an unlawful act of discrimination has been committed, with the approval of the complainant.

By creating the opportunity for NGOs, associations and trade unions to engage in judicial or administrative procedures on behalf or in support of victims of discrimination or *in nome proprio*, the EU legislation took an additional step in ensuring the effectiveness of the non-discrimination norms. This approach not only brings in expertise and a broader equality perspective, but it is also a means to boost the defence of rights by easing the concerns of the victims regarding the uncertainties as to the outcome of the case, the litigation costs and the risk of retaliation.³⁴

1.1.1 What are the requirements for NGOs and trade unions to qualify for locus standi?

The Equality Directives mention the legal standing for ‘associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of [these Directives] are complied with’.

In some countries, legal standing – the possibility to engage on behalf or in support of the potential victims – is recognised without any limiting requirements, while in other Member States legal standing comes after meeting specific requirements or it is granted to pre-defined entities.

In some Member States, legal standing for associations, organisations and/or trade unions is not dependent on specific criteria other than having a legitimate interest in the issue raised by the case. However, a seemingly open provision does not guarantee a straightforward application in practice. In **Cyprus**, non-discrimination law provides that organisations are entitled to engage on behalf of victims if they have a ‘legitimate interest’. This contrasts, however, with the constitutional principle limiting legal standing to individuals who are personally aggrieved. Although laws transposing the *acquis* rank higher than the Constitution, these conflicting provisions have not been clarified in the jurisprudence and, since 2017, the equality body has stated that it only accepts complaints from the victims themselves.³⁵

This change in the approach of the equality body emerged even though the 2017 law governing the operation of NGOs did not address the question as to whether NGOs can pursue cases in court on behalf of victims.³⁶ NGO representatives are not considered to have a legitimate interest and the term ‘community’ was defined as meaning the Greek and Turkish communities, as defined in Article 2 of the Constitution. The original test used to determine whether an association had an ‘existing legitimate interest’ was hard to satisfy, as it required that the specific administrative act ‘directly affects’ the whole or part of the association’s membership, whereas if it affects only one member, or if there are conflicting interests between members, the association has no legitimate interest.³⁷

³⁴ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘the Racial Equality Directive’) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (‘the Employment Equality Directive’), [COM\(2021\)139 - Application of Racial Equality Directive and Employment Equality Directive](#).

³⁵ Cyprus, *Philenews* (2018), ‘[Καβγάς για τις αρμοδιότητες της Επιτρόπου Διοικήσεως](#)’ (Quarrel over the mandate of the Commissioner for Administration), 26 April 2018.

³⁶ Cyprus, [Law Revising the Laws on Associations and Foundations and Annulling the Law on Registration of Clubs](#), N. 104(I)/2017.

³⁷ Cyprus, Supreme Court, [Police Association of Cyprus v. Republic of Cyprus](#) (1991), 3 A.A.D. 146, 14 February 1991 (in Greek).

In three different cases, the Supreme Court in Cyprus rejected the applicants' claim for, *inter alia*, lack of legitimate interest. In two cases, the claim concerned a financial prize granted to athletes with disabilities, which was lower than the award for other athletes. However, the claim was rejected, as the claimant was not yet entitled to the prize at the time of filing the complaint.³⁸ In the third case, the applicant was deemed to lack a legitimate interest since there was no positive legislative provision entitling her to claim the right to extend a regulation on the age of retirement so as to include her age group.³⁹

At the other end of the spectrum, in **Croatia**, the right to intervene is recognised for bodies, organisations, institutions, associations or other people engaged in the protection of the right to equal treatment relevant to the group whose rights are at issue in the proceedings. In **Bulgaria**, public interest NGOs and trade unions may either join proceedings brought by a victim in their support or represent the complainants directly. Still, under settled Supreme Administrative Court case law, NGOs as public interest law litigants expressly have no standing to appeal against decisions of the Bulgarian national equality body, the Protection Against Discrimination Commission (PADC), as such litigants are considered to lack 'a legal interest', not being personally affected by a PADC decision.⁴⁰

What does 'legitimate interest' mean and how can it be documented? The concept of 'legitimate interest' is potentially wider and more far-reaching than direct/individual interest or 'victim status', as legitimate interest can include persons who are not victims themselves and who have no direct or individual interest, but who nevertheless have been adversely affected by the act or omission complained against. If NGOs representing victims are not seen by the court as having sufficient 'legitimate interest' in order to pursue the judicial review procedure for annulling a discriminatory administrative decision, there is a paradox. This is because NGOs are often the only actors with accurate and up-to-date expertise in a specific field and they often cater for the aggregated needs of the communities they serve. Thus by denying their 'legitimate interest' the courts are deprived of helpful legal expertise and the communities at risk are left without the only defence they might get.

a. Specific statements in statutory documents as a requirement

A less intrusive approach seems to be found in countries where the requirement is transposed as the condition that the organisation's statutory documents must explicitly mention its work to combat discrimination and promote equality. For example, in **Belgium** any legal persons who state as their objective defending human rights or combating discrimination and whose activities satisfy certain conditions of effectiveness contained in the Civil Procedure Code, as well as workers' and employers' organisations, may engage in proceedings on behalf or in support of a victim of discrimination. However, where the victim of the alleged discrimination is an identifiable (natural or legal) person, an action brought by such bodies will only be admissible if they prove that the victim has consented to the action.

³⁸ Cyprus, Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation*, no. 1406/2008, 10 February 2010; Supreme Court, *Andreas Potamitis et al v. Cyprus Sports Organisation*, no. 1377/2008, 30 January 2012.

³⁹ Cyprus, Supreme Court, *Eleni Kyriakidou v. Cyprus Broadcasting Corporation*, no. 18/2008, 3 December 2010.

⁴⁰ Bulgaria, Sofia Appeal Court, Decision no. 7863 of 12 June 2018 in Case no. 697/2017; Ruling no. 6491 of 17 May 2018 in Case no. 5486/2018.

The solution in Article 3 of the **Hungarian** Equal Treatment Act⁴¹ was to define what a ‘non-governmental and interest representation organisation’ means:

- Any non-governmental organisation established under the Act on the right to assembly, public benefit status and the operation and funding of non-governmental organisations,⁴² whose objectives set out in its articles of association or statutes include the promotion of equal social opportunities or catching up by disadvantaged groups defined by an exact enumeration of the relevant protected ground(s) or the protection of human rights defined by an exact enumeration of the relevant protected ground(s).
- A minority (nationality) self-government in respect of a particular national and ethnic minority.
- A trade union in respect of matters related to employees’ material, social and cultural situation and living and working conditions.

Only those non-governmental organisations and foundations whose objectives set out in their articles of association or statutes include the promotion of equal social opportunities for disadvantaged groups or the protection of human rights are authorised to act on behalf or in support of the victims and they may only act to promote the rights of those protected groups that are expressly mentioned in their articles of association. There are no further conditions for legal standing in relation to associations. To prove its legal standing, the non-governmental and interest representation organisation must submit its statutes (so that it can be established whether the entity is entitled to act in relation to the given complaint) and the authorisation signed by the individual victim. NGOs in Hungary are active in engaging on behalf of victims. Courts and other authorities generally accept their mandate to do so and do not hinder them in carrying out their related activities.

In relation to a similar requirement, the Supreme Court of **Poland** clarified that an NGO does not need to explicitly state in its statutes that it participates in court proceedings.⁴³ However, the subject matter of the case must be connected to the organisation’s statutory objectives. This means that NGOs must carefully draft their statutes to ensure they can act effectively in various equality-related areas. Similarly, under **Portuguese** Law 93/2017, associations have to be incorporated with specific aims listed in their by-laws in order to have legal standing. They must aim to protect people against discrimination or protect fundamental rights in general. There are no membership or permanency requirements. ‘Legitimate interest’ is proven by the aims of the associations as contained in their by-laws. Notably, NGOs registered abroad can also act on behalf or in support of victims.

In **Lithuania**, the Law on Equal Treatment stipulates that associations whose field of activity encompasses representation in the courts of victims of discrimination on a particular ground of discrimination have the right to engage on behalf or in support of complainants, with their approval, in judicial and administrative procedures. However, given the lack of cases, it is unclear how this provision interacts with more restrictive general provisions of the Code of Civil Procedure and the Law on the Proceedings of Administrative Cases.

⁴¹ Hungary, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról*) (ETA), 28 December 2003. Available at: [Hungary](#), 28 December 2003.

⁴² Hungary, Act CLXXV of 2011 on the right to assembly, public benefit status and the operation and funding of non-governmental organisations 14 December 2011.

⁴³ Poland, Supreme Court, [decision of 26 May 2022](#) (II CSKP 662/22).

b. Additional requirements such as number of years of activity or number of members

In other countries, additional requirements are established at the national level so that legal standing is limited to those associations or organisations that fulfil certain qualifications, based on, for example, a certain number of years of existence and/or explicit mention of combating discrimination in their statutes, a certain number of members or a specific recognition/ registration with the relevant authorities (ministry of justice or ministry of labour, other relevant authorities). In **Luxembourg**, under the General Anti-Discrimination Law of 28 November 2006, associations must have legally existed for five years and be recognised by the Ministry of Justice as being nationally representative in the field of anti-discrimination for them to assist a victim of discrimination before the courts.

In **France**, until 2025 NGOs had to have been in existence for over five years, with an additional requirement that they declared in their statutory documents that they were established to act/fight against discrimination, in order to be able to act either on behalf or in support of victims of discrimination, before any jurisdiction.⁴⁴ The fact that an NGO had to be in existence for five years prior to having standing before the courts was an important limitation for initiating new judicial mobilisation. For example, the Network for Judicial Action Against Discrimination (*Réseau pour Agir en Justice contre les Discriminations* (RAJD)) was established in July 2021,⁴⁵ but faced having to wait for five years to have judicial standing. Legislation adopted in 2025 reformed the conditions of enforcement for collective action in discrimination cases and extended access to group action to NGOs which have been certified (Article 16 I par c- 1.). This applies to all areas of discrimination, putting an end to the exclusivity of trade unions in employment-related matters. In addition, it opened standing to initiate action to NGOs which have been in existence for one year, facilitating the development of NGOs that support judicial action in discrimination matters, or two years' existence if the NGO only requests the end of the violation (Article 16 C 1. para 1).⁴⁶

In some Member States, the qualification requirements concern the number of members of the association. For example, in **Germany**, under the General Equal Treatment Act, anti-discrimination associations are entitled to support claimants in court proceedings, provided that they fulfil certain criteria, such as having at least 75 members and operating permanently, rather than on an ad hoc basis to support one claim.

c. Prior approval requirement

A very specific approach was taken by **Austria**, where one specific statutory organisation, the Litigation Association of NGOs Against Discrimination, has been expressly given third-party intervention rights in the courts in support of complainants, with their consent, according to Section 62 of the Equal Treatment Act. All specialised NGOs can join this association, while non-members can intervene before the courts if they prove their legal interest in the case. Similarly, in disability-related cases concerning the workplace, the Austrian

⁴⁴ France, Article R779-9 of the Code of Administrative Justice; Article 3 of the New Code of Civil Procedure; Article 2 of the Code of Penal Procedure; Articles L1134-2 and L1134-3 of the Labour Code; Articles L131-1 ff of the General Code of Public Service in the public sector; Article 8, paragraphs 1 and 2, Article 2 of Law no. 2001-1066 of 16 November 2001, Article 10 of Law no. 2008-496 of 27 May 2008.

⁴⁵ [Réseau pour Agir en Justice contre les Discriminations](#).

⁴⁶ France, [Law no. 2025-391 of 30 April 2025 reforming the conditions of enforcement of collective action in discrimination cases](#).

National Council of Persons with Disabilities has been given an explicit right of intervention,⁴⁷ while interventions by the Litigation Association in the same field have also been accepted by the courts.⁴⁸

The picture of the requirements for legal standing for NGOs in **Italy** reflects the different pieces of legislation regulating the fight against discrimination, with 'a fragmentation of rules of procedure' leading to uncertainty.⁴⁹ Regarding the grounds of racial or ethnic origin and disability, associations may engage in proceedings in support or on behalf of complainants only if they are included in a list approved by a joint decree of the Ministry of Labour and Social Policies and the Department for Equal Opportunities as per Article 5 of Legislative Decree 215/2003, implementing Directive 2000/43/EC and Article 4 of the Disability Discrimination Act.⁵⁰ Associations and other bodies must have been officially established for at least one year, and must have been operating continuously in the year immediately before registration, as well as having an official statute establishing that they have a democratic structure; that they do not operate in order to make a profit; and that the promotion of equal treatment and opposition to discrimination is their only or primary aim. Moreover, they must have a budget and a register of members that fulfils certain legal standards, while their legal representatives must not have been sentenced for crimes related to the activity of the association nor act in any form as entrepreneurs or board members of commercial enterprises operating in the same field.

As for the other protected grounds, Article 5 of Legislative Decree 216/2003, implementing Directive 2000/78/EC, entitles trade unions, associations and legal persons to act in support of or on behalf of victims of discrimination on the grounds of religion or personal belief, disability, age and sexual orientation. Thus, standing to litigate is much broader and is granted on an ad hoc basis to any organisation or association regarded as having a 'legitimate interest' in the enforcement of the relevant legislation, without any pre-registration in a special register.⁵¹ In addition, in the field of employment, trade unions have legal standing to engage on behalf or in support of victims of discrimination on all grounds.

The Italian jurisprudence has interpreted these rules in a way that avoids inconsistencies, thus recognising the legal standing of associations acting against discrimination on nationality grounds under the same conditions as those acting against discrimination on grounds of race and ethnic origin. In 2017 the Italian Supreme Court held that two associations had legal standing to act against discrimination on the ground of nationality, notwithstanding the lack of express provision in this regard in the laws implementing Directive 2003/109 on long-term residents and on anti-discrimination. The Italian Supreme Court has interpreted the provisions regarding discrimination on the ground of nationality (Article 44, para. 10, Legislative Decree 286/1998) in accordance with those on discrimination on the ground of racial and ethnic origin, conflating the different provisions.

Prior recognition by the authorities is also required in **Slovenia** where Article 41 of the Protection Against Discrimination Act states that, regardless of the rules defined in the Civil Procedure Act, a person who has experienced discrimination may authorise an NGO active in the field of protection from discrimination or protection of human rights to represent them in judicial proceedings. An NGO is considered to be active in the

⁴⁷ Austria, Act on the Employment of Persons with Disability (*Behinderteneinstellungsgesetz*), Section 7q.

⁴⁸ Austria, Linz Regional Court, *F.v. Linz Linien AG*, case no. 33C1725/127/14, decision of 15 July 2013.

⁴⁹ Passalacqua, V. (2017), 'Advancing EU equality law in Italy: Between unsystematic implementation and decentralized enforcement' in Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

⁵⁰ Italy, Legislative Decree 215/2003, Article 5. See also Decree of the Department for Equal Opportunities of 6.09.2018. Further information available in the dedicated section on the [UNAR website](#).

⁵¹ Italy, Legislative Decree 216/2003. Article 5.

field of protection from discrimination or protection of human rights only if it has been granted the status of an organisation working in the public interest in those fields.⁵² That status is granted by a competent ministry on the basis of the Associations Act⁵³ and in line with the implementing act adopted by the competent ministry for this purpose. This covers non-profit institutions, foundations or unions of associations which are, in addition to associations, the types of NGOs that can be established in Slovenia.

d. Victim consent requirement

While consent of the victim features in most national legislation as a requirement, in a few cases the national legislators have provided for alternative ways to accommodate this requirement. Most Member States adopted legislation without special measures, such as the **Greek** Code of Civil Procedure, which provides that the NGO or trade union must be represented in court by an authorised lawyer (this is not necessary for other bodies such as the Labour Inspectorate). Moreover, the only permitted forms of authorisation are either an official notarised document or a private document with an officially authorised signature (Article 8(3) of Equal Treatment Law 4443/2016). There are no special provisions on victim consent in cases where obtaining formal authorisation is problematic.

A notable exception is found in the **Belgian** legislation. When the victim of the alleged discrimination is an identifiable (natural or legal) person, actions of the entities (NGOs or trade unions) entitled to act on behalf or in support of them will only be admissible if they can prove that the victim has agreed to their action being filed.⁵⁴ However, the Federal Act of 28 June 2023⁵⁵ introduced in to the federal legislation two notable exceptions to the rule requiring mandatory agreement of the victim or their heirs or legal representatives: 1) the victim is deceased and the victim's heirs or legal representatives have already been charged as part of the judicial investigation into the death or it emerges that the victim's legal representatives do not recognise or respect one or more of the victim's protected characteristics; 2) the victim is not in a position to give consent due to their vulnerable situation and their legal representatives are already the subject of an ongoing criminal investigation into discrimination against the victim, or it emerges from the criminal investigation that their legal representatives do not recognise or do not respect one or more of the victim's protected characteristics, or their legal representatives are also not in a position to give consent due to their vulnerable situation.

e. Additional requirements for standing as collective actors

Increased qualification requirements for locus standi raise concerns in the long run. In the **Netherlands**, a law was adopted in 2019 that has significantly increased the requirements to be met by Dutch foundations or associations seeking to engage in proceedings on behalf of victims of discrimination.⁵⁶ On one hand, this act has made it possible for foundations or associations to claim pecuniary damages on behalf of those represented, whereas previously such damages could only be claimed by individual victims. However, foundations and associations engaging in collective action on the basis of Article 3:305a of the Dutch Civil Code now have to meet a series of conditions, including procedures for the representation of the persons on

⁵² In Slovenia, in January 2017, an implementing act was adopted to enable not only associations but also NGOs established as institutes to obtain the status of an organisation working in the public interest: [Rules on Establishing the Status of an Organisation Working in the Public Interest](#) etc., 11 January 2017.

⁵³ Slovenia, [Associations Act](#), 30 May 2006.

⁵⁴ Belgium, Article 31 of the General Anti-Discrimination Federal Act of 10 May 2007; Article 33 of the Racial Equality Federal Act.

⁵⁵ Belgium, Federal Act of 28 June 2023, OJ (Moniteur belge), 20 July 2023.

⁵⁶ Netherlands, Act on the settlement of damages in collective action cases, *Staatsblad* 2019, 130. The Act entered into force on 1 January 2020.

whose behalf they are acting, and a generally accessible website providing information about the foundation or association itself, the proceedings it is engaged in and the possibilities for membership.⁵⁷ Courts may accept collective action claims made by foundations or associations that do not meet the newly imposed requirements if the claim is of an idealistic (non-commercial) nature and the financial interests involved are very limited. In that case, however, no pecuniary damages may be sought.⁵⁸

Additional requirements were introduced concerning the admissibility of collective action claims, including the requirement that the claim must be sufficiently connected with the Dutch legal order and that the organisation must (before taking the case to court) have tried to obtain satisfactory compensation or rebuttal from the perpetrator or otherwise have tried to come to an agreement according to Article 3:305a(3)(b) and (c) of the Civil Code.⁵⁹ In assessing the impact of these amendments, a report from 2024 indicates that the 2019 amendments to Article 3:305a of the Civil Code have made it more difficult for NGOs and trade unions to engage in public interest litigation. The procedural requirements are complicated and sometimes not transparent, which means that NGOs have to invest more time and expertise in procedural aspects, to the detriment of dealing with substantive legal issues.⁶⁰ According to the report:

‘these admissibility requirements are set too high for many public interest groups. Moreover, they are sometimes also applied in cases where no pecuniary damages are sought, the requirement that the organisation must be sufficiently representative of the group whose interests they defend is proving to be a barrier for legal standing. While the requirement was included by the legislator in order to keep out commercial claims, its effect is to (also) exclude groups that act in the public interest. This is attributed to the quantitative nature of the requirements; since 2019 the judgment in a collective action claim is legally binding for persons who belong to the group that is represented, unless they expressly opted out. However, where a claim is brought in the general interest this group is not always easy to define.’⁶¹

Restrictive requirements established at the national level for the recognition of the legal standing of NGOs and trade unions have a deterrent effect in the engagement of civil society in supporting victims of discrimination before national equality bodies, courts or other quasi-judicial bodies. Among the restrictive requirements identified in the mapping of national provisions and practices are prior registration/confirmation by relevant authorities, a specific statement in the statutory documents regarding the aim of the NGO to ensure legal representation which in some Member States is strictly interpreted, the condition of existence for a certain number of years or of having a large number of members. On the other hand, in the countries in which the requirements for standing are minimal or the courts and national equality bodies have used a proactive interpretation of the ‘legitimate interest’ requirement as was the case in **Poland**, increased NGO engagement has correlatively been reported to lead to augmented enforcement of the equality standards.

⁵⁷ Netherlands, Article 3:305a(2), [Civil Code](#).

⁵⁸ Netherlands, Article 3:305a(6), [Civil Code](#).

⁵⁹ Netherlands, Article 3:305a(3), [Civil Code](#). Article 3:305a(3)(b) specifies that the requirement of a sufficient connection with the Dutch legal order is met if the majority of the persons in whose interest the claim is made are usually resident in the Netherlands, or the person against whom the claim is made is usually resident in the Netherlands and additional circumstances indicate a sufficient connection with the Dutch legal order, or the claim concerns an event or events that have taken place within the Netherlands.

⁶⁰ Bureau Clara Wichmann (2024), [De obstakels van de WAMCA voor ideële acties](#) (The obstacles posed for idealistic actions by the Dutch Act on Collective Action).

⁶¹ Bureau Clara Wichmann (2024).

1.1.2 Volume of legal engagement by NGOs and trade unions across Europe

The Equality Directives do not prescribe a specific standing for NGOs and trade unions, leaving it up to the Member States to identify the legal solution for a broad standing leading to the possibility to act on behalf or in support of any victim in proceedings. In some Member States, the scope of the standing has been expanded to cover the right to collective representation when seeking collective redress (as *actio popularis* or as class action). How much this standing is actually used depends on various factors, being influenced, as shown in Chapter two, by the legal standards adopted at the national level, the legal traditions specific to each country and also by the level of engagement of NGOs and trade unions in combating discrimination.

Legal mobilisation also depends on social and historical factors specific to the national civic environment – countries which joined the EU more recently seemed more eager to go beyond the minimum standards; democratisation processes in Eastern Europe seemed to be more conducive towards what was defined as a vibrant civil society. Notably, the different degrees of engagement are also linked to the legal capacities developed at the level of the not-for-profit sector and to the actual dynamic of the relationship between the states and the voluntary sector and the support given by authorities to civil society or, conversely, attitudes of suspicion and hostility towards NGOs.

The survey of the Member States, conducted with the support of the national non-discrimination experts who are members of the European network of legal experts in gender equality and non-discrimination, indicates a wide spectrum in the level of engagement. It ranges from isolated or a complete lack of NGO interventions and a shortage of influential specialised NGOs providing legal aid to victims of discrimination and/or using litigation as a method to generate effective equality, to countries in which coalitions or NGOs end up being the drivers of strategic litigation and foster changes, triggering amendments to relevant legislation, or even bring forward strategic litigation at the level of the Court of Justice of the European Union, thus contributing to the further development of EU Equality Law.

In some Member States, although the legislation allows for NGO standing, no cases of NGOs or trade unions bringing discrimination cases were identified. For example, in **Greece**⁶² and **Malta**⁶³ there were no instances of NGOs or trade unions providing legal support (acting on behalf of the victim) and representation to victims of discrimination. In other countries we can notice receding trends in NGO presence: in the 2020-2023 annual reports of the **Hungarian** Ombudsman (which took over the function of the equality body after the dissolution of the Equal Treatment Authority), there are no mentions of any discrimination cases in which any trade union was engaged.

Similarly, in **Cyprus**, no role is recognised de facto for NGOs and trade unions, as there are no discrimination cases brought to court by NGOs or trade unions and, since 2017, there have been no discrimination reports by the national equality body following a discrimination complaint from an NGO or a trade union.⁶⁴ The US State Department human rights report on Cyprus for 2023 noted that the Ombudswoman ‘enjoyed good co-operation with other government bodies... [but] NGOs complained that the Office of the Ombudswoman (national equality

⁶² European network of legal experts in gender equality and non-discrimination, Greece, questionnaire response.

⁶³ European network of legal experts in gender equality and non-discrimination, Malta, questionnaire response.

⁶⁴ European network of legal experts in gender equality and non-discrimination, Cyprus, questionnaire response.

body) routinely refused to investigate their complaints on the grounds that similar complaints had been investigated in the past'.⁶⁵

In **Finland**, it is rare for NGOs or trade unions to initiate court cases or cases before the Non-Discrimination Tribunal. NGOs more often encourage individuals to approach the Non-Discrimination Ombudsman for assistance. Trade unions have a long tradition of taking cases of gender equality in employment to court, representing victims, but there is no intervention on other protected grounds. When employment is terminated, some cases are taken to court by trade unions to evaluate whether the termination was discriminatory and based on the employee's state of health, membership of a trade union or age.⁶⁶

In **Croatia**, the engagement of NGOs as complainants in joint actions is evident mostly in cases involving discrimination based on sexual orientation. In addition, civil society organisations have participated as intervenors in proceedings related to discrimination based on national origin, ethnicity, religion and political belief.⁶⁷ Although there are no specific data regarding the number of cases filed or intervened in by NGOs, it appears that this legal instrument is still underutilised, considering the number of civil society organisations in Croatia that focus on human rights issues. This underutilisation can be attributed to the various challenges these organisations face, which serve as deterrents to effectively employing these legal instruments.⁶⁸

In other Member States, the level of engagement can be assessed based on indirect reporting by the media or by NGOs. For example, in **Ireland**, a report produced by law students for Free Legal Advice Centres (FLAC) examined the representation used by complainants in 395 cases under the Employment Equality Acts decided by the Workplace Relations Commissions (WRC), the quasi-judicial body which hears the vast majority of discrimination complaints at first instance under the two primary Irish laws implementing the EU Equality Directives.⁶⁹ The research found that between 2018 and 2021, 12.5 % of complainants were represented by a union, 43.5 % of complainants were not represented and just one complainant was represented by an NGO, Free Legal Advice Centres (FLAC). Trade unions play a significant role in representing complainants under the Employment Equality Acts. According to the Services Industrial Professional and Technical Union (SIPTU), the largest union in Ireland: 'SIPTU is the most frequent single user of the Workplace Relations Commission and of the Labour Court'.⁷⁰

For example, in **France**, trade unions regularly engage in judicial proceedings on behalf of salaried employees discriminated against on the grounds of trade union membership and sex,⁷¹ but seldom engage in proceedings connected to anti-discrimination law related to other protected grounds. In addition, NGOs have almost never used the procedural possibility of acting on behalf of victims.

In a few countries the data collected by national equality bodies or the courts allow the number of cases to be identified in which NGOs or trade unions filed the petitions or supported the victims. **Portugal** is one of the few exceptions, with reports by public authorities highlighting the type of engagement by NGOs. The Annual Report

⁶⁵ US State Department, Bureau of Democracy, Human Rights and Labour(2024), [Cyprus 2023 Human Rights Report](#).

⁶⁶ European network of legal experts in gender equality and non-discrimination, Finland, questionnaire response.

⁶⁷ Kesonja, D. and Šimonović Einwalter, T. (2017), *Analiza sudske prakse u postupcima pred hrvatskim sudovima pokrenutima zbog diskriminacije* (Analysis of caselaw in anti-discrimination proceedings before Croatian courts), Centar za mirovne studije (Centre for Peace Studies).

⁶⁸ European network of legal experts in gender equality and non-discrimination, Croatia, questionnaire response.

⁶⁹ Donnelly, J. et al. (2021), *A report on the absence of legal aid for employment equality cases in Ireland*.

⁷⁰ SIPTU (2021), *SIPTU Submission to the review of the Equality Acts* p. 6.

⁷¹ French legislation has more than 25 prohibited grounds of discrimination, among them 'trade union activities'.

issued by the Portuguese Commission for Equality and Against Racial Discrimination (CEARD) under Article 8 of Law 93/2017, which gathered statistical and administrative data related to racial and ethnic discrimination, including administrative procedures, contained some data regarding the number of cases filed by NGOs. Of 491 complaints received by CEARD in 2022, 24 were reported by NGOs.⁷² For the National Institute for Rehabilitation (INR), the equality body dealing with discrimination on grounds of disability, of the 89 complaints registered on the grounds of disability or aggravated health risk in 2023, only one complaint was filed by an NGO.⁷³ According to the 2023 annual report of the national equality body in **Luxembourg**, the Centre for Equal Treatment (CET), of the 250 cases it handled in 2023, 12 % were submitted by associations or were started ex officio.⁷⁴

The other notable exception is **Sweden** where the Labour Court website provides a picture of all the cases decided during 2012–2024.⁷⁵ The cases are marked as being filed by a union, an NGO, an individual or the Equality Ombudsman. Of the 39 discrimination cases filed before the Labour Court between 2012 and 2024, 18 were taken to the Court by a trade union, 14 by the Equality Ombudsman, five by individuals and two by NGOs. It may also be noted that the Equality Ombudsman and NGOs have filed a number of cases outside the employment field, before the ordinary courts.⁷⁶

In the **Netherlands**, over the past 10–15 years there has been a trend towards increased public interest litigation by NGOs. Several NGOs are specifically dedicated to such litigation, or more broadly to providing legal support to social movements, in the field of human rights, including on issues of discrimination. Two key examples are the Public Interest Litigation Project (PILP), established in 2014,⁷⁷ and Systemic Justice, established in 2021.⁷⁸ The Dutch Refugee Council also has a specific section dedicated to strategic litigation. In the field of gender equality, public interest litigation already has a longer history through the work of the foundation, Bureau Clara Wichmann. A parallel development which can be seen as an encouraging practice is an increase in law clinics at Dutch law faculties sometimes providing support to NGOs, for example by preparing legal opinions. One example is the case against Meta⁷⁹ filed by Bureau Clara Wichmann and Global Witness, a case that was supported by the Business and Human Rights Clinic of the University of Amsterdam, in which the NGOs claimed that Meta uses advertising algorithms that are discriminatory on the grounds of sex and age.⁸⁰

Legal engagement of NGOs in the EU, as further detailed in Chapter 3, ranges from no cases brought by NGOs or trade unions on behalf or in support of victims of discrimination, to interventions only in relation to specific protected grounds or in relation to employment only, to a wide diversity of cases initiated *in nome proprio*, with NGOs becoming the main drivers of judicial development in the area of equality and non-discrimination in some Member States and at the European level.

⁷² Portugal, Commission for Equality and Against Racial Discrimination (CEARD), *Annual Report 2022*. The CEARD has since been reformed as an independent administrative body that functions adjoined to the Portuguese Parliament. Under Law 3/2024, it will continue to have reporting powers, including the publication of an annual report on equality and non-discrimination. However, no reports for 2023 and 2024 have been adopted.

⁷³ Portugal, National Institute for Rehabilitation (INR) (2023), *Annual Report 2023*.

⁷⁴ Luxembourg, Centre for Equal Treatment (2023), *Rapport d'activités 2023* (Annual report 2023).

⁷⁵ Sweden, *Labour Court*.

⁷⁶ European network of legal experts in gender equality and non-discrimination, Sweden, questionnaire response.

⁷⁷ *Public Interest Litigation Project* (PILP).

⁷⁸ *Systemic Justice*. Although it is based in the Netherlands, Systemic Justice's field of work is not limited to that country.

⁷⁹ *Bureau Clara Wichmann*, 'Sterke aanwijzingen dat Facebook discrimineert bij plaatsing vacatures' (Strong indications that Facebook discriminates when posting job advertisements), 14 June 2023.

⁸⁰ *Bureau Clara Wichmann*, 'Global Witness and Bureau Clara Wichmann file discrimination complaint against Meta with the Netherlands Institute for Human Rights', 23 June 2023.

Importantly, being formally a party in domestic proceedings, albeit as a third party, NGOs acquire the right to intervene before the CJEU in preliminary references. This is an advantage given that, as noted in the literature, 'EU law offers an easier procedural track for collective claims pertaining to group minority interests than individual and often timely and lengthy claims at the European Court of Human Rights'.⁸¹

1.2 NGOs and trade unions as social partners in combating discrimination

'Member States shall encourage dialogue with appropriate nongovernmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.'

Article 12 of the Racial Equality Directive

As observed in the literature, the European provisions on equality following the Treaty of Amsterdam require a proactive approach.⁸² In this proactive setting for tackling discrimination and promoting equality, a continuous and effective dialogue is needed. It is exactly this dialogue that is specifically provided for in the Equality Directives, in Article 12 of the Racial Equality Directive and Article 14 of the Employment Equality Directive.⁸³ The preferential position of NGOs and trade unions as partners in dialogue contributes to the democratic debate by bringing forth the voice of vulnerable groups that are systematically marginalised. The role of NGOs, associations and trade unions in supporting the enforcement of non-discrimination law is thus far more pertinent and goes beyond legal support provided to victims before national equality bodies, courts or other adjudicating bodies.

The deliberative role of NGOs and trade unions can be recognised at the macro societal level or in the specific context of public policies and measures on equality and anti-discrimination. In 2010 the European Commission started mapping promising practices in trade union engagement to combat discrimination and the research brought to light a broad range of approaches.⁸⁴ This effort of identifying and mapping trade union initiatives aimed at combating discrimination on the grounds of race, ethnic origin, religion, belief, sexual orientation or gender identity, as well as those related to several forms of discrimination or multiple discrimination, was followed up by a similar study in 2019.⁸⁵ Both studies underlined the role trade unions play in fighting discrimination by using a variety of interventions: negotiating with employers to ensure that discrimination in the workplace is eliminated and equal opportunities are promoted, supporting victims of discrimination, and monitoring discrimination in the workplace.

The 2019 EC study identifies drivers for trade unions to act to address discrimination. These include the opportunity provided by the standing established by the legal provisions available at the European and national

⁸¹ Belavusau, U. and Henrard, K. (eds) (2018).

⁸² Meenan, H. (2007), *Equality law in an enlarged European Union. Understanding the Article 13 Directives*, Cambridge and New York, Cambridge University Press.

⁸³ Article 12 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180. Article 14 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.

⁸⁴ European Commission: Directorate-General for Employment, Social Affairs and Inclusion (2010), *Trade union practices on anti-discrimination and diversity – European Trade Union Anti-Discrimination and Diversity study: innovative and significant practices in fighting discrimination and promoting diversity – Report*, Publications Office of the European Union.

⁸⁵ European Commission: Directorate-General for Justice and Consumers, Carta, E., Vajai, D., Kovarova, K., Vandenbroucke, S. et al. (2019), *Trade union practices on non-discrimination and diversity 2019 – Follow-up to the 2010 study – Final report*, Publications Office of the European Union.

level but also societal changes and migration trends and the persistent high levels of discrimination in the workplace as an enduring issue to be tackled.⁸⁶

Trade union actions identified in the 2010 and 2019 EC studies were targeted both internally and externally. Internal actions targeted trade unions' own members through awareness-raising initiatives, campaigning, developing training and internal capacity-building to address discrimination. External actions identified included both engagement in the broader social dialogue (such as through campaigning on equality and non-discrimination issues, as well as through collective bargaining processes and collective agreements) and more specifically involvement in dialogue with employers when responding to individual discrimination cases, handling equality issues by providing support to their own members or acting on behalf of victims of discrimination. Notably, the 2019 EC study found that when trade unions mainstreamed non-discrimination initiatives in their strategic documents or when they established specific internal equality structures, such as dedicated units or personnel and training for the leadership, this approach 'enabled them to undertake more structured and longer-term equality-oriented actions'.⁸⁷

Concerning the role of associations and non-governmental organisations in promoting equality in Europe, their role as key actors is well and broadly documented both at the European level and at the level of each Member State. The role of civil society in addressing inequality through legislative advocacy as well as mobilisation, especially through the joint efforts of civil society organisations representing victims of discrimination brought together as the Starting Line Group, was seminal in influencing the content of Article 13 of the Amsterdam Treaty (Article 19 of the Treaty on the Functioning of the EU) and the actual adoption of the Equality Directives in 2000.⁸⁸ NGOs continue to have an important role in monitoring discrimination; advocating for legislative amendments and public policies; raising awareness with the general population, relevant authorities and potential victims; and providing support to the victims, not only from the perspective of legal intervention but also by providing social, financial and psychological support.⁸⁹

Beyond the rhetoric of dialogue and cooperation, the actual arrangement on the ground, the dynamics of the relationship between national authorities and civil society organisations, vary in the different Member States. One end of the spectrum hosts countries in which NGOs and trade unions are met with suspicion or a generally hostile attitude, raising concerns regarding the shrinking space for civil society.⁹⁰ At the other end, there are countries for which the commitment to promote equality and combat discrimination also entails ensuring support for the helpers, those supporting the victims of discrimination. Even national equality bodies recognise this need – for example, according to an older recommendation of the **Czech** Ombudsman, better cooperation between NGOs and state institutions should be developed in order to improve victims' access to justice; this recommendation does not seem to have been fully followed as yet.⁹¹ The **Czech** Government also recognises NGOs as strategic partners in implementing human rights policies. For example, the Strategy for Cooperation

⁸⁶ European Commission: Directorate-General for Justice and Consumers, Carta, E., Vajai, D., Kovarova, K., Vandenbroucke, S. et al. (2019).

⁸⁷ European Commission: Directorate-General for Justice and Consumers, Carta, E., Vajai, D., Kovarova, K., Vandenbroucke, S. et al. (2019).

⁸⁸ Paul Lappalainen (2022).

⁸⁹ Cichowski, R. A. (2007), *The European Court and civil society: Litigation, mobilization and governance*, Cambridge University Press.

⁹⁰ Fundamental Rights Agency (2023), *Protecting civil society – Update 2023*.

⁹¹ Czech Republic, Public Defender of Rights (Ombudsman) (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles hindering their access to justice), p. 84.

between the Public Administration and Non-Governmental Organisations 2021–2030 mentioned that it aims to foster collaboration for effective monitoring and reporting of discrimination cases.⁹²

A structured framework for cooperation between equality bodies and NGOs seems to have a greater impact than ad hoc cooperation. The promising practices are inspiring and come from all across Europe. The most promising example, due to its comprehensiveness, is from **Portugal** which adopted specific frameworks to engage NGOs and trade unions in relation to racism, as well as on LGBTIQ discrimination.

Institutionalised structures of cooperation in Portugal

Regarding racism strategies, the ‘National plan to combat racism and discrimination (PNCRD) 2021–2025 – Portugal Against Racism’, was published with the Resolution of the Council of Ministers 101/2021 of 28 July 2021.⁹³ The Resolution acknowledges the work of various civil society agencies on this important issue and the contributions and recommendations of the Working Group for the Prevention and Combating of Racism and Discrimination (coordinated by the former national equality body) and a related public consultation process. The plan covers 10 areas of intervention: governance, information and knowledge; education and culture; higher education; work and employment; housing; health and social action; justice, security and rights; participation and representation; sports; and media and digital.

In the area of health and social action, there are specific actions where NGOs are involved as partners (for example, strengthening local responses within the scope of primary healthcare, including mental healthcare and the Integrated Continued Care Network, in conjunction with other community structures including civil society organisations). In the field of employment, trade unions are involved as partners – for example, through support for pilot projects that promote the intervention and representation of trade union movements among workers in more precarious and atypical labour contexts, and their respective connection with anti-racist, immigrant, Roma and other relevant associations.

Regarding LGBTIQ discrimination, in 2018, the Portuguese Council of Ministers adopted a Resolution⁹⁴ to approve the strategy, Portugal + Equal – National Strategy for Equality and Non-Discrimination 2018–2030, which includes an action plan to combat discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics. In 2023, a new Action Plan (Resolution 92/2023) was published for the period 2023–2026.⁹⁵ The Action Plan required a system of multilevel governance that includes governmental administrations, local administrations and NGOs. **Portugal** also adopted a National Strategy on Health for Lesbian, Gay, Bisexual, Trans and Intersex People, adopted by the Minister of Health in 2019.⁹⁶ The plan highlights the role of NGOs as essential partners in identifying needs and seeking to improve the provision of care for LGBTIQ people. From this perspective, continuing the collaboration already established with some of these entities, particularly in the development of this Strategy, Portuguese authorities aim ‘to strengthen cooperation mechanisms to develop mutual trust and harmonise different understandings and procedures on LGBTI issues, particularly in the field of health’. In 2023, Dispatch 5643/2023 established a group to accompany

⁹² Czech Republic, *Strategie spolupráce veřejné správy s nestátními neziskovými organizacemi na léta 2021 až 2030* (Strategy for Cooperation between the Public Administration and Non-Governmental Organisations 2021–2030).

⁹³ Portugal, *Resolution of the Council of Ministers 101/2021 of 28 July 2021, ‘National plan to combat racism and discrimination (PNCRD) 2021–2025 – Portugal Against Racism’*, Diário da República n.º 145/2021, Série I de 2021-07-28.

⁹⁴ Portugal, Council of Ministers, Resolution 61/2018, 8 March 2018, Diário da República, Série I-A, No. 97, 21 May 2018.

⁹⁵ Portugal, Council of Ministers, Resolution 92/2023, 29 June, Diário da República, Série I, 14 August 2023.

⁹⁶ Portugal, *Estratégia de saúde para as pessoas lésbicas, gays, bissexuais, trans e intersexo* (National Strategy of Health for Lesbian, Gay, Bisexual, Trans and Intersex People).

the implementation of the Strategy. It should meet at least quarterly and report every six months. The group is composed of several specialists, representatives of Government and eight LGBTQI associations/NGOs.⁹⁷

The Government of **Luxembourg** has launched a National Action Plan for Integration (*PAN Intégration*) and other frameworks that invite trade unions and NGOs to work together against discrimination (especially concerning migrant integration, workplace discrimination and racism).

According to Article 12 of **Spanish** Law 15/2022, the public authorities will develop ‘active support policies’ for legally constituted groups and organisations that carry out activities of awareness-raising, advice and training in defence of personal dignity and equal treatment against discrimination, intolerance and hate incidents, as well as assistance for victims and legal representation in proceedings. Furthermore, Law 15/2022 also states that trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose aims include the defence and promotion of human rights may be considered interested parties in administrative procedures in which the Administration has to make a decision in relation to a situation of discrimination provided for in this law, as long as they have the authorisation of the person or persons affected. This authorisation shall not be necessary when the persons affected are an indeterminate number or difficult to determine, notwithstanding that those who consider themselves affected may also participate in the procedure.

In **Croatia**, NGOs collaborate with the People’s Ombudsperson (the main authority for addressing discrimination in the Republic of Croatia), through an anti-discrimination network of contact points comprising various civil society organisations.⁹⁸ The Croatian Ombudsperson is obliged, prior to the publication of their annual report, to make a public call to civil society organisations to submit their reports on the occurrence of discrimination.⁹⁹ In addition, cooperation agreements between the Ombudsperson and civil society organisations are in force, meetings are held periodically and experts mention cooperation in individual cases as well. The Human Rights Council of the People’s Ombudsperson has also been established as an advisory body, the purpose of which is to propose strategic guidelines to the Ombudsperson in the field of promoting human rights and freedoms and to enhance cooperation with civil society, academia and the media.

Outside the EU, but with its anti-discrimination legislation strongly influenced by and referencing the Equality Directives, in the **Republic of Moldova** the Equality Council publishes case briefs on its website, as well as the key issues in sensitive cases which might have a broader impact, inviting interested legal entities to contribute by filing their *amicus curiae*.¹⁰⁰ An analysis of the invitations for contributions published in 2022-2024 suggests that the cases in which the Equality Council opens the deliberations and invites input from civil society and other public institutions are all cases of potential *de jure* discrimination.

Ad hoc, unstructured cooperation might bring short-term results but it lacks sustainability and it is often subjective, being defined by the current leadership of the institution. In **Poland**, between 2016 and 2017, the national equality body, the Ombud Office, consulted with NGOs when deciding on the list of research topics for

⁹⁷ Portugal, [Dispatch 5643/2023](#), Diário da República n.º 95/2023, Série II de 2023-05-17.

⁹⁸ Croatian People’s Ombudsperson, [Network of anti-discrimination contact points](#).

⁹⁹ Croatia, Anti-discrimination Act, Article 15.

¹⁰⁰ Republic of Moldova, [Equality Council](#).

studies conducted or commissioned by the Office. Several organisations submitted proposals. Unfortunately, after a few editions, this initiative was discontinued.¹⁰¹

Other national equality bodies report on their engagement with NGOs: in 2024 the **Slovenian** Advocate of the Principle of Equality reportedly cooperated in one form or another with over 360 civil society organisations working in the area of equal treatment, protection of human rights and fundamental freedoms, protection against discrimination of vulnerable groups or legal, social and other support for people who are discriminated against.¹⁰² Some of the forms of cooperation included: 1. Enquiries made by the Advocate for the preparation of research, analyses, special reports, assessments of the discriminatory nature of regulations, and findings of discriminatory practices; 2. NGOs making enquiries with the Advocate; 3. Meetings between the Advocate and NGOs; and 4. Information and awareness-raising activities.

This sub-chapter has showed that the role of NGOs and trade unions is not limited to the legal work they do before courts, national equality bodies or quasi-judicial authorities (to be analysed in Chapter two). It has demonstrated that the Equality Directives also help to define the role of NGOs and trade unions as partners in dialogue with the authorities, bringing their experiences of support for the vulnerable into the democratic deliberative processes. The transposition of the requirement to recognise NGOs and trade unions as partners in dialogue has taken different forms across the EU, ranging from a serious commitment as evidenced by a structured, sustained approach, to ad hoc, temporary cooperation, subject to arbitrary circumstances or, in rare cases, a severe distance leading to limited engagement and suspicion, both being detrimental to civic dialogue, as would appear to be the case in Cyprus.

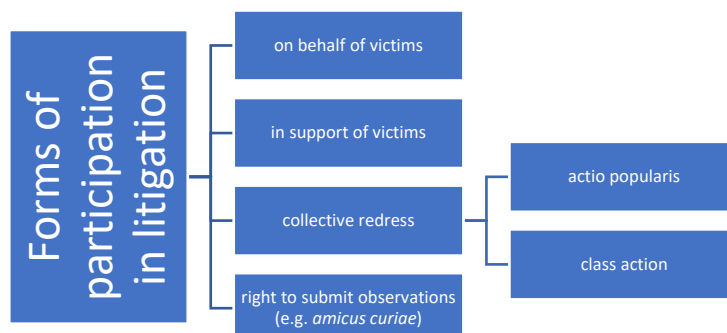
¹⁰¹ [Flash report](#), Poland, from 24 September 2015 - Ombud announces anti-discrimination research topics for 2016-2017.

¹⁰² Slovenia, Advocate of the Principle of Equality (2025), *Redno letno poročilo za leto 2024* (Annual report for 2024), p. 202.

2 Legal standing recognised for NGOs, associations and trade unions by the Member States in the enforcement of national equality and non-discrimination norms

Article 7 of Directive 2000/43/EC and Article 9 of the Directive 2000/78/EC do not provide a very detailed formula for the establishment of locus standi for NGOs and trade unions. Nor do the subsequent directives which were inspired by the provisions recognising legal standing for NGOs and trade unions: Directive 2004/113/EC Gender Equality in Goods and Services (Article 8(2)), Directive 2006/54/EC Recast Gender Equality Directive (Article 17(2)) or Directive 2023/970/EC Pay Transparency Directive (Article 15). The Directives leave it to the Member States to spell out the correlation with the criteria for assessing legitimate interest in ensuring that the provisions of the Equality Directives are complied with as shown in Chapter 1. It is also for the Member States to decide the way in which NGOs may engage, either on behalf or in support of the complainant, and whether the approval of the victim is necessary or not, as will be detailed in this chapter. Although not specifically required by the Directives, the right of NGOs and trade unions to act in court proceedings might also include submitting observations to the court, or the national equality body, in their own name and bringing a public interest perspective, in accordance with national law and practice (e.g. *amicus curiae*-type participation).

Forms of participation in litigation of NGOs and trade unions



It is clear from the text of the Directives that legal standing should be granted for any judicial and/or administrative procedure provided for the enforcement of obligations under the Equality Directives. Notably, in no Member State are discrimination disputes resolved purely in the courts. The vast majority of states combine judicial proceedings (which may be civil, criminal, labour and/or administrative) and quasi-judicial proceedings, such as through equality bodies, with non-judicial proceedings.¹⁰³ From the text of the Directives it is clear that the locus standi conferred on NGOs and trade unions also applies to non-judicial procedures adopted for the enforcement of the Equality Directives, such as labour or education inspectorates, ombuds institutions and other human rights institutions that are mandated to enforce anti-discrimination provisions in the national context.

When taken seriously, the presence of NGOs and trade unions at all stages also includes participation in non-litigation proceedings, such as mediation or conciliation. This is the case in **Sweden**, where when a trade union

¹⁰³ Chopin, I. and Germaine, C. (2025).

is representing one of its members, negotiations must take place with the employer before a case is brought to the Labour Court, with a view to reaching a settlement agreement.

As the mapping of the different models of legal participation by NGOs developed at the national level indicates, the opportunity for NGO engagement in support or on behalf of the individual victim or when seeking collective redress (*actio popularis* and class action) not only brings in expertise and a broader equality perspective, but it is also a means to boost the defence of rights by easing concerns regarding uncertainties about the outcome of the case, the litigation costs and the risk of victimisation.¹⁰⁴ This engagement comes with limitations in some Member States and with more flexibility in others.

Regardless of the type of legal standing with which collective actors are endowed, the engagement of a proactive actor in anti-discrimination proceedings has multiple advantages. From the perspective of the potential victim of discrimination, the engagement of an NGO responds to many of the deterrent factors, such as lack of legal knowledge about the rights and duty-bearers, lack of trust in legal processes and lack of financial resources, or personal deterrent factors, such as physical or mental impairments, linguistic barriers, and fear of being outed and of victimisation. From the perspective of the court or national equality body, the engagement of an NGO brings in expertise, continuity and an additional shield of protection for the victim.

2.1 NGOs and trade unions acting on behalf of victims of discrimination before national equality bodies/courts/quasi-judicial bodies

The comparative analysis of the transposition of the Equality Directives prepared annually for the European Commission finds that the majority of EU countries allow associations and/or trade unions to engage in proceedings ‘on behalf of’ victims of discrimination (i.e. representing them), including **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia,**¹⁰⁵ **Finland,**¹⁰⁶ **France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta,** the **Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain** and **Sweden**. However, the conditions for associations to engage on behalf of victims of discrimination as well as the scope of such potential action vary among the countries.

There are also Member States where associations and trade unions are not entitled to act on behalf of victims of discrimination, such as is the case in **Germany** and **Luxembourg**. For example, in **Luxembourg**, according to Article 7 of the general discrimination Law of 28 November 2006, associations that are recognised by the Ministry of Justice can exercise before the law the rights of victims of discrimination only if damage has been suffered by the cause that they promote. To be recognised by the Ministry of Justice, associations must not only be nationally representative in the field of anti-discrimination, but must also meet two other conditions: the fight against discrimination must be one of their statutory goals and they must have legally existed for five years prior to the facts under consideration. According to Article 18 of the general discrimination Law of 28 November 2006, introducing Article L-253-4 into the Labour Code, labour unions which have general national

¹⁰⁴ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘the Racial Equality Directive’) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (‘the Employment Equality Directive’), [COM\(2021\)139 - Application of Racial Equality Directive and Employment Equality Directive](#).

¹⁰⁵ In Estonia, the legal standing of organisations to act on behalf of victims of discrimination is limited to quasi-judicial proceedings before the Gender Equality and Equal Treatment Commissioner and conciliation proceedings before the Chancellor of Justice. No such standing is possible before the courts.

¹⁰⁶ In Finland, victims can be represented before the courts by a lawyer employed (or paid) by an organisation. The complaint remains in the name of the victim, however, and the organisation is not a party in its own name.

representation or representation in one particularly important sector of the economy are entitled to intervene in actions arising from a collective agreement if the action is instigated by a person bound by the collective agreement and if a solution to the dispute would be in the collective interest of its members.

2.1.1 National standards regarding NGOs and trade unions acting on behalf of victims of discrimination

This section presents different models of standing for NGOs and trade unions when acting on behalf of victims of discrimination, highlighting different options and legal solutions. Several different models emerge, with the locus standi increasing gradually: from the right to act on behalf of victims only before NEBs, to the right to act in court proceedings either only in cases in which representation by barrister is not mandatory or in any type of civil proceedings. There are states in which representation is allowed both before NEBs and in court proceedings (such as **Bulgaria**, **Estonia** and **Romania** among others). There are also countries which recognise the right of NGOs to act on behalf of victims while introducing exceptions for constitutional litigation. For example, in **Slovakia**, representation of victims by NGOs and the national equality body (the Slovak National Centre for Human Rights) is allowed before the ordinary courts and the Supreme Court, but Constitutional Court proceedings remain excluded.¹⁰⁷

As a separate category of shrinking space for NGOs and trade unions to act in court proceedings, the case of **Latvia** is notable, where organisations and foundations whose aims are the protection of human rights and individual rights were able to represent victims of discrimination in all courts until 2014. In accordance with the amendments to the Civil Procedure Law (in force since 4 January 2014),¹⁰⁸ the right to legal representation at the cassation level was restricted and it is now reserved to the person participating in the case or their advocate (defence counsel). This excludes the possibility of legal representation by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate, including in civil claims relating to discrimination cases. The amendments were adopted allegedly to strengthen the role of advocates in civil cases to ensure the quality of claims. However, they have an impact on access to justice for certain vulnerable groups, including victims of discrimination, as previously discrimination cases were predominantly brought before the courts by NGOs or legal practitioners who were not advocates. In the opinion of Latvian experts, these amendments contravene the non-regression clauses of the Equality Directives, but only with regard to access to justice before the Court of Cassation.¹⁰⁹

a. Acting on behalf of victims before national equality bodies

In **Austria**, associations and other legal entities may act on behalf of victims of discrimination (and with their consent) only in proceedings where representation by a barrister is not mandatory (*Anwaltszwang*). The general rules of civil procedure apply. The **Austrian** Act on the Equal Treatment Commission and the National Equality Body expressly allows NGOs to represent alleged victims of discrimination in the informal proceedings before the Equal Treatment Commission (§ 12(2) of GBK-GAW-G);¹¹⁰ this is not a special right, however, as any adult physical person is allowed to represent another.

¹⁰⁷ Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(c).

¹⁰⁸ Latvia, Amendments to the Civil Procedure Law, Amendments to the Civil Procedure Law, 19 December 2013, published in the *Latvian Herald* 2(5061), 3 January 2014.

¹⁰⁹ Latvia, Amendments to the Civil Procedure Law, 19 December 2013, published in the *Latvian Herald* 2(5061), 3 January 2014.

¹¹⁰ Austria, Act on the Equal Treatment Commission and the National Equality Body– GBK-GAW-G, BGBL. no. 108/1979.

Similarly, in **Bulgaria** associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Any entity may represent an individual or another entity before the Bulgarian equality body.¹¹¹

In **Denmark**, trade unions and NGOs are also entitled to represent individuals who have a legitimate interest in the case in proceedings before the national equality body, the Board of Equal Treatment. If the representative is not a certified lawyer, a power of attorney must be submitted along with the complaint. A victim of discrimination is represented before the Board in accordance with traditional administrative law, according to Section 8 of the Public Administration Act.¹¹²

In **Estonia**, associations and organisations that have a legitimate interest in monitoring compliance with the requirements for equal treatment are entitled to act on behalf of victims of discrimination in proceedings before the Gender Equality and Equal Treatment Commissioner. The Equal Treatment Act stipulates that these organisations can file an application before the national equality body for the Commissioner's opinion on whether discrimination has occurred.

In **Finland**, in accordance with Section 21 of the Non-Discrimination Act, besides the Non-Discrimination Ombudsman, any organisation with an interest in advancing equality has the right to bring a specific case before the National Non-Discrimination and Equality Tribunal if the person who considers that they have been discriminated against gives their consent. The Non-Discrimination Ombudsman or the organisation with an interest in advancing equality then becomes the party in the case.

In **Lithuania**, the legal standing of associations to bring cases before the Equal Opportunities Ombudsperson on behalf of victims remains uncertain, although the Ombudsperson does handle complaints lodged by organisations, generally by initiating proceedings 'on its own initiative' on the basis of the information provided.

In **Romania**, NGOs with an interest in combating discrimination are allowed by law to initiate complaints before the national equality body either *in nome proprio* (when acting in cases prejudicing a community or a group) or on behalf of an individual (with the consent of the victim).¹¹³ NGOs working on behalf of various vulnerable groups extensively use the legal possibility of filing a petition with the NCCD.

b. Acting on behalf of victims before general courts and other adjudicating bodies

Acting on behalf of victims before general courts

While NGOs in **Austria** do not, in principle, have legal standing to act on behalf of victims of discrimination before general courts, trade unions and the Chamber of Labour do have such standing in employment-related cases, even though there is no special provision on anti-discrimination matters

In **Belgium**, at federal level, NGOs have locus standi before courts on the basis of the General Anti-Discrimination Federal Act¹¹⁴ (Article 30) and the Racial Equality Federal Act¹¹⁵ (Article 32), if their statutory goal includes protecting human rights or combating discrimination. In addition, NGOs must meet three

¹¹¹ Bulgaria, Administrative Procedure Code, April 2006, last amended December 2023, Article 18(2).

¹¹² Denmark, Consolidated Act 433 of 22 April 2014.

¹¹³ Romania, Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (Anti-discrimination Law), 31 August 2000.

¹¹⁴ Belgium, General Anti-Discrimination Federal Act of 10 May 2007.

¹¹⁵ Belgium, Racial Equality Federal Act of 30 July 1981.

conditions set out by Article 17 of the Judicial Code as modified by the Law of 21 December 2018: (1) the statutory objective of the association must be of a specific nature, distinct from the pursuit of the general interest; (2) the association must pursue that objective in a lasting and effective manner; and (3) the association must take legal action within the context of this statutory objective, in order to ensure the defence of an interest related to this objective. Trade unions also have locus standi, on the basis of the same provisions.¹¹⁶

In **Bulgaria**, trade unions and legal persons operating for non-profit purposes registered in the public interest may represent victims before the civil courts.¹¹⁷ Foundations or associations that self-identify as legal persons acting in the public interest must be registered in the Commercial Register and Register of Non-profit Legal Entities with the Registry agency under the Ministry of Justice.¹¹⁸ They are subject to requirements which are stricter than requirements applied to other non-profit entities.¹¹⁹ Arguably, a non-profit organisation that is not registered under national legislation as being 'in the public interest' can still claim standing before the courts, by substantiating that, in fact, its activities are in the public interest.¹²⁰ There is no legal duty for NGOs or trade unions to act. It is, however, a common practice for NGOs (but not for trade unions) to represent victims of discrimination (although not directly).

In **Cyprus**, organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a claimant in civil court proceedings.¹²¹ Article 9D of Law 127(I)/2000 on the rights of persons with a disability, as amended by Law 57(I)/2004, provides that workers' organisations or other organisations with a legitimate interest can, with their members' permission, exercise on their behalf the right to recourse to the courts or to the equality body. No other 'legitimate interest' is required under this law. For legal actions on the ground of race/ethnic origin, the law roughly transposing the Racial Equality Directive (Law 59(I)/2004, Article 12) requires that organisations must have both the victim's permission and a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. There are no membership, permanency or other requirements in the law.

For legal actions on any of the five grounds in the field of employment, the law provides that workers' organisations or other organisations or legal persons who have a legitimate interest in ensuring that the provisions of the law are complied with may, with the consent of the claimant, exercise the claimant's rights to bring a complaint in court or before the equality body either on behalf or in defence of the claimant and, in such a case, the provisions regarding the reversal of the burden of proof will also apply.¹²² These provisions contrast with the constitutional principle that only individuals who have been *personally* aggrieved have a legitimate interest in engaging in proceedings.¹²³ This is of crucial significance, since the anti-discrimination laws themselves provide for the use of the judicial review procedure in order to pursue discrimination claims where the respondent is the state. Although laws transposing the EU *acquis* rank higher than any national law

¹¹⁶ It must be noted that, in Belgium, trade unions have, in principle, no legal capacity as they are not legal persons.

¹¹⁷ Bulgaria, Protection Against Discrimination Act, Article 71(2).

¹¹⁸ Bulgaria, Legal Persons for Non-profit Purposes Act (LPNPA), October 2000, last amended December 2020, Article 2(1 and 2).

¹¹⁹ Bulgaria, Legal Persons for Non-profit Purposes Act (LPNPA), October 2000, last amended December 2020, Chapter 3.

¹²⁰ Bulgaria, Legal Persons for Non-profit Purposes Act (LPNPA), October 2000, last amended December 2020. Article 38(1) specifies which activities qualify as public interest ones.

¹²¹ Cyprus, Law on Persons with Disabilities, no. 127(I)/2000, Article 9D; Law on Equal Treatment (Racial or Ethnic Origin), no. 59(I)/2004, Article 12; Law on Equal Treatment in Employment and Occupation, no. 58(I)/2004, Article 14.

¹²² Cyprus, Equal Treatment in Employment and Labour Act 2004.

¹²³ Under Article 146(2) of the Cypriot Constitution, judicial review applications 'may be made by a person whose existing legitimate interest, which he has either as a person, or by virtue of being a member of a community, is adversely and directly affected by such decision or omission'. Since 1999, the common law provisions have been codified into a single law that summarises the existing practice (Law 158(I)/99).

including the Constitution, the divergence between these two provisions may lead to complications, delays and additional legal costs for the claimant.

In **Czechia**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. According to Section 11 of the Anti-Discrimination Act, associations can provide legal assistance to victims of discrimination and submit motions to administrative bodies responsible for monitoring the lawful conduct of natural and legal persons in different areas. Associations can also seek payment from clients for providing legal assistance. According to Section 26(3) of the Civil Procedure Code, in matters regarding discrimination on grounds of gender, racial or ethnic origin, religion, conviction, disability, age or sexual orientation, a party to proceedings can be represented by a legal entity which, according to its articles of incorporation, focuses on protection against discrimination within its activities. In this respect, the term 'legal entity' should be understood, in compliance with the directives, in a broad sense. Therefore, any non-profit organisation with a legitimate aim to promote equal treatment can represent the victims.¹²⁴ The organisation can only represent the victim as a chosen representative, based on the power of representation. These associations or other organisations have no legal duty to act on behalf of victims. Similar legislation also applies to other types of procedures.

Under **Danish** procedural rules in Section 260 of the Administration of Justice Act,¹²⁵ individuals may either go to court themselves or authorise a process agent to appear in court on their behalf. Generally, in Danish procedural law, only jurists authorised to practise law, i.e. certified lawyers, may serve as process agents for a party. As an exception, the Minister of Justice may allow for interest groups, labour unions and similar legal entities to represent their members in court through an in-house jurist in cases concerning pay and employment conditions. This applies even when the in-house jurist is not a certified lawyer, cf. Section 260(6) of the Administration of Justice Act. Trade unions and other membership organisations can therefore represent their members in civil court cases dealing with pay and employment conditions. The trade union employees representing the individual member must have a Danish bachelor's or master's degree in legal studies. According to established case law, a trade union may also be allowed to serve a function similar to that of a process agent for its members in the sense that the union files a suit in its own name on behalf of its member (in Danish: *mandatar*). However, it is still the member and not the union who is a party to the case.

The explanatory note to **Estonia's** Equal Treatment Act provides an insight into the legislature's intention regarding the legal standing of associations before the courts.¹²⁶ The note ties the capacity to act on behalf of the victim to the provision in the Code of Civil Procedure that allows the parties to a dispute to include an adviser in the proceedings. An adviser may appear at the trial or hearing together with the party to proceedings and provide explanations. An adviser cannot perform procedural operations or file petitions (Article 228(2)). There are no data on whether this provision has been applied in any court case. Therefore, it is not clear who is considered to have a legitimate interest in checking compliance with the requirements for equal treatment. Given Estonian law and practice, in court proceedings, NGOs and other relevant associations prefer to support victims through their staff members, who may act as legal representatives or advisers to victims. In **Greece**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Article 8(3) of Law 4443/2016 states that: 'legal persons, unions or organisations including social partners and trade

¹²⁴ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-Discrimination Act), Prague, C. H. Beck, p. 411.

¹²⁵ Denmark, Consolidated Act 1160 of 5 November 2024 with later amendments.

¹²⁶ Estonia, Explanatory note attached to draft no. 384 SE (11th Riigikogu).

unions, whose purpose also includes the safeguarding of the principle of equal treatment regardless of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics, may represent the injured party before the courts and represent them before any administrative authority or organ, as long as he/she provides in advance his/her consent through a notarial document or private document, which will bear their certified signature'.¹²⁷

There are two criteria demanded within the framework of the Equal Treatment Law 4443/2016, in combination with the general requirements laid down by Greek procedural statutes (Article 62 of the Code of Civil Procedure). The first is that NGOs and/or trade unions have 'a legitimate interest in ensuring the application of the principle of equal treatment'. This means that any intervening organisations should have as their objective the effective implementation of the principles laid down by the law. The second criterion is that the victim has given their consent to the organisation, stating that they want and agree to be represented by that organisation.

The **Hungarian** Equal Treatment Act provides in Article 18(1) that 'non-governmental and interest representation organisations' as well as the Ombudsman, acting under the equality body mandate, may act on behalf of the victim in proceedings launched due to the violation of the equal treatment requirement (for instance in civil lawsuits initiated due to a violation of inherent personal rights or labour lawsuits).¹²⁸ The act specifies that such organisations include social organisations whose objectives, as set out in their articles of association or statutes, include the promotion of equal social opportunities or the catching up of disadvantaged groups defined by an exact enumeration of the concerned protected ground(s) or the protection of human rights.¹²⁹

Only qualified, practising lawyers have the right to represent litigants before the civil courts in **Ireland**.¹³⁰ The civil courts largely hear appeals from the decisions of the Workplace Relations Commission and the Labour Court.¹³¹ Only nine NGOs employ practising lawyers who have a right to represent individuals in legal proceedings.¹³² These NGOs must be registered as independent law centres.¹³³ They provide free legal advice and limited legal representation to members of the public. Only a few centres provide advice in equality law cases.

Regulation 11 of the **Maltese** Equal Treatment in Employment Regulations provides that nothing will prevent any association, organisation or other legal entity from having a legitimate interest in ensuring that these regulations are complied with, or from engaging either on behalf of or in support of the complainant, with their approval, in any judicial or administrative procedure which is provided for the enforcement of obligations under these Regulations.¹³⁴ Furthermore, Article 16 of the Equal Treatment of Persons Order provides that nothing in this Order or in any other law will prevent any association, organisation or other legal entity, which has a legitimate interest in ensuring that the Order is complied with, from engaging either on behalf or in support of

¹²⁷ Greece, Article 8(3) of Equal Treatment Law 4443/2016.

¹²⁸ Hungary, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA), 28 December 2003, Article 18(1).

¹²⁹ Hungary, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA), 28 December 2003, Article 3.

¹³⁰ Ireland, Order 6 of the District Court Rules, S.I. no. 93/1997 - District Court Rules, 1997, 1 May 1997.

¹³¹ The civil courts in Ireland hear discrimination cases against licensed premises at first instance (the District Court) and appeals from ESA decisions of the WRC (the Circuit Court). The District Court and Circuit Court are courts of a local and limited jurisdiction. The High Court hears appeals on points of law in ESA and EEA cases as well as judicial review cases that challenge the process by which a decision was reached before the lower courts and quasi-judicial bodies such as the WRC. High Court judgments may be further appealed to the Court of Appeal and ultimately the Supreme Court.

¹³² According to the Public Interest Law Alliance.

¹³³ The regulations governing the establishment of independent law centres are: S.I. no. 103/2006 - The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations, 2006.

¹³⁴ Malta, Equal Treatment in Employment Regulations.

the complainant, with their approval, in any judicial or administrative procedure provided for the enforcement of obligations under the Order.¹³⁵ These provisions are general in nature and no limitations exist as to the conditions under which or the terms upon which representation can take place. The complainant's authorisation is required, but no specific provisions stipulate how such authorisation is to be obtained. There is no known case where any association, organisation or other legal entity has brought forward proceedings.

In the **Netherlands**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. The basis for this is provided in Article 3:305a of the Civil Code, which allows the introduction of claims by interest groups.¹³⁶ To be able to introduce a claim, the interest group must be an association (*vereniging*) or foundation (*stichting*) under Dutch civil law with full legal powers. Article 3:305a of the Civil Code provides that interest groups can take legal action in court on behalf of people whose (similar) interests have been damaged; i.e. also on behalf of victims of discrimination. Article 3:305a of the Civil Code requires that the statutory goals of the association or foundation that introduces the claim cover the particular interest at stake (e.g. combating discrimination in general or enhancing disability rights). Proof of this is requested by the court and can be given by showing the deed or act by which the association or foundation was established.

In **Poland**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. This solution was adopted in the Code of Civil Procedure, which allows CSOs (this includes trade unions) to file a claim on behalf of individuals or join such proceedings.¹³⁷ Article 61 of the Code of Civil Procedure stipulates that organisations whose official objectives include protecting equality and non-discrimination and protection from unfounded direct or indirect violation of the rights and duties of citizens may, in the case of claims in this field and with the written consent of citizens, institute actions on behalf of citizens (the court verifies only the fulfilment of the formal criteria, such as the association's official objectives).¹³⁸ CSOs may also initiate proceedings on behalf of an entrepreneur (if that entrepreneur is a member of the organisation and provides written consent) in a dispute related to their business activity. According to the Polish doctrine, the use of the wording 'unfounded direct or indirect violation' (Article 61(1)(5)) could suggest that the standing is limited to cases of direct or indirect discrimination and no other forms.¹³⁹ It is, however, an academic doubt, as there are no known cases of such a limitation in practice.

Similarly, CSOs are entitled to bring administrative proceedings. 'A civil society organisation may, in a case concerning another person, request: 1) to institute proceedings, 2) to be admitted to proceedings, if it is justified by the official objectives of the organisation and when it is in the public interest'.¹⁴⁰ It is up to the administrative organ to decide whether to admit the CSO, but this decision may be appealed. If an organisation initiates civil proceedings on behalf of a party, it has the rights of a party to the proceedings and may seek and obtain any remedy, including calling witnesses or appealing the ruling (the obligations for the party also apply, such as respecting court orders and compliance with deadlines).¹⁴¹ Since May 2012, the written consent of the party is

¹³⁵ Malta, Equal Treatment of Persons Order.

¹³⁶ Netherlands, Civil Code.

¹³⁷ Poland, Code of Civil Procedure, 17 November 1964, Article 8.

¹³⁸ Poland, Act amending the Code of Civil Procedure and some other acts, 2 July 2004, entered into force on 4 February 2005, Article 61.

¹³⁹ See expert opinion commissioned by the Office of the Ombud and prepared by Dr M. Kułak, *Analiza poprawności implementowania do polskiego porządku prawnego dyrektyw Unii Europejskiej w obszarze równego traktowania, Ekspertyza przygotowana na zlecenie Biura Rzecznika Praw Obywatelskich* (Analysis of the correctness of implementation of European Union directives in the field of equal treatment into the Polish legal system), 4 January 2021, pp. 34-35.

¹⁴⁰ Poland, Administrative Procedure Code, 14 June 1969, Article 31(1).

¹⁴¹ Poland, Code of Civil Procedure, 17 November 1964, Article 62.

always needed. There are no special additional provisions on victim consent. An organisation admitted to administrative proceedings also has the rights of a party (with some limitations).¹⁴²

In **Portugal**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. According to Article 12(1) of Law 93/2017, associations with the objective of combating discrimination based on the grounds of race or ethnic origin, nationality, ancestry and territory of origin have the right to engage in judicial procedures on behalf or in support of the persons concerned, with their approval in writing.¹⁴³ In the case of minors or persons under guardianship, the authorisation of their parents or guardian is required. Article 8 of Law 3/2011 provides that 'organisations whose purpose is the defence or promotion of the rights and interests of individuals against discrimination regarding access to employment, training or to the conditions for the provision of self-employment or employment, have legal standing to intervene on behalf of the person concerned, provided that: a) the associations explicitly include protection of the specific interests in their mandate or by-law objectives; and b) there is express authorisation from the person represented'.

NGOs can also intervene in administrative proceedings as provided by Article 55(1)(f), in connection with Article 9(2) of the Code of Procedure in Administrative Courts, which grants legal persons, including NGOs whose aim is to protect a certain general interest, the option of intervening in administrative procedures and subsequently the right to appeal to the administrative courts if they consider it necessary.

Portuguese legislation in relation to discrimination against persons with disabilities (Article 15(1) of Law 46/2006) stipulates that associations for persons with disabilities and other similar organisations defending the rights and interests of persons with disabilities have the right to intervene in support or on behalf of a complainant in their respective legal proceedings.¹⁴⁴ Such organisations have the right to monitor administrative procedures that may culminate in a fine for any discriminatory act. In addition, Decree-Law 163/2006 (Article 14), on accessibility for persons with disabilities, provides that legal entities (NGOs and associations) representing persons with disabilities have legal standing in court to assist or act on behalf of individuals with disabilities in court cases in which they are involved. In cases of minor offences, these organisations have the right to denounce the perpetrator of the discrimination and file a complaint with the equality body CEARD. Individual complainants need be identified only if this is necessary to substantiate the complaint.

Portuguese trade unions are entitled under Article 5 of the Labour Procedure Code and Articles 5 and 8 of Law 3/2011 to act on behalf of victims of discrimination in judicial or administrative procedures.¹⁴⁵ Article 5(2)(c) of the Labour Procedure Code states that trade unions may file actions to represent members who authorise them to do so in cases related to a general violation of individual rights of an identical nature. Article 5(3) states that authorisation is presumed if the member does not demonstrate any opposition after being informed by the trade union of its intention to file the action. Furthermore, Article 443(1)(d) of the Labour Code grants legal standing to trade unions in administrative proceedings, imposing fines in cases of violation of the anti

¹⁴² Poland, Administrative Procedure Code, 14 June 1969, Article 31(3).

¹⁴³ Portugal, Law 93/2017, 23 August 2017, which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin.

¹⁴⁴ Portugal, Law 46/2006, 28 August 2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health.

¹⁴⁵ Portugal, Labour Procedure Code.

discrimination rules of the Code, with the right to file an appeal or to answer an appeal by the person found guilty.

Article 28 of the **Romanian** Anti-discrimination Law defines two different types of legal standing before the equality body (the National Council for Combating Discrimination – NCCD) and the courts for NGOs with an interest in combating discrimination: *in nome proprio* (acting in cases prejudicing a community or a group) or in support of an individual (with the consent of the victim).¹⁴⁶ When a petition regarding the unconstitutionality of the provision granting legal standing to NGOs was brought before the Romanian Constitutional Court, in Decision 285 of 1 July 2004, the Constitutional Court rejected the argument of the petitioners, who claimed that recognising legal standing for NGOs led to ‘a situation of inequity and discrimination for the parties which did not put themselves under the protection of an NGO of this kind’.¹⁴⁷

In **Slovenia**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination, provided that they meet the conditions defined by law. Article 41 of the Protection Against Discrimination Act states that, regardless of the rules defined in the Civil Procedure Act, a person who has experienced discrimination may authorise an NGO which is active in the field of protection from discrimination or protection of human rights to represent them in judicial proceedings based on the Protection Against Discrimination Act.¹⁴⁸ The procedural acts in the judicial process in the name of the NGO may be conducted only by a person who is a representative of the NGO and who has passed a state legal exam (Article 41(1)).

In **Sweden**, NGOs have the right to bring actions representing an individual person provided that their statutes envisage the possibility of taking into account their members’ interests, depending on their own activities, their finances and the circumstances of the case, and on condition that consent is given by the victim. Labour unions have legal standing to litigate discrimination cases where one of their members is involved, in accordance with Chapter 4, Section 5 of the Labour Disputes Act (1974:371).¹⁴⁹ The right of the Equality Ombudsman and non-profit organisations to represent a victim is subsidiary to a labour union’s right to represent its members under Chapter 6 Section 2(3) of the Discrimination Act. Chapter 6 Section 2 of the Discrimination Act gives non-profit organisations whose statutes state that they aim to protect their members’ interests the right to bring actions in their own name as a party representing an individual. It was added to the law because of an interpretation of the minimum requirements of the EU anti-discrimination directives.¹⁵⁰

At the same time, Swedish experts note that even prior to the change in the law, NGOs always had the possibility of giving assistance in the form of providing a lawyer or covering a victim’s potential legal costs. However, for many years, this type of action was outside Sweden’s legal and political culture, at least for NGOs which did not represent the more powerful interests in society such as unions or employers’ organisations. There was no tradition of less powerful NGOs maintaining their own legal expertise or establishing public interest law firms to provide that expertise.¹⁵¹ According to Section 10(1)(a) of the **Slovak** Anti-discrimination Act, the claimant in (civil) proceedings pursuant to the Act can be represented by a legal entity which has the authority to do so in accordance with a separate law. According to Section 10(1)(b) of the Anti-discrimination Act, the parties can

¹⁴⁶ Romania, Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (Anti-discrimination Law), 31 August 2000.

¹⁴⁷ Romanian Constitutional Court, Decision 285, 1 July 2004.

¹⁴⁸ Slovenia, Protection Against Discrimination Act, 21 April 2016.

¹⁴⁹ Sweden, Labour Disputes Act, 1974:371.

¹⁵⁰ See, for example, the reference in the Government bill to Article 7(2) of the Racial Equality Directive and Article 9(2) of the Equal Treatment in Working Life Directive.

¹⁵¹ European network of legal experts in gender equality and non-discrimination, Sweden, questionnaire response.

also be represented by a legal entity ‘whose activities are aimed at or consist of protection against discrimination’.¹⁵² If the legal entity takes up the representation, it authorises one of its members or employees to act on its behalf.¹⁵³

According to Section 308 of the Civil Dispute Act, the parties in anti-discrimination disputes can be represented by a person (or legal entity) authorised by anti-discrimination legislation.¹⁵⁴ In all civil proceedings related to individual employment relations, a party to the proceedings can be represented by a trade union. Associations can represent victims in civil proceedings before ordinary courts, but not before the Constitutional Court. The fact that NGOs cannot represent victims of discrimination before the Constitutional Court ultimately makes such representation in some cases inadequate and inefficient in the opinion of national experts.

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can be represented by a lawyer or by ‘another representative of their choice’.¹⁵⁵ This means that people affected by discrimination can, in principle, select any natural or legal person to represent them, including NGOs without any requirement. Regarding a complaint dealt with by a public body, although there is no specific provision as to the legal standing of associations, the law does not prohibit other natural persons or legal entities from acting (submitting a complaint) on behalf of a complainant.

Acting on behalf of victims before other adjudicating bodies

The **Estonian** Trade Unions Act¹⁵⁶ Article 17(7) provides that among the competences of trade unions is the representation and protection of their members before labour dispute resolution bodies, in relation to state and local government authorities, employers and associations of employers. Also, in conciliation proceedings for the resolution of discrimination disputes (in the private sector) filed before the Chancellor of Justice, a person (meaning both a legal and a natural person) who has a legitimate interest in checking compliance with the requirements for equal treatment may also act as a representative (Article 23(2)).¹⁵⁷

In **Ireland**, any individual or body may be authorised by an individual claimant to represent them before the Workplace Relations Commission (WRC) and the Labour Court, but not before a civil court.¹⁵⁸ The Workplace Relations Commission is a quasi-judicial body which hears the vast majority of discrimination complaints at first instance under the two primary Irish laws that implement the EU equality directives: the Equal Status Acts 2000-2018 (ESA) and the Employment Equality Acts 1998-2021 (EEA).

In **Malta**, Article 75(2) of the Employment and Industrial Relations Act 2002 also permits action to be taken on behalf of a person who is the subject of alleged discriminatory treatment.¹⁵⁹ This provides that, where it is alleged that a worker has been unfairly dismissed by an employer, or where there is an alleged breach of any obligation under Title I of the Act (thus including discriminatory treatment) or any regulations, the matter will

¹⁵² Slovakia, Anti-discrimination Act.

¹⁵³ Slovakia, Civil Dispute Act, 160/2015, Section 317.

¹⁵⁴ Slovakia, Civil Dispute Act, 160/2015, Section 308.

¹⁵⁵ Slovakia, Administrative Code, 71/1967, Section 17(1).

¹⁵⁶ Estonia, Trade Unions Act (available in English).

¹⁵⁷ In Estonia, in general, a petitioner must file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23(1) of the Chancellor of Justice Act).

¹⁵⁸ Ireland, Section 77(11) Employment Equality Acts 1998-2021 and Section 25A Equal Status Acts 2000-2015. A party cannot object to the other side’s choice of representative: Workplace Relations Commission, Holmes v. National Women’s Council of Ireland, ADJ-00040678, 27 October 2023.

¹⁵⁹ Malta, Employment and Industrial Relations Act 2002.

be referred to the Industrial Tribunal for a decision by it through a referral in writing made by the worker alleging the breach, or by another person acting in the name and on behalf of the worker. Furthermore, Article 33A of the Equal Opportunities (Persons with Disability) Act provides that any association, organisation or any legal entity that has a legitimate interest in ensuring that the provisions of this Act are complied with may institute, on behalf or in support of the person against whom an unlawful act of discrimination has been committed under this Act, with their approval, proceedings for redress before the UNCRPD Redress Panel or the competent court.¹⁶⁰

¹⁶⁰ Malta, Act LIX of 2021 amending the Equal Opportunities (Persons with Disability) Act.

Table on legal standing to engage on behalf of victims of discrimination

NB. This table does not contain criminal law provisions

Country	Standing to act on behalf of victims ¹⁶¹	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Austria	Yes (NGOs)	Anti-discrimination law	Quasi-judicial equality body	Gender, ethnic affiliation, religion, belief, age and sexual orientation
	Yes (trade unions)	Procedural law (employment)	1 st and 2 nd instance courts	Gender, ethnic affiliation, religion, belief, age and sexual orientation
Belgium	Yes (NGOs and trade unions)	Anti-discrimination law (race)	All courts	Alleged race, colour, descent, ethnic or national origin and nationality
	Yes (NGOs and trade unions)	Anti-discrimination law	All courts	Age, sexual orientation, civil status, birth, property (in French: <i>fortune</i>), religious or philosophical belief, state of health, disability, political opinion, trade union opinion, language, physical or genetic features and social origin or condition
Bulgaria	Yes (NGOs)	Anti-discrimination law	Quasi-judicial equality body 1 st instance courts	Sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status or any other ground provided for by law or by international treaty Bulgaria is a party to
	Yes (NGOs and trade unions)	Administrative law	Administrative courts	<i>Not specified</i>

¹⁶¹ In this column, the types of entities (NGOs, trade unions or both) that are in principle granted legal standing to act on behalf of victims of discrimination are indicated in brackets.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Croatia	Yes (trade unions)	Procedural law (civil)	Ordinary civil courts Zagreb Labour Court	<i>Not specified</i> Applicable to all grounds: race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation
Cyprus	Yes (NGOs and trade unions)	Anti-discrimination law (employment)	Courts and quasi-judicial equality body	Race/ethnic origin, religion or belief, age, sexual orientation
	Yes (NGOs and trade unions)	Anti-discrimination law (race)	Courts and quasi-judicial equality body	Race/ethnic origin
	Yes (NGOs and trade unions)	Anti-discrimination law (disability)	Courts and quasi-judicial equality body	Disability
Czechia	Yes (NGOs) ¹⁶²	Anti-discrimination law	1 st and 2 nd instance courts	Sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (in Czech: <i>národnost</i>)
	Yes (trade unions)	Civil procedural law	1 st and 2 nd instance courts	Gender, racial or ethnic origin, religion, conviction, disability, age or sexual orientation

¹⁶² Standing is limited to NGOs that were established to protect victims of discrimination or have this activity listed in their articles of association.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Denmark	Yes (trade unions) ¹⁶³	Procedural law	Civil courts, Labour courts, Quasi-judicial equality body	Gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression, gender characteristics, age, disability, national, social or ethnic origin
	Yes (NGOs)	Procedural law	Quasi-judicial equality body	Gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression, gender characteristics, age, disability, national, social or ethnic origin
Estonia	Yes (NGOs)	Anti-discrimination law	Gender Equality and Equal Treatment Commissioner (Quasi-judicial equality body)	Gender, ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation
	Yes (NGOs)	Chancellor of Justice Act	Quasi-judicial equality body	Gender, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law
	Yes (trade unions)	Trade union law	Labour dispute committees	<i>Not specified</i>

¹⁶³ Only in employment.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Finland	Yes (NGOs and trade unions)	Procedural law	All courts	Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics
	Yes ¹⁶⁴ (NGOs and trade unions)	Anti-discrimination law	Quasi-judicial equality body	Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics
France	Yes (NGOs and trade unions)	Anti-discrimination law	All bodies and jurisdictions	Origin, mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed, to an ethnic origin, a nation, a race or a specific religion, physical appearance, last name, family situation, trade union activities, political opinions, age, health, disability, genetic characteristics, place of residence, or banking residence, capacity to express oneself in a language other than French, apparent economic vulnerability, loss of autonomy
	Yes (NGOs and trade unions)	Procedural law (civil)	All bodies and jurisdictions	<i>Ibid</i>
	Yes (NGOs and trade unions)	Procedural law (administrative)	All bodies and jurisdictions	<i>Ibid</i>

¹⁶⁴ Not in employment.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Germany	No			
Greece	Yes (NGOs and trade unions)	Anti-discrimination law	All courts and any administrative authority or administrative body	Racial or ethnic origin, genealogical descent, colour, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity, characteristics or expression
Hungary	Yes (NGOs and trade unions)	Anti-discrimination law	Any proceeding based on the violation of the right to equal treatment, including court procedures, the proceeding of the quasi-judicial equality body and any other administrative procedure	Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national minority (also including ethnic minority), mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, gender identity, age, social origin, financial status, part-time nature of employment legal relation or other legal relation aimed at labour, or determined period thereof, belonging to an interest representation, any other situation, attribute or condition of a person or group
Ireland	Yes (NGOs and trade unions)	Anti-discrimination law (employment)	Quasi-judicial equality body and Labour court	Gender, age, race, religion, family status, disability, civil status, sexual orientation, Traveller community
	Yes ¹⁶⁵ (NGOs and trade unions)	Anti-discrimination law	Quasi-judicial equality body and Labour court	Gender, age, race, religion, family status, disability, civil status, sexual orientation, Traveller community, housing assistance

¹⁶⁵ Fields other than employment.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Italy	Yes (NGOs entered in UNAR registry)	Anti-discrimination law (race)	Any level of ordinary jurisdiction	Racial or ethnic origin
	Yes (NGOs and trade unions)	Anti-discrimination law (employment)	Any level of ordinary jurisdiction	Sexual orientation, disability, age, religion or personal belief
	Yes (trade unions) ¹⁶⁶	Immigration law	Any level of ordinary jurisdiction	Ancestry, religion, national or ethnic origin, religious beliefs and practices
	Yes (trade unions)	Employment law	Any level of ordinary jurisdiction	Race, sexual orientation, disability, age, religion or personal belief
Latvia	Yes (NGOs)	NGO law	Civil cases 1 st , 2 nd instance court, not cassation Administrative cases all 3 instances	<i>Not specified</i>
	Yes (trade unions)	Employment law	Civil cases 1 st , 2 nd instance court, not cassation Administrative cases all 3 instances	<i>Not specified</i>
Lithuania	Yes ¹⁶⁷ (NGOs and trade unions)	Anti-discrimination law	All courts, the labour dispute commission (for trade unions).	Gender, race, 'nationality', citizenship, language, origin, social status (including family status), belief, convictions or views, age, sexual orientation, disability, ethnic origin, religion
	Yes ¹⁶⁸ (NGOs and trade unions)	Procedural law (civil)	All courts, the labour dispute commission (for trade unions).	<i>Not specified</i>
Luxembourg	No			

¹⁶⁶ Only in employment.

¹⁶⁷ Restrictive interpretation by national courts.

¹⁶⁸ Only on behalf of members of the association.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Malta	Yes ¹⁶⁹ (NGOs and trade unions)	Anti-discrimination law (employment)	Employment tribunal/competent court	Religion or religious belief, disability, age, sex, sexual orientation, racial or ethnic origin, pregnancy or maternity leave, gender reassignment
	Yes ¹⁷⁰ (NGOs and trade unions)	Anti-discrimination law (employment)	Employment tribunal	Marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership of a trade union or an employers' association
	Yes (NGOs and trade unions)	Anti-discrimination law (race)	Competent court	Racial or ethnic origin
	Yes (NGOs and trade unions)	Anti-discrimination law (disability)	Redress panel/competent court	Disability
Netherlands	Yes (NGOs and trade unions)	Civil law	Civil courts	Racial or ethnic origin, sex (incl. pregnancy, gender identity, gender expression and sex characteristics), religion or belief, sexual orientation, age, disability, nationality, marital status, political opinion, permanent/temporary contract, part-time/full-time work or other status

¹⁶⁹ Only in employment.

¹⁷⁰ Only in employment.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Poland	Yes (non-profit NGOs and trade unions)	Procedural law (civil)	Common courts	<i>All grounds</i>
	Yes (non-profit NGOs and trade unions)	Procedural law (administrative)	Administrative organs and administrative courts	<i>All grounds</i>
Portugal	Yes ¹⁷¹ (NGOs)	Anti-discrimination law (race)	Administrative Courts Civil Courts Equality body	Race/ethnic origin, colour, nationality, ancestry and territory of origin
	Yes (NGOs)	Anti-discrimination law (disability)	Administrative Courts Civil Courts Equality body	Disability, pre-existing risk to health
	Yes (trade unions)	Procedural law (employment)	Labour Courts Administrative Courts Equality body	Ancestry, age, sex, sexual orientation, gender identity, civil status, family situation, economic situation, education, origin or social condition, genetic heritage, reduced capacity for work, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions, trade union affiliation
Romania	Yes (NGOs and trade unions)	Anti-discrimination law	National equality body and civil courts	Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion

¹⁷¹ Fields other than employment.

Country	Standing to act on behalf of victims	Form of legislation granting standing	Courts/bodies where standing is granted	Grounds for which standing is granted
Slovakia	Yes (NGOs and trade unions)	Anti-discrimination law	Civil courts	Sex, religion or belief, race, affiliation with nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status or for the reason of reporting criminality or other anti-social activity
Slovenia	Yes (NGOs and trade unions)	Anti-discrimination law	National courts	Gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic
Spain	Yes (NGOs and trade unions)	Administrative Law and Procedural Law	Civil, Labour Courts / Public Administration	Birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance
	Yes (trade unions)	Procedural law (employment)	Civil, Labour Courts / Public Administration	Racial or ethnic origin, religion or beliefs, disability, age, sexual orientation
	Yes ¹⁷²	Anti-discrimination law (disability)	Civil, Labour Courts / Public Administration	Disability
Sweden	Yes (NGOs and trade unions)	Anti-discrimination law	Courts	Sex, transgender identity or expression, ethnicity, religion and

¹⁷² Only in employment.

				other belief, disability, sexual orientation, age
	Yes (trade unions)	Anti-discrimination law and Procedural law (employment)	Courts	Sex, transgender identity or expression, ethnicity, religion and other belief, disability, sexual orientation, age

2.1.2 Promising practices in NGOs and trade unions acting on behalf of victims of discrimination

In order to support the NGOs and trade unions to act on behalf of victims, different Member States identified various strategies. Some states facilitate access to dedicated litigation funds, as is the case in **Austria, Czechia, Italy** and **Sweden**, other Member States facilitate access to courts by waiving formal requirements for mandatory representation by barristers, as is the case in **Austria** and **Poland**. There are also Member States such as **Spain** which have extended the list of collective actors allowed to act on behalf of victims of discrimination to also include political parties, consumer and user organisations.

a. Providing financial support so that NGOs can act on behalf of victims

In **Czechia**, the national legal and policy framework provides some facilities and incentives for NGOs and trade unions to engage in non-discrimination litigation, but these opportunities are limited and often underutilised. For example, the Czech Ombudsman has signed a memorandum of cooperation with the NGO Pro Bono Alliance in 2012 which can provide free legal support to victims of discrimination selected by the Ombudsman. In practice, this is only used for a limited number of cases but it arranges free legal assistance for certain victims of discrimination who have very probably been discriminated against according to the Czech Ombudsman. Special assistance is provided on the basis of a contract between a complainant (client) and a cooperating law firm or lawyer involved in a pro bono clearing-house served by the Pro Bono Alliance. Since 2012, the Pro Bono Alliance has arranged legal representation in around 20 discrimination cases referred by the Ombudsman. These are all cases where the Ombudsman found discrimination.¹⁷³

Swedish anti-discrimination bureaux as promising practice

One of the most interesting practices of intervention on behalf of victims of discrimination is that of **Swedish** anti-discrimination bureaux which are able to participate in cases as named parties on behalf of claimants.¹⁷⁴ The 18 local anti-discrimination bureaux are non-governmental organisations whose members are other organisations and sometimes individuals and which operate with public funding. They typically provide free legal advice and support to victims of discrimination.¹⁷⁵ While initially there were some questions about the right of an anti-discrimination bureau to represent claimants in court in accordance with the rules in the

¹⁷³ European network of legal experts in gender equality and non-discrimination, Czech Republic, questionnaire response.

¹⁷⁴ Byrån mot diskriminering, 'Kontakta din närmaste antidiskrimineringsbyrå' (Contact your closest anti-discrimination bureau). For more general information, Diskrimineringsombudsman, 'Organisations and authorities you can contact'.

¹⁷⁵ For the 2022 budget year, 18 bureaux were granted funding of about EUR 2.8 million from the national Government, according to the 2022 annual report of the Swedish Agency for Youth and Civil Society: [Swedish Agency for Youth and Civil Society](#) (2023), *Årsredovisning 2022* (Annual report 2022), p. 78. Available (in Swedish). The bureaux were created in order to combat discrimination on all grounds.

Discrimination Act, it now seems clear that they do have this right.¹⁷⁶ There is also an expectation that anti-discrimination bureaux will increasingly take cases to court.

The reduction in the number of complaints dealt with by the Equality Ombudsman over a longer period, particularly 2014–2020, due to a focus on ‘strategic’ complaints and other means of dealing with discrimination than through individual complaints, has contributed to an increasing reliance by victims on the bureaux. This happens especially since even the Ombudsman refers complainants to the bureaux as a potential source of advice and support. Among other things, bureaux take part in public debate, arrange seminars for the general public and provide anti-discrimination training for the private and public sectors. The inspiration for their work came from similar bureaux in the Netherlands and the UK, and more indirectly from public interest law firms in the United States.

Even beyond the work of the local anti-discrimination bureaux, civil society has been developing an increased awareness of the importance of being more proactive concerning the development of case law related to discrimination. The main LGBTIQ organisation in Sweden, RFSL, has brought some cases to the administrative courts that involve discriminatory treatment (but not within the terms of the Discrimination Act – on the requirement for sterilisation prior to a person applying for a change of gender marker), partly with the help of local anti-discrimination bureaux.¹⁷⁷

b. Waiving formal requirements regarding representation by barristers

As far as legal representation is concerned in **Poland** some preferential treatment is allowed in labour cases. In principle, legal representation may be provided by an advocate or a legal adviser,¹⁷⁸ but in cases of discrimination against an employee a representative of a trade union, a labour inspector or another employee of the enterprise may also act as a legal representative.¹⁷⁹

Opening up the list of entities enabled to act on behalf of victims of discrimination in Spain

Another promising practice was adopted in 2022, when the relevant **Spanish** norm¹⁸⁰ was strengthened through Law 15/2022, of 12 July 2022, which comprehensively covers equal treatment and non-discrimination.¹⁸¹ On this basis, Article 29 of Law 15/2022 states that, ‘political parties, trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose aims include the defence and promotion of human rights shall be entitled to defend the rights and interests of their affiliated or associated persons or users of their services in civil and

¹⁷⁶ See, for example, Göta Court of Appeal, 30 September 2011, *Örebro Rättighetscenter v Götavi Invest AB*, Case No. FT 198-11. See also *Malmö mot diskriminering*, the bureau that has been the most active in taking cases to court.

¹⁷⁷ On 19 December 2012, the Administrative Appeal Court (*case no. 1968-12*) held that the requirement for sterilisation prior to a person applying for a change of gender marker violated the Swedish Constitution as well as Articles 8 and 14 of the European Convention on Human Rights. See Time, ‘[Transgender people in Sweden no longer face forced sterilization](#)’, 14 January 2013. See also RFSL’s press release ‘[Historic Victory for Trans People – the Swedish Parliament Decides on Compensation for Forced Sterilizations](#)’, 21 March 2018.

¹⁷⁸ Poland, Code of Civil Procedure, 17 November 1964, Article 87(1).

¹⁷⁹ Poland, Code of Civil Procedure, 17 November 1964, Article 465(1).

¹⁸⁰ Spain, Law 62/2003, of 30 December 2003, [on fiscal, administrative and social measures](#).

¹⁸¹ Spain, Law 15/2022, of 12 July 2022 [on equal treatment and non-discrimination](#). This Law establishes as grounds for discrimination birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance.

contentious-administrative legal proceedings and also in social proceedings, provided they have their express authorisation’.

Consequently, all these entities can defend a person who is a victim of discrimination in civil, contentious-administrative and social proceedings, if they are a member, associate or a ‘user’ of the entity’s services and they give their express authorisation. Thus, all these entities may be considered as ‘interested parties’ in administrative procedures in which the administration has to pronounce on a situation of discrimination provided for in the Law, as long as they have the authorisation of the person or persons affected, in accordance with Article 31(2) of Law 15/2022.

The same regulation has also been incorporated by Law 4/2023, on equality for transgender people and guaranteeing LGBTI rights, which addresses this matter in its fifth final provision. It grants legal standing to a number of types of organisation, in addition to the persons affected, for the defence of the rights and interests of persons who are victims of discrimination on the grounds of sexual orientation or identity, gender expression or sexual characteristics. These entities include political parties, trade union organisations, business organisations, professional associations of self-employed persons, associations of consumers and users and legally constituted associations and organisations whose aims include the defence and promotion of the rights of lesbian, gay, bisexual, trans and intersex persons or their families. To intervene in proceedings they must have express authorisation from the persons affected.¹⁸²

A similar provision is included in the **Spanish** General Law on the Rights of Persons with Disabilities and their Social Inclusion, which applies to access to and the supply of goods and services (telecommunications and the information society, urban public spaces, infrastructure and construction, transport, goods and services available to the public, relations with public administrations, the administration of justice, and cultural heritage) and to employment. Article 76 provides that legal entities which are legally authorised to defend legitimate collective rights and interests may engage on behalf and in the interests of a person who authorises them to do so in proceedings in order to make effective the principle of equal treatment, defending the individual rights of those persons to whom the effects of the norm will apply.¹⁸³

2.1.3 Challenges for NGOs and trade unions acting on behalf of victims of discrimination

Although the number of complaints submitted to courts or equality bodies has been gradually rising, the volume of case law on discrimination in most countries is still relatively low, which may well point towards real and perceived barriers to justice.¹⁸⁴ The annual comparative analysis of the enforcement of the Equality Directives identifies common concerns regarding the limitations and challenges encountered by NGOs when exercising their legal standing. Additional limitations were explained by national experts assessing domestic practices.

a. No standing or limited standing for NGOs in court proceedings

A first limitation might be that the domestic legal framework does not provide for standing in civil proceedings or provides for limited standing only to trade unions. Alternatively, the legal provisions may not be clear enough. For example, Section 23 of the **German** General Act on Equal Treatment (AGG) provides for legal support

¹⁸² Spain, Law 4/2023, of 28 February 2023, on equality for transgender people and guaranteeing LGBTI rights.

¹⁸³ Spain, General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013).

¹⁸⁴ Chopin, I. and Germaine, C. (2025).

through anti-discrimination associations but does not include legal representation in court proceedings.¹⁸⁵ Similarly, no particular legislation exists in **Luxembourg** and in **Denmark** regarding the possibility of NGOs representing victims of discrimination in civil court proceedings.¹⁸⁶

In spite of language transposing the requirements used in the Equality Directives into Article 12(2) of the **Lithuanian** Law on Equal Treatment, the latest amendments to the Law on the Proceedings of Administrative Cases do not mention associations among the list of possible representatives of persons in an administrative procedure, unless they are representing the association itself or its members.¹⁸⁷ A similar provision in the Code of Civil Procedure also has narrower wording. Article 56(1)(6) states that such associations may only engage in judicial proceedings on behalf of their members and that they must be represented by a person holding a law degree or by a member of the Bar.¹⁸⁸ An unofficial interpretation provided by the Ministry of Justice suggested a narrow interpretation of this provision as well, in that a victim can be represented by an association only if they are formally a member of that organisation.¹⁸⁹

This narrowing of representation opportunities for NGOs can also be observed in relation to the national equality body proceedings. In the past, it was fairly common for associations to initiate administrative proceedings with **Lithuania's** Office of the Equal Opportunities Ombudsperson in cases where their rights were not directly affected by particular actions or omissions and the Ombudsperson would start an investigation of their complaint. However, the Supreme Administrative Court issued a landmark decision in 2010, ruling that only persons whose rights were directly affected by particular decisions had the right to appeal to the Ombudsperson.¹⁹⁰ According to the Court's interpretation, associations can thus lodge a complaint with the Ombudsperson only when their rights have been directly violated.

A restrictive approach is also pursued in other countries where legal standing to act on behalf of victims is limited to trade unions, such as in **Croatia**, where only trade unions can act on behalf of victims of discrimination in labour disputes. While trade unions in **Denmark** have legal standing to represent their members in cases concerning pay and employment conditions, there is no similar standing for NGOs. In **Hungary**, although legal standing is established by Article 18(1) of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA)¹⁹¹ for 'non-governmental and interest representation organisations', one of the problematic areas is that there are no special provisions on victim consent in cases where obtaining formal authorisation can be difficult, such as from children or persons under guardianship. In practice, this has caused problems when people under guardianship wished to take action against the guardianship office, but the guardians employed by the office refused to sign the powers of attorney.¹⁹²

This category of limited legal standing also includes the group of countries in which even if NGOs are entitled to bring cases of discrimination to court, the national legislation is itself limitative, with the national legislation mirroring the Equality Directives and providing only a limited material scope in cases of discrimination on grounds of disability, age, religion, sexual orientation outside the field of employment. This is the type of

¹⁸⁵ Germany, Section 23 of the German AGG.

¹⁸⁶ Denmark, Consolidated Act no. 1160 of 5 November 2024 with later amendments.

¹⁸⁷ Lithuania, Law on the Proceedings of Administrative Cases, 1999, no. 13-308.

¹⁸⁸ Lithuania, Code of Civil Procedure, 2002, amendments related to class action made mainly in 2014.

¹⁸⁹ Lithuania, Official Letter from the Ministry of Justice, 10 November 2011, no. (1.11) 7R-9117, replying to an inquiry dated 18 October 2011.

¹⁹⁰ Lithuania, Supreme Administrative Court, decision in case no. A⁶⁶²-665/2010, 19 April 2010.

¹⁹¹ Hungary, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA), 28 December 2003.

¹⁹² European network of legal experts in gender equality and non-discrimination, Hungary, questionnaire response.

challenge encountered by the **Estonian** Human Rights Centre in its strategic litigation. In some of the cases of discrimination on the ground of sexual orientation they were unable to litigate because the Equal Treatment Act still has a narrow material scope regarding sexual orientation (only in the field of employment). Nevertheless, such cases have been brought under constitutional provisions.

One of the cases brought by the Estonian Human Rights Centre through strategic litigation efforts before the Supreme Court concerned the payment by the state of social tax for dependent spouses of insured employed persons who are raising at least one child under eight years of age.¹⁹³ The payment of social tax gives such spouses automatic access to the national health insurance system. The Supreme Court found it unconstitutional (violation of the non-discrimination principle set out in Article 12 of the Constitution) that dependent registered partners (in this case a lesbian couple) did not have access to the scheme on an equal footing with married partners. However, the Court did not discuss whether the applicant was discriminated against on the ground of sexual orientation.

b. Formal requirements regarding representation by barristers and informal concerns acting as deterrents

Even if the national legislation provides for the right of NGOs to ensure legal representation for victims of discrimination, the second type of limitation is encountered when there are concerns that the complexity of discrimination law may be deterring victims of discrimination from bringing cases. Skilled, experienced assistance for victims can help counter this, but the availability of such aid remains limited (in contrast to the professional advice and representation usually available to respondents) and too costly for many victims. A finding in **Poland** is relevant for most Member States: research undertaken by the Polish Association of Anti-Discrimination Law showed that not many NGOs engage in anti-discrimination legal work: this is mostly done by those familiar with legal issues, especially larger, more influential CSOs based in the capital city.¹⁹⁴

In most countries, legal representation by lawyers is either mandatory or – at least – necessary in practice. In **Austria**, representation by a lawyer is compulsory for most civil procedures in court and before the courts of public law, so there is not much opportunity for NGO representation in civil law courts, although there is more opportunity at the lower levels of administrative proceedings. In these cases, associations, organisations etc. can, like any other natural persons, represent parties in so far as these parties have formally mandated them. In **Cyprus**, lawyers working for NGOs are not entitled to appear in court, only lawyers working in law firms have the required practising license that allows court appearance. According to Section 260(2) of the **Danish** Administration of Justice Act, only certified lawyers who have obtained a mandate from the individual victim of discrimination can litigate a case in the civil courts.¹⁹⁵ This means that an NGO can help to examine the case but when it comes to representing and promoting the case before the civil courts, the individual victim of discrimination must get legal representation from a certified lawyer.

In **Slovenia**, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination, provided that they meet the conditions defined by the Protection Against Discrimination Act, one of the requirements established by Article 41(1) of the Act being that procedural actions in the judicial process in the name of the NGO may be conducted only by a person who is a representative of the NGO and who has

¹⁹³ Estonia, Supreme Court, constitutional review chamber, Decision of 18 December 2019, Case no. 519-42.

¹⁹⁴ Poland, PTPA (2013), *Prawo antydyskryminacyjne w praktyce polskich sądów powszechnych. Raport z monitoringu* (Anti-discrimination law in the practice of Polish ordinary courts – monitoring report), Polish Society of Anti-Discrimination Law, pp. 179-212.

¹⁹⁵ Denmark, Consolidated Act 1160 of 5 November 2024 with later amendments.

passed a state legal exam.¹⁹⁶ This condition is excessive when compared to representation under the general rules on representation in the Civil Procedures Act, for which the state legal exam is not required for representation before county courts adjudicating disputes worth less than EUR 20 000.

c. Financial constraints

The availability of free legal aid constitutes a core requirement to ensure access to justice for victims of discrimination. In practice, however, there are many countries where access to free legal aid is either very limited or dependent on complex procedures (e.g. **Croatia, Hungary, Lithuania** and **Slovakia**).¹⁹⁷

The third type of limitation consists of financial constraints other than the cost of a certified lawyer. An additional factor that discourages victims from initiating legal action is the level of court fees in some countries, such as in **Czechia, Greece** (notably when the respondent is a public administration) and **Slovakia**. Similarly, the **Belgian** equality body Unia has highlighted that it is very difficult for claimants who are not eligible for legal aid to bring a claim before the courts due to numerous obstacles, including very high costs and the risk of paying a procedural indemnity if the case is dismissed.¹⁹⁸

The system of ordering the losing party to pay the winning party's legal fees and expenses is also particularly detrimental in some countries and acts as an effective deterrent in **Finland** and **Poland**. While in **Sweden** the courts may decide in a discrimination case that each party will bear their own costs, this is not common practice.¹⁹⁹ In **Bulgaria**, the procedures under the Protection Against Discrimination Act are explicitly exempt from all costs, both state fees and expenses, but this provision is not always respected in practice as the losing party is generally ordered to pay the winning party's fees and expenses.²⁰⁰ The case law of the Supreme Administrative Court is not settled with regard to this practice, causing legal uncertainty.²⁰¹

Concerns regarding the loser pays rule as deterrent for litigation – a Swedish example

The difficulties created by the 'loser pays' rule in the context of anti-discrimination litigation is evidenced by a 2022 **Swedish** case. AA had a diagnosis of Asperger's syndrome. His application to join the Armed Forces was automatically rejected. The anti-discrimination bureau Norra Skåne filed a small claims lawsuit on behalf of AA. At the district court, the Armed Forces asserted that due to the nature of the case, meaning that there may be many similar situations, the case should be tried as a normal case and not a small claims case. The district court determined that the reasons put forward were insufficient to justify an exception.²⁰² The Armed Forces appealed the decision. On essentially the same information, the Svea Appeal Court determined that since there was the possibility of many more similar claims, the case should be decided according to the rules that generally apply and not according to the small claims rules. The Court recognised that a key reason for filing

¹⁹⁶ Slovenia, *Protection Against Discrimination Act*, 21 April 2016.

¹⁹⁷ Chopin, I. and Germaine, C. (2025).

¹⁹⁸ Belgium, Unia (2017), *Évaluation de la loi antiracisme et de la loi antidiscrimination (2017 et 2022)* (Evaluation of the Anti-Discrimination Federal Acts (2017 and 2022)), February 2017, pp. 10 and 58-59.

¹⁹⁹ For one recent example of such a court decision, see Lund District Court, decision of 19 May 2021 in case no. T 4019-19, *Malmö mot Diskriminering (MmD) v Lund University*.

²⁰⁰ This practice is based on an interpretative ruling by the Supreme Administrative Court, which is not specific to cases under the Anti-discrimination law (No. 3 of 13.05.2010, rendered in commercial case no. 5 of 2009).

²⁰¹ Bulgaria, Supreme Administrative Court, ruling of 4 July 2019 in case no. 6182/2019 and, in contrast, Decision no. 5733 of 18 May 2020 in case no. 6405/2019.

²⁰² Sweden, Stockholm District Court, PROTOKOLL, 2022-01-24, Case no. FT 13133-21.

small claims cases is to avoid the risks concerning the payment of the other party's legal costs.²⁰³ An important effect of the Appeal Court decision was that the lawsuit was then withdrawn by the anti-discrimination bureau Norra Skåne due to the cost risks involved.

This case illustrates the disparity of resources between alleged victims and the defendants and the defendant-friendly nature of the procedural rules in Sweden, due to the loser pays rule. NGOs representing discriminated groups generally lack the financial resources to take on such risks unless the cases can be brought as small claims cases. Defendants and their lawyers, knowing that they have resources and that even if they lose a case the expenses will be tax deductible, also understand that the rules concerning potential legal costs are highly dissuasive – even in cases where the complainant has a good case. In the AA case, the Swedish Equality Ombudsman later agreed to take on the case and, eventually, the Stockholm District Court held that the failure to provide an individual assessment of AA's application for an admissions test for basic military education (MGU) with conscription constituted direct discrimination. According to the judgment, the burden of proof was shifted and the Armed Forces were unable to provide a non-discriminatory explanation, as there had been no individual assessment.²⁰⁴ The case has been appealed. The Ombudsman did not file the case as a small claims case.

d. Concerns regarding the risk of retaliation

The mapping of the national experiences of NGOs acting on behalf of different vulnerable groups for the enforcement of equality and anti-discrimination norms shows a fourth type of challenge in the form of the risk of retaliation, political or legal harassment against civic actors critical of government policies or involved in sensitive or unpopular issues. **Polish** organisations advocating for equality and anti-discrimination have faced retaliatory lawsuits, which not only strained their resources but were also meant to create a chilling effect on their advocacy efforts. For instance, the 'Atlas of Hate' initiative, which mapped local governments that had adopted anti-LGBT resolutions, has been subjected to multiple legal challenges. These lawsuits aim to intimidate and silence activists by burdening them with legal defences.²⁰⁵

2.2 NGOs and trade unions acting in support of victims of discrimination before national equality bodies/courts/quasi-judicial bodies

The Equality Directives specifically require Member States to ensure the right of NGOs and trade unions to act on behalf or in support of victims of discrimination. The specificities of NGO intervention are not defined and are left to the national legislators to cover through further regulation, taking into account the domestic legal procedural framework.

The national models employed to allow NGOs to act in support of victims before courts, national equality bodies or quasi-judicial authorities include both progressive and more restrictive approaches. Some Member States have limited the provision of support to proceedings before the national equality bodies, as is the case in

²⁰³ Sweden, Svea Appeal Court, PROTOKOLL, 2022-04-22, Case no. Ö 2186-22.

²⁰⁴ Sweden, Stockholm District Court case T 17322-22, 2024-11-19.

²⁰⁵ In Poland, for example, multiple legal cases were brought against [Atlas of Hate](#) for defending the rights of lesbian, gay, bisexual and transgender individuals.

Bulgaria,²⁰⁶ or before the administrative courts, while others have opened up the possibility of providing support not only before civil courts but in all proceedings.

2.2.1 National standards for NGOs and trade unions acting in support of victims of discrimination

The norms regulating the right to act in support of the victim can be either spelled out in the anti-discrimination norms such as it is the case in **Croatia, Hungary or Portugal** or based on the general civil procedure norms as it is the case in **Cyprus, Estonia, Germany, Greece, Netherlands, Poland**, or both in the anti-discrimination and the general procedure rules, as it is the case in **Slovenia**. In all Member States in which the right to support the claimant is provided for, the consent of the victim is required.

a. Right to act in support of victims before courts established in anti-discrimination or other specific norms

The **Croatian** Anti-Discrimination Act allows organisations, entities or associations that focus on protecting the right to equal treatment for specific groups to join anti-discrimination disputes as intervenors on the side of the complainant, if the complainant agrees.²⁰⁷

In **Hungary**, associations, organisations and trade unions are entitled to act in support of victims of discrimination and to join existing proceedings. Under Article 18(2) of the ETA, non-governmental and interest representation organisations are entitled to exercise the rights of the concerned party in administrative proceedings (but not before courts) which are initiated due to the infringement of the requirement of equal treatment (e.g. they may lodge motions, submit legal briefs or attend proceedings).

In **Portugal**, associations, organisations and trade unions are also entitled to act in support of victims of discrimination. According to Article 12(1) of Law 93/2017, associations with the objective of combating discrimination based on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin are entitled to act in support of interested persons, with their consent. Trade unions are entitled to act in support of victims of discrimination (Article 5 of the Labour Procedure Code, Decree-Law 480/99 and Articles 5 and 8 of Law 3/2011). Article 23 of Law 107/2009, which approves the procedural rules for administrative offences in relation to labour and social security, also grants trade unions legal standing to intervene in administrative proceedings in support of the worker. Non-governmental organisations for persons with disabilities (NGOPDs) and all organisations defending and promoting the interests of persons with disabilities have legitimacy to intervene in support of the interested party (Article 15(1) of Law 46/2006). More specifically, NGOPDs are entitled to act in support of victims of discrimination in criminal procedures, according to Article 5(2) of Decree-Law 106/2013, which defines the statute for NGOPDs.

According to the **Slovenian** Protection Against Discrimination Act, a representative of an anti-discrimination NGO may also accompany and support a victim of discrimination in judicial proceedings in cases of discrimination without representing them, provided that the victim consents to this. To ensure that consent is given, it is sufficient that the victim of discrimination, at the beginning of the proceedings or in the course of the proceedings, gives a statement that a certain person is accompanying them and that they wish for this person to be present during the proceedings (Article 41(4)).

²⁰⁶ Bulgaria, Protection Against Discrimination Act, Article 71(2).

²⁰⁷ Croatia, Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008 and 112/2012, Article 21.

b. Right to act in support of victims before courts based on general civil procedure norms

In **Estonia**, engagement in support of the victim (even at a later stage, i.e. joining existing proceedings) is regulated by general procedural rules. Thus, there are rules on the involvement of a third party who does not have an independent claim concerning the object of the proceeding but has a legal interest in having the dispute resolved in favour of one of the parties in a civil court procedure (Article 213 of the Code of Civil Procedure). It is not completely clear whether associations, organisations or trade unions would be recognised as such third parties in the context of discrimination-related civil cases.

In **Germany**, Section 23 AGG provides for legal support through anti-discrimination associations. The associations are limited to advising during court proceedings (Section 23(2) AGG). In this case, Section 90(2) of the Civil Procedure Code provides that the actions of the counsel are taken as actions of the party, if the latter does not contradict them. These rules apply to other court proceedings as well. Anti-discrimination associations may support claimants in court proceedings even if representations through advocates are mandatory. They are then able to act in support of the claimant in addition to an advocate.²⁰⁸ Although the AGG does not contain an explicit provision, it is generally held that anti-discrimination associations always need the consent of the victim when acting in support of them.²⁰⁹ In cases where obtaining formal authorisation is problematic, the general rules of German civil law apply. In Germany, there is no special duty for associations to act in support of victims of discrimination. Section 23(2) AGG does not contain any explicit limitation on certain types of proceedings. However, according to the explanatory report, associations may not engage in criminal proceedings.²¹⁰ Associations are allowed to conduct other legal matters for the claimant (Section 23.3 AGG), most importantly they may give legal advice.

In **Greece**, NGOs and trade unions are entitled to act in support of victims by joining already existing proceedings according to Article 82 of the Code of Civil Procedure, which provides for the possibility of 'additional intervention' in court proceedings (but only under the strict general requirements laid down by Article 62 of the Code concerning 'legitimate interest', the consent of the victim to be represented, authorisation of the representing lawyer, etc). Article 8(4) of Law 4443/2016 states that legal persons may also intervene in court proceedings examining a discrimination case before the civil or administrative courts free of charge (i.e. they do not have to submit a separate court fee).

In the **Netherlands**, associations, organisations and trade unions are entitled to act in support of victims of discrimination, on the basis of Article 3:305a of the Civil Code. They do, however, need consent from the victim(s) to do so. Sometimes individuals who bring an application before the Netherlands Institute for Human Rights are supported by NGOs. One example is a case concerning discriminatory risk profiling by a Dutch bank. The case was brought by three customers, who were supported by the NGO PILP and Discriminatie.nl, the Dutch association of local anti-discrimination services.²¹¹

According to the **Polish** Code of Civil Procedure (Articles 8, 61 and 462), organisations involved in combating discrimination may engage in judicial procedures in support of a complainant. Article 61 stipulates that

²⁰⁸ Advocates are mandatory in various instances in German civil law, e.g. for all cases pending before a regional court (*Landgericht*) or higher regional court (*Oberlandesgericht*), Section 78(1) (first sentence) of the Civil Procedure Code (ZPO).

²⁰⁹ Schlachter, M. (2024), in: Müller-Glöße, R., Preis, U., Gallner, I. and Schmidt, I. (eds.), *Erfurter Kommentar zum Arbeitsrecht* (24th ed.), Munich, Beck Verlag § 23 AGG, para. 1.

²¹⁰ Germany, *Bundestagsdrucksache* 16/1780, 26, 48.

²¹¹ PILP, '[Verdict: ING discriminates against customers based on their ethnicity in transaction checks](#)', 25 July 2024.

organisations whose official objectives include protecting equality and non-discrimination and protection from unfounded direct or indirect violation of the rights and duties of citizens, in the case of claims in this field and with the written consent of the claimant, may join proceedings at any stage thereof (the court verifies only the fulfilment of the formal criteria, such as the association's official objectives).²¹²

General provisions of the **Slovenian** Civil Procedure Act, which are used for civil proceedings and also, when appropriate, for proceedings in the Constitutional Court or the Labour and Social Court, also state that a third party (*stranski intervenient*) who has a legal interest (meaning a personal interest based on statutes or other regulations) can intervene in support of one of the parties at any time until the end of the proceedings. In such cases, the law does not require the party's permission for an NGO to become involved as a *stranski intervenient*.

2.2.2 Promising practices of NGOs and trade unions acting in support of victims of discrimination

The possibility of intervening in support of complainants, in cases that concern equality and non-discrimination, allows the NGOs and trade unions to provide expert opinions or argue for broader interpretations of non-discrimination laws, bringing in their expertise in often difficult cases and increasing the chances of all arguments being heard in what often seems to be an unbalanced power relationship between victims and perpetrators.

It is very clear that many of the landmark decisions on anti-discrimination in **Austria** (of which there are still few) have been litigated by or with the support of a small number of NGOs, with a particular role being taken by the Litigation Association of NGOs Against Discrimination as a specialised umbrella organisation of more than 70 NGOs. The Litigation Association of NGOs Against Discrimination, as established in Section 62 of the Equal Treatment Act, receives public funding for work in the courts and takes on a limited number of strategic cases each year.²¹³ Having one NGO that is specialised in strategic litigation on all discrimination grounds seems very helpful and necessary to ensure the legal provisions are used and tested. The long-term specialisation and expertise built up over 20 years also results in the fact that the opinions and comments submitted to the Parliament during consultation periods for new or amended legislation are usually taken seriously by the legislator.

In **Belgium**, positive practices include landmark cases won with the support of NGOs, as well as the active participation of two law clinics (Human Rights Centre of Ghent University²¹⁴ and Equality Law Clinic of the Université Libre de Bruxelles²¹⁵) in international proceedings (for example, before the European Court of Human Rights) concerning non-discrimination. In a landmark **Belgian** judgment from 3 May 2021,²¹⁶ the President of the Brussels Labour Court found that the refusal of the STIB (Brussels Intercommunal Transport Company) to hire a woman who wore a headscarf and had the necessary technical skills for internal administrative functions, repeated on two occasions, constituted both direct discrimination on the basis of her religious beliefs, prohibited by the Brussels Ordinance of 4 September 2008 to promote diversity and combat discrimination in the civil service, and indirect discrimination on the basis of her gender, prohibited by the same Ordinance. The procedure

²¹² Poland, Act amending the Code of Civil Procedure and some other acts, 2 July 2004, entered into force on 4 February 2005, Article 61.

²¹³ The Litigation Association of NGOs Against Discrimination has intervened in quite a number of cases concerning disability. This is not part of the explicit mandate given to it by Section 62 of the Equal Treatment Act, but its right to intervene has never been contested or even questioned in court.

²¹⁴ [Human Rights Centre of Ghent University](#).

²¹⁵ [Equality Law Clinic of the Université Libre de Bruxelles](#).

²¹⁶ Belgium, Brussels Labour Court (*Tribunal du Travail de Bruxelles*), 3 May 2021.

was initiated by national equality body UNIA, but the victim herself and the NGO Ligue des droits de l'Homme subsequently intervened as claimant.

McKenzie friends in Ireland

In **Ireland**, advocates who are not practising lawyers, such as officials from trade unions or NGO staff may provide limited assistance to lay litigants with the permission of the court. They are known as 'McKenzie friends'.²¹⁷ The Court of Appeal and the High Court have issued a joint practice direction setting out the scope of what a McKenzie friend may and may not do.²¹⁸ They may provide moral support for litigants, take notes, help with case papers and quietly give advice on any aspect of the conduct of the case. They are not permitted to address the court, make oral submissions or examine witnesses and do not have the right to conduct litigation (although in exceptional circumstances a court may permit a McKenzie friend to address the court). McKenzie friends cannot receive any payment, act as a litigant's agent in relation to the legal proceedings or manage a litigant's case outside the court. The extent to which NGOs or trade union officials engage in court proceedings as McKenzie friends is unknown. This possibility for NGOs or trade union representatives to be allowed by the courts to provide assistance to victims of discrimination has the advantage of reducing litigation costs, which are identified as a deterrent in all states.

2.2.3 Challenges for NGOs and trade unions acting in support of victims of discrimination

The lack of specific provisions on the right of NGOs or trade unions to act in support of victims and the lack of legal clarity regarding the formal requirements for acting in support of victims seem to be the specific challenges encountered by collective actors willing to support claimants.

On one hand, **Finnish** legislation and **Swedish** laws do not provide NGOs or trade unions with any possibility to act in support of the complainant.²¹⁹

On the other hand, in **Germany**, existing provisions are not translated into operational procedures which would enable their application: anti-discrimination associations are defined as associations of people which, in accordance with their charter, promote the interests of people or groups of people discriminated against on the grounds covered by the AGG on a non-commercial basis (Section 23(1) AGG). They must have at least 75 members or be an association of seven organisations with the same purpose. It is not a precondition that these associations have legal personality. They must operate permanently and not just on an ad hoc basis to support one claim.²²⁰ Trade unions are not associations in this sense. There is no centralised procedure for acceptance as an anti-discrimination association; a legitimate interest seems to be presumed if the membership requirement is met. The status of an anti-discrimination association has to be verified by the court in a specific case.²²¹ No relevant case law on the type of proof required has yet been reported.

The wording of Article 12(2) of the **Lithuanian** Law on Equal Treatment provides that associations whose field of activity, as stated in their statutory documents, encompasses the representation of victims of discrimination on a particular ground of discrimination in court have the right to engage on behalf or in support of the

²¹⁷ See generally, Baker, M. (2017), 'What is a 'McKenzie friend'?', *Irish Judicial Studies Journal* 1, 31-39.

²¹⁸ Ireland, Court of Appeal and High Court (2017), *Practice Direction HC72-McKenzie Friends*.

²¹⁹ European network of legal experts in gender equality and non-discrimination, Finland and Sweden, questionnaire responses.

²²⁰ These preconditions are not explicitly prescribed by the directives. The non-profit requirement may be justified by the intent not to foster inflationary claims and the minimum requirement of size and stability by considerations of the protection of claimants.

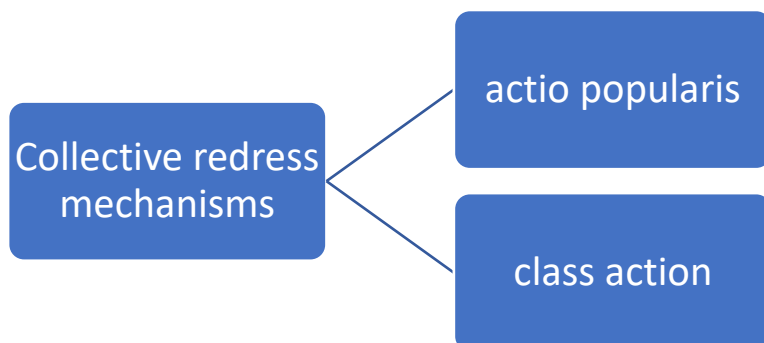
²²¹ Cf. the Explanatory report to the AGG (in German), 16/1780, 48.

complainant, with their approval, in judicial and administrative procedures, in a manner prescribed by law. However, how this right might be implemented in practice is not clear. The Code of Civil Procedure allows an association, as a third party, to get involved in both civil and administrative proceedings in support of a victim (Article 47 of the Code of Civil Procedure) and to provide certain evidence and expert opinions (Article 61 of the Code of Civil Procedure). Under the Code of Civil Procedure (which is also applied in labour disputes), an association could be involved in a discrimination case in support of the victim if the case concerned the rights and responsibilities of the association. In all cases, it is up to the court to decide whether the organisation has a legitimate interest in participating as a third party in support of the complainant. According to interpretation by the Supreme Administrative Court, associations can take part in an administrative procedure only when their rights have been directly violated.²²²

2.3 NGOs and trade unions engaged in collective redress (*bdųp>ppqvrsjt* and class actions)

The 2000 Equality Directives introduced into EU law the novelty that NGOs and trade unions have a role in legal proceedings, by acting on behalf or in support of actual victims of discrimination, as explained in the first two sub-sections of this chapter. However, the Directives do not require Member States to grant NGOs or trade unions collective representative standing to have the right to access the courts *in nome proprio*. While the rules governing collective representative standing vary between the Member States, many EU countries allow NGOs and trade unions to bring forward cases that challenge discriminatory laws or practices, even if they are not representing a direct victim of discrimination. Where available at the national level, in itself this novelty is conducive to enhanced enforceability of the Directives and greater protection against discrimination.

Collective redress mechanisms



In 2013, the European Commission issued a recommendation to the effect that all Member States should introduce collective redress mechanisms to facilitate the enforcement of the rights that all EU citizens have under EU law.²²³ Such action is not covered by the two anti-discrimination directives but can be divided, on the one hand, into class action or group action (claims on behalf of an undefined group of claimants or identified claimants and multiple claims) and, on the other, *actio popularis* (claims by organisations acting in the public interest on their own behalf, without a specific victim to support or represent). According to the Court of Justice, Member States are not precluded from:

²²² Lithuania, Supreme Administrative Court of Lithuania, administrative Case no. A⁴⁹²-2078/2013, decision of 7 November 2013.

²²³ European Commission (2013), Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.07.2013, p. 60–65.

'laying down, in their national legislation, the right of associations with a legitimate interest in ensuring compliance with [the Racial Equality Directive], or for the body or bodies designated pursuant to Article 13 thereof, to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant. It is, however, solely for the national court to assess whether national legislation allows such a possibility'.²²⁴

The comparative annual analysis of the implementation of the Equality Directives notes that, in spite of the lack of a minimum standard in this regard, 'in many countries, there is no specific procedure for discrimination cases but consumer protection norms envisage group action and this angle might be relevant in cases regarding access to goods and services'.²²⁵

Collective redress mechanisms adopted

In the literature it was observed that collective redress mechanisms appear particularly in Member States in Central and Eastern Europe which transposed the Equality Directives prior to their accession to the EU.²²⁶ The choice of transposition in a manner that went beyond the minimum requirements was described as 'over-implementation',²²⁷ often a gesture of good will from transitioning democracies seeking legitimacy in the European arena. Thus, even though not required under EU anti-discrimination law, representative action for NGOs and trade unions was introduced in **Bulgaria, Hungary, Romania, Slovakia** and **Croatia**, though elements of collective action emerged in other countries that recognise public interest litigation.

No or only partial collective redress mechanisms available

Neither *actio popularis* nor class action is permitted in discrimination cases in **Czechia, Estonia, Greece, Ireland, Latvia** and **Poland**, while in **Finland**²²⁸ *actio popularis* is allowed but class action is not allowed. In **Slovenia**, national law does not allow for *actio popularis* but it does allow for class action. While there is nothing to prevent engagement in respect of several complaints, there is also nothing to specifically authorise this, thus the law is silent on this and the issue of possible class actions remains unresolved. The only procedure in which an association could act even if there is no victim, is the inspection procedure before the Advocate of the Principle of Equality (Article 34 of the Protection Against Discrimination Act). However, this would not constitute an action (a lawsuit). Given that class actions have so far been foreign to the **Latvian** legal system, it seems safe to state that, in the absence of legislative action, they remain impossible.

While some Member States are considering amending their legislation to allow for standing for collective actors, in others recent amendments have not taken this issue into consideration. For example, in **Sweden**, where national law does not allow associations, organisations or trade unions to act in the public interest on their own behalf without a specific victim to support or represent, in 2020, a Government inquiry was tasked with

²²⁴ Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, ECLI:EU:C:2008:397.

²²⁵ Chopin, I. and Germaine, C. (2025).

²²⁶ Oliveira, Á. (2017).

²²⁷ Lilla Farkas (2017), 'NGO and equality body enforcement of EU anti-discrimination law: Bulgarian Roma and the electricity sector', in Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds.), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

²²⁸ Judicial interpretation may be necessary to determine whether the form of collective action permitted in Finland can be defined as *actio popularis* or is rather some other form of collective redress.

investigating whether measures are needed to strengthen the protection against discrimination in cases where there is no individual injured party. In 2021, the inquiry concluded that although there is no obligation for Member States to introduce provisions concerning sanctions when there is no identifiable victim, Sweden should introduce such provisions, thus proposing an amendment to the Discrimination Act that would make it possible to prohibit the dissemination of statements or communications expressing contempt for a person or a group of persons linked to a ground of discrimination by a person who has a leading position in an activity or organisation.²²⁹ No proposal in this regard has been submitted to the Parliament.

Similarly, *actio popularis* is not permitted in respect of discrimination claims in **Czechia**. However, in its 2013 annual report, the Czech Ombudsman recommended that the legislation be amended so that in discrimination cases NGOs could bring *actio popularis* complaints to courts. National legislation permits *actio popularis* in the consumer and environmental fields. In recent years, legislative initiatives to grant the Ombudsman the competence to file lawsuits and give NGOs the possibility to file *actio popularis* suits have been unsuccessful.

There are also Member States which adopted a restrictive approach to the question of whether NGOs can be potential victims of discrimination but which may gradually be moving towards a more empowering approach. For example, in spite of their long term advocacy, **Irish** NGOs that have attempted to litigate under the equality laws (EEA and ESA) have been denied legal standing.²³⁰ In 2008, the Equality Tribunal held that a legal person cannot avail itself of the equality legislation to claim protection against discrimination.²³¹ The complainant in that case was an unincorporated body of persons in the form of a choir called 'Gloria (Ireland's Lesbian and Gay Choir)'. The group referred a claim of direct discrimination on the sexual orientation ground when the respondent removed the description of Gloria as a gay and lesbian choir from promotional material for a choral festival. Having considered several provisions in detail and various principles of interpretation, the Tribunal concluded that:

'Whilst the term "person" is usually interpreted broadly to include corporate and unincorporated bodies ... a contrary intention is evident from the Equal Status Acts given the manner in which the discriminatory grounds are set out and the particular definition of "person" as contained in the Acts. I am therefore of the view that the legislative intent in this regard was to protect individuals and not bodies from discrimination.'²³²

The Tribunal reasoned that a body could not be of a particular gender, marital status, sexual orientation, religion and so on. In the context of identifying potential *respondents* under the Act, 'person' is defined in Section 2(1) ESA as including 'an organisation, public body or other entity'. The Tribunal concluded that the Oireachtas (Irish Parliament) thus intended that the wider definition of person should not apply to complainants. The net effect of the decision is that only natural persons can act as complainants under the ESA. The same conclusion was reached in a complaint referred by a club for members of the Deaf community which sought to argue that its members had been denied reasonable accommodation when they wanted to undertake a tour of a historical

²²⁹ Sweden, Government Inquiry SOU 2021:94, Strengthening the protection against discrimination.

²³⁰ Free Legal Advice Centres (FLAC) (2021), *FLAC submission to the Department of Children, Equality, Disability, Integration and Youth's Consultation on the Review of the Equality Acts*.

²³¹ Ireland, Equality Tribunal, *Gloria (Ireland's Lesbian & Gay Choir) v. Cork International Choral Festival Ltd.*, DEC-S2008-078, 28 October 2008; applied in, for example, Workplace Relations Commission, *Cork Deaf Club v. Office of Public Works*, DEC-S2017-039, 10 November 2017, and in Workplace Relations Commission, *XTX Markets Technologies Limited v. Aviva Investors Liquidity Funds PLC*, ADJ-00044913, 8 November 2023.

²³² Ireland, *Gloria (Ireland's Lesbian & Gay Choir) v. Cork International Choral Festival Ltd.*, DEC-S2008-078, at para. 5.5.

site.²³³ While not framed in those terms, it is therefore clear that NGOs or trade unions do not have legal standing to bring representative actions. The same principles should apply to the EEA, since the discriminatory grounds are set out in the same manner under both laws.²³⁴ Members of an association could pursue a complaint under the EEA or ESA, but it appears they would have to establish that they were discriminated against as individuals.

In January 2025, the Irish Government published the outline of draft legislation which would amend the EEA and ESA based on its recent review of anti-discrimination law.²³⁵ The draft proposals still do not refer to the extension of legal standing to NGOs and trade unions.

Recent amendments to allow for collective redress

On the other hand, legislation recently adopted in **France** (Law 2025-391 which entered into force on 30 April 2025) expanded the standing of NGOs in group actions on all matters of discrimination. The new norm extends the standing of organisations to initiate action to NGOs that have been in existence for at least one year.²³⁶

2.3.1 National standards for NGOs and trade unions engaged in *actio popularis* and class action

a. *Actio popularis*

Actio popularis as a mechanism allowing claims by organisations acting in the public interest on their own behalf without a specific victim to support or represent is a very useful tool giving wider effect to the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU).

As observed in the annual comparative analysis conducted by Isabelle Chopin and Catharina Germaine and the European network of legal experts in gender equality and non-discrimination,²³⁷ *actio popularis* is permitted by national law for discrimination cases in 16 EU Member States (**Austria**,²³⁸ **Belgium**,²³⁹ **Bulgaria**, **Croatia**, **Finland**, **France**, **Germany**,²⁴⁰ **Hungary**, **Italy**, **Luxembourg**, **Malta**,²⁴¹ **Netherlands**, **Portugal**, **Romania**, **Slovakia** and **Spain**²⁴²).

For example, in **Hungary**, social and interest representation organisations besides the Ombudsman and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment

²³³ Ireland, Workplace Relations Commission, *Cork Deaf Club v. Office of Public Works*, DEC-S2017-039, 10 November 2017.

²³⁴ The core provision on protection from discrimination under the EEA, Section 8(1), provides that 'an employer shall not discriminate against an employee or prospective employee and a provider of agency work shall not discriminate against an agency worker.' Section 2(1) defines an employee as 'a person' who works or has worked under a contract of employment and includes a member or former member of a regulatory body. That section also specifies that a contract of employment is one in which 'an individual agrees ... personally to execute any work or service'.

²³⁵ Ireland, *General Scheme of the Equality (Miscellaneous Provisions) Bill* 2024.

²³⁶ France, Law no 2025-391 of 30 April 2025, Article 16 c I para 1; *Flash report 041- FR-2025*.

²³⁷ Chopin, I. and Germaine, C. (2025).

²³⁸ On the ground of disability only.

²³⁹ The Belgian equality body Unia, as well as registered associations and representative workers' organisations, can bring actions on their own behalf to challenge alleged breaches of the non-discrimination legislation.

²⁴⁰ This option exists notably on the basis of disability law and consumer protection law.

²⁴¹ Only the Maltese National Commission for the Promotion of Equality may launch an *actio popularis*.

²⁴² *Actio popularis* is possible in Spain only in criminal proceedings but since the entry into force of Law 15/2022 it can be argued that *actio popularis* is also possible in civil proceedings.

was based on a characteristic that is an essential feature of the individual and that the violation affects a larger group of persons that cannot be determined accurately. In other countries, however, the possibilities for *actio popularis* are much more limited. In some Member States *actio popularis* is available only in relation to specific grounds (such as disability in **Austria** or **Germany**) and under restrictive conditions. There are also attempts to introduce *actio popularis* as a procedure on all grounds, as was the case recently in **Spain**.

Depending on the regulatory model, *actio popularis* can either be provided in anti-discrimination legislation or general provisions of civil procedures might apply. There are also Member States which use collective redress mechanisms both in anti-discrimination norms and in general civil or administrative procedures, such as is the case for **Croatia**.

Actio popularis provided for in anti-discrimination laws

In **Bulgaria**, national law allows associations, foundations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent before civil courts ‘where the rights of many parties are infringed’ (Article 71(3) of PADA). According to the PADA, any entity can bring proceedings before the national equality body without identifying a specific victim.²⁴³ The entity must be incorporated. Non-profit organisations not formally registered as being in the public interest need to substantiate how their activities are publicly useful in the circumstances of the case. Both trade unions and not-for-profit organisations need to substantiate how the alleged discrimination affected many people. There is no legal definition of ‘many’. In the past, in one case, judges accepted as few as 10 people as being enough. In another case, they frustrated implementation of the legal provision, requiring that victims be enumerated and each individual listed by name. Trade unions and non-profit organisations can explicitly (only) seek a declaration of discrimination and a court order for the respondent to stop and abstain from the impugned conduct. The listing is exhaustive. A claim for damages is clearly, if implicitly, excluded. In 2023, decisions were rendered in at least four *actio popularis* cases brought by activists and NGOs.²⁴⁴

The **Croatian** Anti-Discrimination Act further specifies that associations, bodies, institutions or other organisations established by law, with a legitimate interest in protecting collective interests for a specific group, can file a joint legal action (association action, *udružna tužba*) against any person who has violated the right to equal treatment. They must demonstrate that the defendant’s actions have adversely affected the rights of a larger group of individuals, particularly those whose rights the complainant is protecting (this is known as a collective lawsuit for protection against discrimination).²⁴⁵ When filing the legal action the association may bring various claims:

- b. to establish that the defendant’s conduct has violated the right to equal treatment in relation to members of the group;
- c. to prohibit the undertaking of activities that violate or may violate the right to equal treatment;

²⁴³ Bulgaria, Protection Against Discrimination Act, Article 50(3).

²⁴⁴ Bulgaria, Sofia Appeal Court, Decision No. 9474 of 10 October 2023 in Case no. 425/2023; Decision no. 1013 of 31 January 2023 in Case no. 5811/2022; SCAC, Decision no. 8064 of 21 December 2023 in Case no. 9841/2023; SCAC, Decision no. 5976 of 12 October 2023 in Case no. 3833/2023.

²⁴⁵ Croatia, Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008 and 112/2012, Article 24.

- d. to carry out activities that eliminate discrimination or its consequences in relation to members of the group;
or
- e. to publish in the media a ruling establishing violation of the right to equal treatment.

In **Finland**, as a general rule national law does not allow associations, organisations and trade unions to act in court in the public interest on their own behalf, without a specific victim to support or represent. However, an organisation with an interest in advancing equality and the non-discrimination Ombudsman has a right to bring a specific case before the National Non-Discrimination and Equality Tribunal without a specific victim as *actio popularis*.²⁴⁶

In **Hungary**, under Article 20 of the Equal Treatment Act, if the principle of equal treatment is violated or there is a direct danger of this, a lawsuit against the infringement of inherent rights, a labour lawsuit or a lawsuit related to a civil service relationship may be brought by: a) the Public Prosecutor; b) the Commissioner for Fundamental Rights (Hungary's Ombudsman who also fills the role of the equality body); or c) any non-governmental and interest representation organisation, provided that the violation of the principle of equal treatment or the direct danger of this was based on a characteristic that is an essential feature of a human being and the violation affects a larger group of persons that cannot be determined accurately. Under Article 18(3), a non-governmental and interest representation organisation may – if the above conditions prevail – also choose to initiate proceedings before the Ombudsman (as Hungary's quasi-judicial equality body).

It should be noted that a specificity of such cases in relation to the burden of proof is that the danger of violation has to be sufficiently substantiated on the part of the complainant organisation (so no actual disadvantage needs to be substantiated). Notably, the first case under the Equal Treatment Act was the *actio popularis* claim brought by Hättér Association, an LGBTIQ rights organisation, against a denominational university.²⁴⁷ The Chance for Children Foundation (CFCF) was set up with the exact purpose of combating the segregation of Roma children in education through primarily *actio popularis* litigation based on the ETA's relevant provisions. The CFCF launched and won several important legal victories, before it had to terminate its activities due to lack of continued funding.

In accordance with both **Italian** decrees implementing the two Equality Directives of 2000, organisations with legal standing can act in cases of collective discrimination when victims cannot be identified in a direct and immediate way.²⁴⁸ While the legal standing of associations is always contested by respondents, in particular when there is no individual victim, judges have constantly reiterated a reliance on the provisions of the legislative decree. Furthermore, regarding discrimination on grounds of disability, according to Article 4(3) of Law 67/2006, associations are entitled to act in cases of collective discrimination without an individual victim.

In **Spain**, according to Law 15/2022, which comprehensively covers equal treatment and non-discrimination, authorisation from the victim of discrimination is not necessary where an indeterminate number of persons is concerned or they are difficult to identify, notwithstanding the fact that those who consider themselves affected may also participate in the procedure.²⁴⁹ Consequently, professional associations, trade unions and NGOs have

²⁴⁶ Finland, Act Amending the Non-Discrimination Act, 1192/2022, Section 21, entry into force 01.06.2023.

²⁴⁷ Hungary, Supreme Court, [Pfv.IV.20.678/2005/5](#), 8 June 2005.

²⁴⁸ Italy, Legislative Decree 215/2003, Article 5(3); Legislative Decree 216/2003, Article 5(2); Legislative Decree 67/2006, Article 4(2) and (3); Immigration Decree: Article 44(10).

²⁴⁹ Spain, [Law 15/2022, of 12 July 2022, on equal treatment and non-discrimination](#).

legal standing to defend non-discrimination interests when indeterminate groups of people have been affected. Law 4/2023 on equality for transgender people and guaranteeing LGBTI rights adds that when an indeterminate number of persons are affected or they are difficult to determine, legal standing to sue for the defence of these diffuse interests shall correspond exclusively to the public bodies with competence in the matter, that is to political parties, trade union organisations, business organisations, professional associations of self-employed persons, associations of consumers and users and legally constituted associations and organisations whose aims include the defence and promotion of the rights of lesbian, gay, bisexual, trans and intersex persons or their families.²⁵⁰

In **Slovakia**, Section 9a of the Anti-discrimination Act stipulates that, if a breach of the principle of equal treatment could violate rights or interests protected by law or freedoms of a greater or non-specified number of persons, or if the public interest could be otherwise seriously endangered by such a violation, the right to invoke the protection of the right to equal treatment is also vested in the Slovak National Centre for Human Rights or a legal entity that is ‘concerned with or active in protection against discrimination’ (usually NGOs, but in principle also trade unions). These entities can request that the court determines that the principle of equal treatment has been breached and that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these actions is non-exhaustive. In principle, it can also include some financial compensation, but judicial interpretation would be required in this regard. Although this provision is quite progressive, it is only rarely used in practice. Only one domestic NGO (the Centre for Civil and Human Rights) and a few international NGOs (the European Roma Rights Centre and Forum for Human Rights), have submitted *actio popularis* claims to Slovak courts in cases of discrimination.

Actio popularis provided for in civil procedures legislation

The **Croatian** Civil Procedure Act states that associations, bodies, institutions or other organisations established according to the law and engaged in protecting legally recognised collective interests and rights of citizens may file a lawsuit (known as a suit for the protection of collective interests and rights) against a natural or legal person. This is applicable when there is explicit authorisation in a special law and it meets the conditions set by that law. These entities can take legal action against a person whose activities – whether through direct actions, conduct or omissions – seriously violate or endanger these collective interests and rights.²⁵¹ The interests at stake may involve aspects of the human environment, living conditions or moral, ethnic, consumer or anti-discrimination rights, or other legally guaranteed interests that must be significantly harmed or endangered by the actions of the defendant.²⁵²

In Croatia, in cases of collective complaints, the county courts decide in the first instance, and the Supreme Court in the second instance, unlike individual anti-discrimination proceedings in which the municipal courts decide in the first instance and the county courts in the second instance.²⁵³

National law in **France** allows associations, organisations and trade unions to initiate *actio popularis*. Article 31 of the New Code of Civil Procedure (NCCP), as a general principle, provides that legal action is open to anyone who has a legitimate interest in the success or the dismissal of a legal claim. In addition, Articles L.600-

²⁵⁰ Spain, Law 4/2023, of 28 February 2023, on equality for transgender people and guaranteeing LGBTI rights which amends Act 1/2000 of 7 February 2000 on civil procedure.

²⁵¹ Croatia, Civil Procedure Act, 14 December 1976, Article 502 a.

²⁵² Croatia, Civil Procedure Act, Article 502 a (2).

²⁵³ Croatia, Anti-discrimination Act, Article 24 (3).

1-2 and R.632-1 of the code provide for voluntary interventions by trade unions and NGOs before administrative courts. These provisions allow NGOs and trade unions to act on the sole basis of having an interest in the case. The French Labour Code also provides that trade unions can challenge collective agreements that are contrary to public order, provisions on discrimination being part of the list of provisions that are deemed to form part of public order.²⁵⁴

In **Luxembourg**, associations recognised by the Ministry of Justice can exercise the rights recognised to a victim of discrimination before administrative and civil courts if some direct or indirect damage has been made to the cause that they promote.²⁵⁵ Any kind of proceedings is open to such associations, without any difference of standing. Associations may ask for all remedies that are provided for by the law to be applied, such as redress in the case of victimisation, the annulment of any written discriminatory document or clause or the annulment of any dismissal. They may ask for damages to be paid. So far there has been no case where these provisions have been used in practice by associations and NGOs.

In the **Netherlands**, national law allows associations, organisations and trade unions to act in the public interest on their own behalf. These cases are referred to as ‘general interest actions’ (*algemeen belangacties*). Even if no victims have come forward, or if victims are not known, this action is possible if it is in the public interest. The interest may be quite diffuse (e.g. ‘combating racial stereotypes’). The basis for general interest claims is Article 3:305a(1) of the Civil Code. General interest actions are also possible in the field of administrative law, in that case the basis for the legal action is Article 1:2(3) of the General Act on Administrative Law. The latter provision speaks of ‘bringing legal action to protect similar interests of other persons’. For example, the Sinti, Roma and Travellers Foundation (Sinti, Roma en reizigers) started a civil case against the municipality of The Hague in which the Foundation claimed (and won) a court declaration stating that the municipality acted in violation of the prohibition of discrimination by failing to ensure sufficient caravan sites for Travellers.²⁵⁶ The court also issued an injunction to the municipality to act in such a way that, within five years, the waiting list for caravan sites would be comparable to that for ground-floor social housing. The claim was an *actio popularis* (the Foundation acted in the general interest, in the absence of identifiable victims). The legal basis for the claim was Article 1 of the Dutch Constitution (general prohibition of discrimination), Article 7a General Equal Treatment Act (prohibition of discrimination on the ground of race in the field of social protection) and Article 8 of the European Convention (the right to family life).

In **Portugal**, according to Article 52(3) of the Constitution and Law 83/95, *actio popularis* in both administrative and judicial procedures is admissible in respect of diffuse interests. The wording of those articles seems to be narrow (Article 1(2) of Law 83/95 refers to public health, environment, quality of life, consumer protection, cultural heritage and public property, merely as examples). However, the remit has been amplified by legal doctrine to cover other areas, such as non-discrimination, that require collective action. The same can be said regarding Article 31 of the Civil Procedure Code. Under Article 12(1) of Law 93/2017, associations may act in support of rights and collective interests. This article stipulates:

²⁵⁴ France, Articles L2251-1 and L2132-3 Labour Code (LC).

²⁵⁵ The provisions can be found in Articles 7 and 18 (introducing Article 253-4 into the Labour Code) of the Law of 28 November 2006, Article 1-6 (introducing Article 36(a) into the amended Law of 16 April 1979 establishing the general statute of state civil servants) and Article 2-6 (introducing Article 47(a) into the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the Law of 29 November 2006.

²⁵⁶ Netherlands, Stichting Sinti, Roma en Reizigers (Sinti, Roma and Travellers Foundation) v. Municipality of The Hague, District court The Hague 29 May 2024, ECLI:NL:RBDHA:2024:7830.

‘Associations and non-governmental organisations whose statutory object is essentially aimed at preventing and combating discrimination on the grounds referred to in Article 1 shall be legitimately entitled to propose and intervene, either in representation or in support of the person concerned and with his or her consent, or in defence of collective rights and interests.’

Actio popularis in civil cases is permitted for NGOs only if their by-laws state the protection of the concerned interest as an objective. In labour law, under Article 5(1) of the Labour Procedure Code, trade unions can intervene to protect individual rights in general without an identified victim. They may use all types of proceedings available in the Code and the types of remedies specified by the Labour Procedure Code. In housing, Law 83/2019 introduced the possibility of using *actio popularis* (Article 60(2)(a)). In spite of the various provisions giving different entry points for NGOs, there is no longstanding tradition of using *actio popularis* in Portugal.

In **Romania**, according to Article 28(1) of the Anti-discrimination Law, associations with protection of human rights as their mandate can file complaints on their own behalf, both with the NCCD and with the courts, when the target of discrimination is a group or a community.²⁵⁷ The same rules of procedure apply, the only additional requirement is that the NGOs must provide their statutes in order to show that their declared statutory objective is protecting human rights or combating discrimination. The provisions of Article 28(1) of Governmental Ordinance 137/2000 are duplicated by Article 37 of the Civil Procedure Code, which provides that:

‘In the cases and conditions specifically provided for by the law, complaints can be filed or defences can be submitted by persons, organisations, institutions or authorities which, without justifying a personal interest, act for the defence of rights and legitimate interests of persons who find themselves in special situations or, as necessary, with the purpose of protecting a group or a general interest.’²⁵⁸

b. Class action

Class actions (providing the possibility for an organisation to act in the interests of more than one individual victim for claims arising from the same event) are permitted by law for discrimination cases in 11 EU Member States as identified in the comparative assessment: **Bulgaria, Denmark, France, Italy, Lithuania, Netherlands, Portugal, Slovakia, Slovenia** and **Sweden**.²⁵⁹ In **Germany**, it still remains to be seen whether the procedure for consumer rights class action that was introduced in 2018²⁶⁰ could be interpreted as relevant for discrimination law.²⁶¹ Class action is not possible in many Member States such as in **Austria** or **Spain**.

There are countries where, although class action is not specifically provided for in anti-discrimination legislation, it is used as a procedural tool meant to secure speed and consistency. For example, in **Romania**, in the case of the national equality body, albeit not defined as class action, aggregate claims by more than one individual victim arising from the same event would be annexed as one file both before the NCCD and the courts as provided by Article 66 of the NCCD internal procedures. The individual victim may request or oppose such an aggregation of the complaints. If NGOs represent more than one victim, as provided by Article 28, declarations

²⁵⁷ Romania, Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (Anti-discrimination Law), 31 August 2000.

²⁵⁸ Romania, Law 134/2010 Civil Procedure Code, 1 July 2010.

²⁵⁹ However, according to the Swedish Group Proceedings Act (2002:599) this does not apply to labour law cases.

²⁶⁰ Germany, Act to introduce civil model declaratory proceedings, 12 July 2018, with effect from 1 November 2018.

²⁶¹ Chopin, I. and Germaine, C. (2025).

issued by each individual victim must be included. From the perspective of the regulatory models, where class action was introduced in the national legislation, it was provided for either in the form of norms of civil procedure or as specific provisions on collective redress, as is the case in **Slovenia** and **Sweden**.

Class action provided for in civil procedure legislation

In **Bulgaria**, under general civil procedure law, organisations which have as their mandate the protection of a particular category of victims or the protection of people from a particular type of violation have standing to bring ‘collective claims’ to court.²⁶² Such claims can be brought on behalf of all victims of a single violation where their ‘circle cannot be exactly defined but is definable’.²⁶³ Litigant entities need to prove incorporation and the fact that they exist ‘for the protection’ of the relevant victim category. In addition, NGOs are expressly required by law to prove their abilities to ‘seriously and in good faith’ defend the collective interest harmed, as well as to bear the burden of taking the case, including costs and expenses.²⁶⁴ Entities need to clarify the circumstances defining the relevant ‘circle of victims’. They can claim on behalf of *all* victims that a tortious action or inaction be declared unlawful and that the respondent be ordered to stop the violation and/or to correct its consequences in the collective interest, and to pay compensation.²⁶⁵

In terms of whether this remedy belongs to an opt-in or an opt-out model, it should be noted that, under the law, the relevant persons/entities have standing to bring action on behalf of all victims of the alleged violation, which would indicate an opt-out model. Indeed, under the law, victims may opt out within a certain time limit, which the court confirms (Article 383(1.2)). Those persons are then free to pursue their right in a separate trial. On the other hand, there is also a procedure for including additional victims or organisations, also by express ruling of the court; this amounts to an opt-in procedure (Article 383(1.1)). The decision in the case explicitly has effect vis-à-vis the persons who brought the claim, as well as those persons who claim to be victims and who did not opt out (Article 386(1)). Where the decision upholds the claim, persons who opted out can also avail themselves of that decision (Article 386(1)). The law does govern the relationship between the claimants and the victims in terms of payment of damages (Article 387).

Danish civil procedure legislation provides for collective action as a special type of procedure prepared with a view to combining several – and in particular a large number of – uniform claims in the same proceedings. The term ‘collective action’ implies that the action relates to the claims of a group of persons, with a representative of this group (not individual members of the group) being regarded as a party to the action. The rules on collective actions are based on a central rule that the members of the group must opt for the action (the opt-in model). At the request of the group representative, the court may also decide that a collective action must comprise the group members who do not opt out of the collective action (the opt-out model). This is, however, subject to some additional conditions being satisfied. First of all, the case must concern claims that are so small that it is evident that they cannot generally be expected to be brought through individual actions. This choice would be made not because the persons concerned do not think that they have a justified claim, but merely because the inconvenience and financial risk of individual litigation are deemed to be disproportionate to the outcome of the individual action. A number of conditions for bringing a collective action have been laid down, including the condition that the court must approve the case as being suitable for a collective action.

²⁶² Bulgaria, Civil Procedure Code, Article 379.

²⁶³ Bulgaria, Civil Procedure Code, Article 379(1).

²⁶⁴ Bulgaria, Civil Procedure Code, Article 380(3).

²⁶⁵ Bulgaria, Civil Procedure Code, Article 379(2-3).

Several ‘control mechanisms’ also apply. For example, the court must approve the group representative and may decide that the representative must provide security for the legal costs that they may have to pay to the other party if they lose the case. As for associations, there are no specific requirements as to age, number of members, financial situation, etc., but in order to be appointed as a group representative, the association must have sufficient financial means, including, for example, insurance to be able to cover legal costs. This mechanism has not yet been used in discrimination cases to test its application.

Class action provisions in the French legal system

In **France**, national law allows associations which have existed for more than five years (or more than one year after the adoption of the 2025 Law) and trade unions to initiate a class action for claims arising from the same event or similar facts.²⁶⁶ Provisions on collective enforcement are, however, distributed among different pieces of legislation.

Article 163 of Law no. 2002-73 allows NGOs to act on behalf of a number of claimants in access to housing. A class action was instituted that can only be triggered by an NGO or a trade union for injunctive relief to put an end to a discriminatory behaviour (*action en cessation de manquement*). The class action must be preceded by a formal letter requesting the correction of the discrimination. It can be initiated to request that the discriminatory measure be stopped and/or to initiate an action for liability.²⁶⁷ French NGOs are excluded from the right to institute class actions in employment matters and in this context the action must be initiated by a trade union in its own name. The only exception is that NGOs can initiate a class action regarding discrimination in access to employment or training (Article 87 of Law no. 2016-1547).

Article 65 of the law defines remedies obtained by the action to put an end to discrimination as: ‘an injunction to take all necessary measures’ to put an end to the discriminatory situation or practice, within a specified period under sanction of a fine. The procedure does not separate judgment on the merits from the decision determining whether the situation is representative of a collective situation allowing for a class action.

Except on issues related to employment, Article 10-1 of the Law of 27 May 2008 provides that the action for injunction can be joined by an action for damages to be compensated for the discriminatory behaviour (*action en responsabilité*). As the procedure has been set up to favour out-of-court discussions, compensation can only be sought for damages that arise from not ceasing the discriminatory behaviour and occurs after the action is brought before the court (Article L1134-8 CT).

The procedure is one allowing private parties to opt into the group within a period specified by the judge to benefit from the findings of the court’s decision (Article 72). At the time of the enforcement of the judgment and determination of damages, members of the group can give a mandate to the association or trade union to represent them. Initiation of the class action does not interrupt the right of complainants to seek individual redress before the labour courts in individual cases (Article 71). Victims can always pursue a separate action if they do not wish to be represented by the group (Article 71). They do not have to wait for the final judgment

²⁶⁶ France, Law no. 2025-391 of 30 April 2025 reforming the conditions of enforcement of collective action in discrimination cases, Article 16.

²⁶⁷ France, Articles 62 to 88 of Law no. 2016-1547 on the modernisation of the justice system in the 21st century of 18 November 2016.

and can also opt out of the class action.

Article 16 para. V of the Law of 30 April 2025 introduces the possibility for the judge to order the payment of provisions by the defendant to facilitate enforcement of the decision. In addition, it provides that the judge may order the defendant to deposit sums in the Deposits and Consignments Fund (*Caisse des dépôts et consignations*) to safeguard amounts available for the payment of damages (Article 16 III A 3). Furthermore, in Article 16 XI, the 2025 law creates a civil penal sanction for intentional civil and contractual faults independent of compensation by amending the Civil Code and the award is deposited into a fund dedicated to the financing of group actions.

To date, all class actions in employment have been instituted by trade unions in matters relating to discrimination on the grounds of trade union activities or sex discrimination in women's careers. One class action initiated by an NGO requesting the National Police to cease practices of racial profiling was instituted by NGOs before the Conseil d'État. All the organisations involved received very little funding, even in cases initiated by trade unions, creating great difficulties for acting lawyers to pursue judicial mobilisation in support of group discrimination cases and raising serious questions about the efficiency of this procedure. All cases to date have been dismissed either because the initiating facts occurred before the adoption of the Law of 18 November 2016 or because the conclusions requested that the court order the Government to take measures that extended beyond the competence of the judiciary (for example the Conseil d'État decision in the racial profiling case²⁶⁸).

According to the **Lithuanian** Code of Civil Procedure (Article 441⁴(2)),²⁶⁹ associations or trade unions are allowed to act directly in the interests of more than one individual victim for class action claims that are directly related to the aims and scope of activities of an association or trade union if at least 10 parties to the class action are members of an association or trade union. The Code allows class action through the representation of a lawyer. A group of claimants must consist of no fewer than 20 natural or legal persons and they must be represented in court by a lawyer.

However, while the provisions on class action entered into force in 2015 (and were amended in 2020), there have been only a few cases (on the protection of consumer rights) and none concerning discrimination. Lithuania has chosen an opt-in model of class action, meaning a person has to express their wish to join the group. Similarly, the Law on the Proceedings of Administrative Cases (Article 126⁸) allows associations and trade unions to act in the interests of a class action together with a lawyer acting for the group concerned.²⁷⁰

In the **Netherlands**, national law provides for 'group action' (*groepsactie*). This kind of legal action is possible if a group of people suffers as a result of the same rules, events or acts and if a foundation or association brings one case on behalf of all of them (without specifying the names of the victims in the claim).²⁷¹ A report from 2024 by Bureau Clara Wichmann and PILP indicates that the 2019 amendments to Article 3:305a of the Civil Code have made it more difficult for NGOs and trade unions to engage in public interest litigation:

'Since 2019 the judgment in a collective action claim is legally binding for persons who belong to the group that is represented, unless they expressly opted out. However, where a claim is brought in the

²⁶⁸ France, Conseil d'État, Plenary Assembly, Amnesty International & al., 11 October 2023, no 454836.

²⁶⁹ Lithuania, Code of Civil Procedure, 2002, amendments related to class action made mainly in 2014.

²⁷⁰ Lithuania, Law on the Proceedings of Administrative Cases, 1999.

²⁷¹ Netherlands, Article 3:305a Civil Code and Article 1:2(3) General Act on Administrative Law.

general interest this group is not always easy to define. For individuals who did not opt out, the binding nature of the judgment may form an obstacle to bring another, individualised case if the collective action was not successful; where a claim is brought by an NGO and one or more individual claimants together, the individual claimants are often considered inadmissible because they are presumed not to have an autonomous interest in winning the case. Such a declaration of inadmissibility can prove an obstacle if the case is continued before a human rights court (notably the ECtHR), because there the NGO is not admissible but the individual will be considered as not having exhausted national remedies.²⁷²

In **Slovakia**, class actions are allowed as there are no restrictions as to the number of petitioners who can be represented (although the Anti-discrimination Act is not explicit on the matter). Class actions are also possible in Slovak civil judicial proceedings, meaning that a group of citizens can lodge an action based on the same facts, where each victim must stand as a claimant. According to Section 75 of the Civil Dispute Act, in cases in which more than 10 claimants are party to the proceedings, the court can decide that only one claimant should represent the group.²⁷³

Class action provided for in specific legislation on collective redress

In **Slovenia**, the 2017 Class Actions Act aimed to facilitate access to justice, prevent the unlawful conduct of perpetrators and enable access to compensation in cases of mass rights violations. The law entered into force on 21 April 2018. The Act defines class actions, class settlements, the rules of class action procedure, the content and impact of class actions, the procedure of payment of aggregate compensation, and the rules on costs of the procedure and financing of class actions (Article 181). The aim of the Act is to facilitate access to justice, to stop and prevent unlawful conduct of perpetrators and to enable access to compensation in cases of mass rights violations. At the same time, the Act provides for procedural guarantees in cases of unjustified litigation (Article 1(2)). Article 2(2) states that, in the field of discrimination, the only permissible action is an action claiming termination of the discriminatory acts. Class action has not yet been used in discrimination cases in Slovenia.

Another procedure, similar to class action, is defined in the area of employment and social rights and is governed by the Labour and Social Courts Act (Article 40). The rules for employment-related class actions are identical to the rules for individual procedures. All the victims have to be identified (there is no class certification); the only difference is that there is more than one victim. The only special provision which is in place for class actions concerning identical cases is the so-called exemplary action, which is similar to the pilot judgment procedure conducted by the European Court of Human Rights. In an exemplary procedure, the court may first decide one test case that is identical to all the other cases (which are, in the meantime, put on hold) and the decision in this first case affects the decision in those other cases.

Swedish law allows the filing of a class action in a district court for claims arising from the same issue, but only for cases outside the employment field.²⁷⁴ Such cases are to be dealt with according to the rules on civil disputes. However, class actions are not permitted if the case can be appealed, for example, to the Labour Court. Labour law cases fall outside the scope of the law according to the legislative materials, but

²⁷² Bureau Clara Wichmann (2024).

²⁷³ Slovakia, Civil Dispute Act, 160/2015, Section 75.

²⁷⁴ Sweden, Group Proceedings Act (2002:599).

discrimination in other fields can result in class actions. This means that a person can pursue a lawsuit on their own behalf, but with legal consequences for other persons, even though they are not parties to the case.

2.3.2 Promising practices of NGOs and trade unions engaged in *actio popularis* and class action

Even though there are various questions and difficulties related to the use of *actio popularis* and class actions, the mapping of national experiences indicates they can have significant potential under the right circumstances. They can also provide NGOs, in particular, with the potential to combine situation testing with a class action, for example in the case of inadequate accessibility. Many of the promising practices come from courts which extend standing to non-national entities, as was the case in **Belgium**, or outside the scope of consumer protection to cover equality law, as was the case in **Portugal** and could potentially be the case in **Germany** or **Italy**. The first successful group litigation by the Litigation Association of NGOs Against Discrimination in **Austria** was undertaken in relation to the physical environment, transport, information and communications, including technologies and systems linked to access to education, given the lack of personal assistance for students with intellectual disabilities in education compared to those with physical disabilities.²⁷⁵ The case was brought in the form of an action for a declaratory judgement. The basis for the claim was a decree (*Rundschreiben*) by the Minister of Education, Science and Research from 2017 which regulated the provision of ‘personal assistance for pupils with physical disabilities in national educational institutions’. The main point of the claim was that the decree did not even mention pupils with other forms of disabilities, despite the fact that it was the only basis for the provision of personal assistance for pupils with disabilities in education. The court found direct discrimination (Section 5/1 Disability Equality Act) on the basis of the nature of the disability, which excludes pupils with certain disabilities from access to personal assistance. The court found that pupils with disabilities other than physical ones are in a comparable situation in the education system to those with physical disabilities and are therefore directly discriminated against by the policy in question. The case led to changes in the provision of personal assistance to students and can therefore be viewed as a successful NGO intervention.

With segregation being so pervasive in **Hungarian** education and its extent on the rise,²⁷⁶ the Chance for Children Foundation (CFCF) launched and won several *actio popularis* lawsuits against individual schools and school operators.²⁷⁷ In spite of these efforts, it was obvious that the phenomenon could not be addressed by suing each segregating school one-by-one and so CFCF initiated an *actio popularis* lawsuit against the Ministry of Human Capacities (Hungary’s ministry responsible for education matters), as the entity ultimately responsible for the management of the Hungarian education system. CFCF complained about the failure of the Ministry to take effective measures against segregation in education. The Foundation asked the court to conclude that by not taking effective action against the segregation of Roma children in education, the Ministry failed to fulfil its obligations stemming from Hungarian anti-discrimination law.²⁷⁸ In its first instance judgment,²⁷⁹ the court concluded that the Ministry had violated the requirement for equal treatment in relation to Roma pupils in 28 primary schools by failing to desegregate them and ordered a series of very specific measures to remedy the situation. The court of second instance upheld the conclusion regarding the Ministry’s

²⁷⁵ Austria, Viennese Commercial Court, Dec. no. Cg 73/21p of 31 March 2023.

²⁷⁶ Havas, G., Liskó, I., (2005) *Szegregacio a Roma tanulok általános iskolai oktatásában* (Segregation of Roma students in primary schools).

²⁷⁷ Kádár, A. (2021), *Country report. Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Hungary*, Publications Office of the European Union / European network of experts in gender equality and non-discrimination.

²⁷⁸ Hungary, *Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities*, 28 December 2003.

²⁷⁹ Hungary, Budapest Regional Court, *Decision No. 40.P.23.675/2015/84*, 18 April 2018.

responsibility while also reducing the number of measures prescribed by the first instance court.²⁸⁰ The CFCF was closed due to a lack of sustainable funding but their approach to collective litigation remains relevant.

Standing to apply for collective redress in **Belgium** is also applicable to non-Belgian entities: in its landmark decision delivered in the *Adecco* case, the Brussels Appeal Court confirmed the decision of the court of first instance (civil section) on the grounds of admissibility and rejected the argument proposed by Adecco that the French NGO *SOS Racisme* (one of the applicants) would lack legal standing because its interest would be restricted to discrimination happening in France.²⁸¹

One potentially promising development may be observed in countries where there is no specific provision on class action in the anti-discrimination legislation but where general civil procedures or new consumer protection legislation could be used, as is the case in **Germany** and **Italy**. In **Germany**, until 2018, there had been no class action in German law. Since 1 November 2018, consumer class actions have been allowed under the act to introduce civil model declaratory proceedings,²⁸² amending the Civil Procedure Code (*Zivilprozessordnung – ZPO*).²⁸³ Potentially, such class actions could become relevant for discrimination law, although this has not yet been confirmed in practice. In terms of the act, certain qualified institutions are authorised to sue a company on behalf of consumers before the higher regional court (*Oberlandesgericht – OLG*). The definition of ‘qualified’ is formulated in Section 606 ZPO.

In **Italy**, following heated scholarly and political debate, several draft laws and subsequent amendments, in 2019 an organic framework for class action was introduced and has been in force since 19 May 2021.²⁸⁴ The model is that of an opt-in class action for obtaining financial compensation for wrongs perpetrated against groups of consumers or users. While its provisions make no mention of anti-discrimination suits as such, it is not inconceivable that actions relating to discrimination against specific groups of consumers on racial or other grounds could be brought under the law.

Such an expansive interpretation is possible as proved in **Portugal**. The possibility of using *actio popularis* as provided for in Article 52(3) of the Portuguese Constitution and Article 1 of Law 83/95, which explicitly only refers to some fields of action (public health, environment, quality of life, consumer rights, cultural heritage and the public domain), was interpreted by Portuguese courts as a non-exhaustive list and non-discrimination was included, leading to a ground-breaking court decision obliging the Portuguese authorities to eliminate physical barriers to accessing court buildings, thus complying with accessibility regulations. The case was brought as an *actio popularis* by Associação Salvador, which aims to defend the rights and interests of persons with physical disabilities. In a case decided on 7 November 2024, the Administrative and Fiscal Court of Leiria convicted the Portuguese State for failure to comply with the technical rules of accessibility for persons with disabilities, according to the requirements set by Decree-Law 163/2006. The court ordered the Portuguese state to comply with the applicable rules and specified which adjustments should be introduced (for instance, ramps and elevators and dimensions of hallways, desks and benches) to several Courts in the Leiria District.²⁸⁵

²⁸⁰ Hungary, Budapest Appeals Court, Judgment no. 2.Pf.21.145/2018/6/I, 14 February 2019.

²⁸¹ Belgium, Court of Appeal of Brussels, 10 February 2015.

²⁸² Germany, Act to introduce civil model declaratory proceedings, 12 July 2018, with effect from 1 November 2018.

²⁸³ Germany, Civil Procedure Code, 5 December 2005.

²⁸⁴ Italy, Law Decree 12 April 2019 no. 31, Provisions on class actions.

²⁸⁵ Portugal, Administrative and Fiscal Court of Leiria, case no.º 190/19.9BELRA, decided on 7 November 2024.

As regards countries where class action is not permitted, it is interesting to note that the **Hungarian** legal system does not prevent associations from obtaining authorisations from more than one victim and bringing a single case, if the claims stem from similar factual and legal bases and the court has jurisdiction over all the respondents (Article 37 of the Code of Civil Procedure), but in such a case the claims of each victim will be examined individually.²⁸⁶ Although **Irish** law does not allow NGOs or trade unions to initiate class actions, there is an option through the Workplace Relations Commission (WRC). The WRC is a quasi-judicial body which hears the vast majority of discrimination complaints at first instance under the two primary Irish laws that implement the EU equality directives. When it receives multiple complaints under either the EEA or ESA arising from the same event or practice, it may convene a meeting with the parties prior to the hearing with a view to investigating the claims as a single grouped case.²⁸⁷ This practice is adopted as a matter of administrative convenience and is not a class action.²⁸⁸ In a grouped case, each person involved must refer a complaint and a decision is issued in respect of every complaint.²⁸⁹

2.3.3 Challenges for NGOs and trade unions engaged in *actio popularis* and class action

On the limited approach to collective redress there are also different models: no standing as in **Cyprus** or **Czechia**, a theoretical standing which is not translated into practice as is the case in **Lithuania**, or a standing that is limited either to a particular ground or to a particular procedural stage, as in **Austria**, **Germany** and **Bulgaria**. One main challenge comes from the fact that some Member States have not adopted any measures to follow the European Commission's Recommendation on common principles for collective redress mechanisms.²⁹⁰

a. Lack of legal provisions or limited legal provisions

In **Cyprus**, one of the Member States which did not follow the European Commission Recommendation, NGOs are not explicitly authorised by the law to act in support of victims of discrimination, in the sense of joining victims as a separate entity in existing proceedings.²⁹¹ There is no procedure in the Cypriot legal system for supporting victims in court. The law does not explicitly allow associations, organisations or trade unions to act in the public interest on their own behalf in *actio popularis* proceedings, without a specific victim to support or represent. There is also no procedure or precedent for organisations acting in the interests of more than one victim (class action) for claims arising from the same event. Up until 2017, the Equality Body accepted and investigated complaints from associations, NGOs acting in support of asylum seekers, the UNHCR representation in Cyprus, the Pancyprian Alliance for Disability KYSOA or anti-racist NGOs acting in the public interest on their own behalf without a specific victim to support (e.g. 'Roma pupils' in general or 'female migrant workers' in general, 'persons with disabilities', 'migrants', 'drivers aged over 70'). This is attributed to the liberal approach which was followed by the Equality Body at the time rather than an interpretation of the law allowing

²⁸⁶ Chopin, I. and Germaine, C. (2025).

²⁸⁷ Equality Tribunal, *McCann, Collins and 31 others v. Eircom Ltd.*, DEC-S2003-076/108, 12 September 2003; *Johnson and sixty-five others v. Tesco Ireland Limited*, DEC-E2001-024, 10 August 2001.

²⁸⁸ Ireland, High Court ruled out use of class actions in the employment case of *Verbatim Ltd. v. Duffy and others* [1994] ELR 159.

²⁸⁹ Ireland, Equality Tribunal, *58 Named Complainants v. Goode Concrete Limited*, DEC-E2008-020, 30 April 2008.

²⁹⁰ Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201.

²⁹¹ Cyprus, Law on Persons with Disabilities, no. 127(I)/2000, Article 9D; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 12; Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 14.

actio popularis. In recent years, the Equality Body examines complaints mainly from persons who have been personally affected by an act of discrimination.²⁹²

In **Lithuania**, both civil and administrative law provide that *actio popularis* is possible in cases ‘as prescribed by law’, but no such laws have been adopted. Article 49(2) of the Code of Civil Procedure mentions that, in cases prescribed by law, a prosecutor, state institutions or ‘other persons’ do have a right to pursue *actio popularis*. The same can be said of the administrative procedure. Article 55(1) of the Law on the Proceedings of Administrative Cases mentions that, in cases prescribed by law, a prosecutor, state institution or natural person has a right to pursue *actio popularis*. However, no additional law that would allow associations to act in the public interest exists at national level, therefore these provisions remain theoretical and need judicial clarification. In addition, the Supreme Administrative Court has held that, as regards administrative law, only persons whose rights have been directly affected may file a complaint with the Ombudsperson.²⁹³

A landmark decision from 2013 gives a fairly good example of the possible challenges. The European Foundation of Human Rights (EFHR), a Vilnius-based organisation, filed a complaint to the Equal Opportunities Ombudsperson in September 2012 regarding a discriminatory job advertisement from an online job search portal. The Equal Opportunities Ombudsperson started an investigation but then stopped it due to the ‘lack of objective data about a violation of anti-discrimination legislation’, as the company in question did not respond to queries. The EFHR appealed to the Vilnius Regional Administrative Court, which ruled that the decision of the Ombudsperson was not objectively justified. However, the Supreme Administrative Court stated that an administrative act that does not affect the rights of any person may not be the subject of an administrative procedure. The court emphasised that the Law on the Proceedings of Administrative Cases does allow specific subjects to act in the public interest; however, this right may only be exercised by specific subjects, as defined by law and only in cases outlined in specific legislation. Neither the Law on the Proceedings of Administrative Cases nor anti-discrimination legislation explicitly allow associations to act in defence of the public interest, therefore the complainant did not have legal standing in the case.²⁹⁴

b. Restrictive interpretation by courts leading to reduced legal standing

Courts may play a role in closing the doors to collective redress action by limiting the standing of NGOs, as has happened in **Hungary**, where *actio popularis* before the Constitutional Court is no longer available, or **Bulgaria**, where the Supreme Administrative Court denied the interest of collective actors to appeal against decisions of the national equality body. Although *actio popularis* has proved its value in Hungary, where it has been used effectively by NGOs such as Háttér Association, an LGBTIQ rights organisation. For example, in the Karoli case, which was the first *actio popularis* case, although it was lost on merits, the case confirmed important principles in the application of collective redress.²⁹⁵

Similarly, the Chance for Children Foundation (CFCF) launched several *actio popularis* claims with respect to the segregation of Roma pupils, but the right to bring *actio popularis* claims was restricted by a decision of the Constitutional Court. Following the handing down of the final decision in an *actio popularis* lawsuit brought by

²⁹² Cyprus, Ombudswoman, *Ετήσια Εκθεση 2020 Επίτροπος Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων (Ombudswoman Annual Report for 2020)*, pp. 22, 20 January 2022.

²⁹³ Lithuania, Supreme Administrative Court, Administrative case no A492-2078/2013, Decision of 7 November 2013.

²⁹⁴ Lithuania, Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative Case no. A⁴⁹²-2078/2013, 7 November 2013.

²⁹⁵ Hungary, Supreme Court, *Pfv.IV.20.678/2005/5*, 8 June 2005.

the CFCF against a local school where Roma pupils were educated in a segregated way,²⁹⁶ the Foundation filed a complaint with the Constitutional Court, claiming that the Supreme Court decision (according to which courts in general are not authorised to order an end to the segregation) had violated the pupils' constitutional rights. However, in its decision, the Constitutional Court declared the complaint inadmissible on the basis that only natural and legal persons affected by the actual individual case may file a constitutional complaint against a court decision. Since it was not the NGO that was actually affected by the segregation (in other words, the Kúria's decision affected the constitutional rights of persons other than the NGO, i.e. the pupils), it was deemed to have no standing before the Constitutional Court.²⁹⁷ This interpretation was confirmed by the European Court of Human Rights, which rejected the CFCF's application claiming a violation of its rights under Article 6 of the European Convention of Human Rights on the basis of the lack of locus standi.²⁹⁸

The express authorisation for NGOs to launch *actio popularis* lawsuits still stands in the Equal Treatment Act and this was not annulled by the Constitutional Court. However, if the NGOs do not win these cases in the ordinary court system, they cannot appeal to the Constitutional Court or the ECtHR, so their remedial routes are limited, which will also act as a disincentive for NGOs.²⁹⁹ A recent amendment to the rules determining the litigation costs of the winning party might also act as an obstacle in *actio popularis* cases. The general rule under Hungarian law is that the losing party must pay the other party's legal costs, including the fees of the party's legal representative.³⁰⁰ While previously courts had wide discretion to reduce the litigation costs claimed by the winning party, as of 9 February 2025, they may not do so if the value of the substance of the case does not exceed HUF 10 million (approximately EUR 24 000) and may do so above this threshold only under very strict conditions.³⁰¹ The problem is that if powerful state authorities and/or companies hire expensive lawyers, the financial risk of losing the case increases significantly, not to mention the problem that for an NGO it is generally very difficult to fundraise for the purposes of paying litigation costs.

In **Bulgaria**, under settled Supreme Administrative Court case law, public interest law litigants expressly have no standing to appeal against decisions of the national equality body PADC, as such litigants are said to lack 'a legal interest', not being personally affected by a PADC decision.³⁰² This means that public interest NGOs and minority activists bringing PADC proceedings in cases where the rights of many unspecified victims were infringed are excluded from access to judicial review of unfavourable PADC decisions. This is a serious hindrance for public interest litigation. On the other hand, in a landmark case, the Supreme Administrative Court (SAC) heard a case brought by an NGO regarding pro-Roma positive measures; the NGO had appealed against the PADC decision, which had dismissed its claims. On appeal by this NGO, the Sofia City Administrative Court (SCAC) had heard the case and repealed the PADC's decision. The SAC confirmed the SCAC decision rather than annul it as having been rendered in an inadmissible case (as would have been implied had it considered that the NGO lacked standing to appeal against the PADC decision).³⁰³ The case law is, therefore, contradictory.

²⁹⁶ Hungary, Kúria, [Pfv.IV.20.068/2012/3](#), 16 May 2012.

²⁹⁷ Hungary, Constitutional Court, [decision no. 3133/2013](#), 17 June 2013.

²⁹⁸ European Court of Human Rights, *Esélyt a Hátrányos Helyzetű Gyerekeknek Alapítvány v. Hungary* No. 786/14, 25 March 2014.

²⁹⁹ Hungary, Judgment no. 27.Pf.21.357/2019/76. of the Budapest regional Court (7 December 2021); Judgment no. 8:pf.20.047/2022/5. of the Budapest Appeals Court (12 April 2022); Judgment no. Pfv.IV.21.186/2022/10. of the Kúria (5 April 2023). For information see [flash report](#); and [flash report](#).

³⁰⁰ Hungary, [Act CXXX of 2016 on the Code of Civil Procedure](#), 1 January 2018, Article 83.

³⁰¹ Hungary, Article 4 of [Decree 17/2024](#). (XII. 9.) IM of the Minister of Justice on lawyers' fees in court procedures (17/2024. (XII. 9.), 9 December 2024.

³⁰² Bulgaria, SAC, Decision no. 7863 of 12 June 2018 in Case no. 697/2017; Ruling no. 6491 of 17 May 2018 in Case no. 5486/2018.

³⁰³ Bulgaria, SAC, Decision no. 458 of 13 January 2020 in Case no. 5375/2019.

c. *Actio popularis* allowed only in relation to limited grounds

A more restrictive approach is taken in **Austria** and **Germany** where *actio popularis* is a limited tool and applies only to discrimination on the ground of disability and can be brought by a limited number of organisations. In **Austria**, the possibility of *actio popularis* has been incorporated since 2013 into Section 13(2) of the Federal Disability Equality Act. The regulation gives the Austrian National Council of Persons with Disabilities, the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities the right to file a lawsuit against an insurance company in the event that the company does not comply with the prohibition of discrimination on the ground of disability as set out by Section 1d of the Insurance Contracting Act in a manner ‘affecting the general interest of the group of persons protected by this regulation significantly and in multiple cases’.³⁰⁴

In December 2017, a new possibility was created by the so-called ‘inclusion package’ in amendment BGBl I 155/2017 to file a group litigation under Section 13 of the Federal Disability Equality Act. It creates the possibility for the three above-mentioned organisations to sue a perpetrator independently on behalf of an unidentifiable group of affected persons. The action is limited to a declaratory judgment in principle, while against large companies the litigants can choose to bring an action for injunction and removal of the discrimination. This is a useful opportunity for those potential litigators, as an ‘ordinary’ individual victim of discrimination has no legal right to ask for injunction and removal (of barriers, for example). This possibility has been used by the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities very successfully to reach useful settlements in respect of new policies/measures introduced by large companies, such as the post office and a major insurance company.

There are frequent demands by NGOs and experts to expand such important legal tools to other grounds of discrimination, but the political will to do so does not seem strong at the moment. The relevant provision, Section 13(1) of the Federal Disability Equality Act reads:

‘In case the legal duties and restrictions set out by this law are infringed and thereby the general interests of the persons protected by this regulation are significantly and sustainably negatively affected, the Austrian National Council of Persons with Disabilities, the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities can bring a lawsuit for a declaratory judgment and – regarding large capital corporations³⁰⁵ – also for injunction and removal of the discrimination on the ground of disability.’

A similar model appears in **Germany**. Under disability law provisions, associations have legal standing, given that representative action is possible in this field. This relates to the duties of public bodies to provide an accessible environment, as specified in various legal regulations and anti-discrimination law relating to persons with disabilities.³⁰⁶ In addition, there are general regulations concerning standard contracts (*Allgemeine Geschäftsbedingungen*). A violation of the AGG can give rise to an action by associations seeking an injunction

³⁰⁴ Austria, Insurance Contracting Act (BGBl 2/1959, last amended by BGBl I 12/2013).

³⁰⁵ These are defined in Section 221(3) of the Company Law Code (BGBl I 114/1997, last amended by BGBl I 107/2017) as follows: a minimum of two of the following characteristics are true: over EUR 1.5 million balance sheet total, over EUR 10 million annual revenue, over 250 employees.

³⁰⁶ Germany, Equal Opportunities for Persons with Disabilities Act, 27 April 2002, Section 14–(*BGG*): right to action against violation of the law. If the case also concerns an individual, the right exists only if the case has general importance; Section 85 SGB IX - Right of Action by Organisations (*Klagerecht der Verbände*): an organisation has legal standing in place of a person with disabilities, with their consent.

against this violation. The association must be included in the relevant register for this purpose.³⁰⁷ Similar possibilities exist with regard to consumer protection.³⁰⁸ Such instruments could be used for cases involving discrimination, e.g. in standard contracts.

A new development has been established at the *Land* level. The Berlin State Non-Discrimination Law (LADG),³⁰⁹ regulating the accountability of the public authorities of the State of Berlin in case of discrimination, introduced collective legal claims for qualified associations. According to Section 9 (1) of the LADG, a qualified association may, without having to explain the infringement of its own rights, file an application for a ruling and assert that administrative acts, general rulings or other administrative acts infringe the relevant discrimination prohibitions of the act, if there is a significance that goes beyond individual concern. Moreover, a qualified association may also apply for judicial legal protection on behalf of the person entitled to bring an action with their consent (Section 9(3) of the LADG).

Section 10 (1) of the LADG defines anti-discrimination associations as associations of persons which, on a non-commercial and non-temporary basis, operate in accordance with their statutes and represent the particular interests of persons who are discriminated against on the basis of one or more of the grounds protected by the law. Recognition as an anti-discrimination association with the right to bring collective actions must be granted to associations if a) they have their registered office in Berlin and their statutory area of activity also covers the territory of the State of Berlin, b) they have existed for at least five years at the time of their recognition as an anti-discrimination association and have been active in the context of the AGG and LADG during this period, c) they can be expected to guarantee the proper performance of their duties on the basis of their previous activities and d) they are exempt from corporate income tax because of the pursuit of not-for-profit or charitable purposes (Section 10 (1) Sentence 2 of the LADG).

d. Financial concerns

Even in countries where class action is allowed and it is used, the practice has brought to light inherent challenges. In **Sweden** there are two basic problems identified for an individual in bringing a class action. One problem is the loser pays system applicable in such cases. Liability is limited to the group representative, but this does not lessen the cost risks, since a class action will probably lead to greater costs for the whole process. In addition, group proceedings in Sweden are based on an opt-in model, meaning essentially that a power of attorney must be signed by each member of the group. This in itself also increases the cost of taking on the case.

This is why it is helpful to establish dedicated litigation funds, as in the case of Talerättsfonden,³¹⁰ a litigation fund initially established to collect donations to ensure that at least some discrimination cases are taken to court. The legal work of the fund has received some support for work on various disability discrimination cases due to an arrangement with an NGO, Disability Rights Defenders Sweden (DRDS). Under this arrangement, DRDS provides a small amount of funding for the initial research (about EUR 250) as well as about EUR 1 000 if a lawsuit, approved by DRDS, is filed. This has led to a number of cases. Over the years about 10 cases received support from DRDS. Given this minimal support, a lawyer from Talerättsfonden provided pro bono legal representation, for example in the various cases of pupils with dyslexia asserting they were discriminated

³⁰⁷ Germany, Prohibitory Action Act (UKlaG), 27 August 2002.

³⁰⁸ Germany, Act against unfair competition (UWG), 3 March 2010.

³⁰⁹ Germany, Berlin State Non-Discrimination Law (*LADG*) of 11 June 2020.

³¹⁰ Talerättsfonden (Discrimination Litigation Fund). Further information is available on the Fund's [website](#).

against in the national exams at school, as they were not allowed to use their normal reasonable accommodations when sitting the exams. One of these cases is now pending before the UN CRPD Committee. In addition, various other cases have been taken on. Talerättsfonden is currently being restructured and the name is being changed to *Rättighetsjurister* (Lawyers for Rights).

A rolling back in the use of collective redress mechanisms can also be seen in the adoption of additional requirements. For example, in the **Netherlands**, additional requirements were introduced around the admissibility of collective action claims, including the requirement that the claim must be sufficiently connected with the Dutch legal order and that the organisation must (before taking the case to court) have tried to obtain satisfactory compensation or rebuttal from the perpetrator or otherwise have tried to come to an agreement.³¹¹

2.4 NGOs and trade unions engaging on public interest grounds

Many Member States have included in their general civil procedure norms the possibility for NGOs and trade unions to submit observations in support of a general public interest and not in support of the parties. In such a case, even if it is not taking part in proceedings as a party, an organisation, with the consent of the administrative or judicial body, may still express its opinion (e.g. submit an *amicus curiae* brief), acting in the proceedings in its own name and on public interest grounds.

This is a measure allowing interested actors, including NGOs and trade unions, to provide expert opinions or argue for broader interpretations of non-discrimination laws which has the advantage that, where it is introduced in the legislation, it does not always require the consent of the victim.

Some countries use the third-party intervenor provisions from civil proceedings, allowing NGOs to act in their own name on public interest grounds, others allow NGOs to submit observations or act as a friend of the court (*amicus curiae*) even when there are no specific legal provisions in this regard (as is the case in **Romania**), while in others, such as **Ireland** or **Slovakia**, the courts can invite contributions from third parties. In **Ireland** and **Slovakia**, NGOs can also intervene without being invited by the courts. The use of this opportunity also differs from country to country, with many Member States reporting lack of use of the provisions.

2.4.1 National standards for NGOs and trade unions acting on public interest grounds

In Austria, besides the Litigation Association of NGOs Against Discrimination, as established in Section 62 of the Equal Treatment Act, 'access to third-party intervention' is not monopolised by this NGO, as others (including trade unions) also act in court proceedings if they can prove their legal interest in a particular case. The openness in recognising the right to intervene is also manifested in legislation adopted at regional level - the Carinthian Equal Treatment Act (Section 39), the Burgenland Anti-Discrimination Act (Section 32), the Tyrolean Anti-Discrimination Act (Section 12) and the Vorarlberg Anti-Discrimination Act (Section 7(4)) grant the right to intervene on public interest grounds (Nebenintervention) to associations whose statutes state their interest in adherence to the prohibition of discrimination.

³¹¹ Article 3:305a(3) *Civil Code*. Article 3:305a(3)(b) specifies that the requirement for a sufficient connection with the Dutch legal order is met if the majority of the persons in whose interest the claim is made are usually resident in the Netherlands, or the person against whom the claim is made is usually resident in the Netherlands and additional circumstances indicate a sufficient connection with the Dutch legal order, or the claim concerns an event or events that have taken place within the Netherlands.

In **Cyprus**, the law permits third-party ‘intervenor’ to participate in a case in court provided they have a ‘legitimate interest’ in the case, which is usually interpreted by the courts to be a ‘personal stake’. The law regulating the mandate of the equality body does not make any such a provision and it remains to be decided by the equality body itself.

German legislation includes a stipulation that workers’ councils or unions representing enterprises that are subject to the Works Constitution Act have the right to take court action against severe cases of discrimination (Section 17(2) AGG in conjunction with Section 23(3) Works Constitution Act). The complainant in these cases is neither representing a victim of discrimination nor acting in support of the victim (Section 17(2)(3) explicitly excludes the possibility of pursuing the victim’s claim). Rather, in this *sui generis* legal procedure, the complainant is entitled to compel the employer to abide by the obligations under the AGG through legal action in qualifying cases.

The **Polish** Administrative Procedure Code,³¹² as well as the Act on Procedures before Administrative Courts, also allow CSOs to take part in proceedings when this is justified by their official objectives and in cases specified by particular provisions.³¹³ An organisation admitted to administrative proceedings has the same rights as a party (with some limitations).³¹⁴

When **Romanian** NGOs have an interest in making a particular legal argument, they can ask the courts for permission to join already pending procedures as interested parties under ordinary civil procedure provisions, according to Article 61 of the Civil Procedure Code.³¹⁵

Besides the possibility of acting in their own name in the public interest, NGOs and trade unions can also address the courts by submitting observations. In **Czechia** it is possible for associations, organisations and trade unions to submit observations. Such a course of action is, however, not expressly provided for in national laws and courts do not have an obligation to take such briefs into account. Therefore, it is rather rare in practice. NGOs have submitted opinions defined as *amicus* briefs in proceedings relevant to equality and human rights concerns before the Romanian Constitutional Court and their opinions have been accepted by the Court and incorporated into its decisions. The statute of the Constitutional Court does not provide expressly for this tool, but the Court refers to civil procedure norms and the regulations of the European Court of Human Rights allowing for *amicus curiae*.

2.4.2 Promising practices of NGOs and trade unions acting on public interest grounds

In **Ireland**, if the Director General of the quasi-judicial body, the Workplace Relations Commission (WRC), considers it appropriate during an investigation, they may ‘hear persons appearing to the Director to be interested’.³¹⁶ Consequently, interested third parties may be authorised to engage to some extent in proceedings by making submissions on relevant matters. To date, this has occurred very rarely. Representatives of the Irish Traveller Movement (a human rights organisation), for example, have provided expert testimony on

³¹² Poland, Administrative Procedure Code, 14 June 1969, Article 31(2-5).

³¹³ Poland, Act on Procedure before Administrative Courts (Dz.U.2017.1369 t.j.), 30 August 2002, Articles 9, 25(4) and 33(2).

³¹⁴ Poland, Administrative Procedure Code, 14 June 1969, Article 31(3).

³¹⁵ Romania, Law 134/2010 Civil Procedure Code, 1 July 2010, Article 61 on voluntary intervention and Article 62 on primary intervention (when the third party claims a right on its own) and Article 63 on secondary intervention (when the third party supports the arguments of one of the parties).

³¹⁶ Ireland, Section 25(1) ESA; Section 79(1) EEA.

the difficulties experienced by Travellers in gaining access to services and on other matters.³¹⁷ In a reasonable accommodation case, the (then) Equality Tribunal heard expert evidence on the structure of Irish Sign Language and the need for suitably qualified interpreters.³¹⁸ In a 2022 case concerning racial abuse of prison staff, experts on, inter alia, racism and penal policy were called as witnesses.³¹⁹ There is no equivalent provision that would enable NGOs or trade unions to intervene in proceedings before the civil courts. However, the courts have an inherent jurisdiction to permit such interventions.³²⁰

The overview of interventions by **French** NGOs and trade unions shows a rich, diverse and impactful collection of cases in which NGOs not only initiated class action cases but also presented their observations ‘supporting the recognition of rights’. The *Bougnaoui* case led to a referral to the CJEU with the support of the *Association coordination contre le racisme et l’islamophobie* (ADDH-CCIF), defending the right of a female data engineer to wear a Muslim headscarf in the workplace.³²¹ Other *amicus curiae* actions before European courts include recourses before the ECtHR in the case of the evacuation of Travellers and Roma in the *Hirtu* case³²² and the mobilisation for the recourses against the ban of blood donation by homosexual men that led to the CJEU *Léger* case.³²³

Other cases were impactful at the national level: the submissions in support of the class action before the Conseil d’État challenging the racial profiling practice of the French police;³²⁴ the challenge before the Constitutional Council to the legislation imposing internal circulation papers and reporting obligations on French travellers in application of Law no. 69-3 of 3 January 1969, which led to the abrogation of the applicable legislation;³²⁵ the systematic challenge before the courts of Roma evacuations by claimants supported by a collective of NGOs, the Observatoire de lieux de vie informels,³²⁶ together with the Defender of Rights;³²⁷ and the strategic litigation before the criminal courts to recognise testing as a legal means to establish discrimination in access to goods and services, as deployed in night clubs by the NGO SOS Racisme over more than 15 years.³²⁸

French NGOs have also used *amicus curiae* for petitions before the UN Human Rights Committee to challenge various aspects of the application of the principle of secularity: on the niqab/burqa covering women’s faces;³²⁹ on the prohibition of the Islamic headscarf and other religious signs such as the Sikh turban in public schools;³³⁰ and on the ban against the Islamic headscarf in sporting competitions.³³¹ The NGO Action Droits des Musulmans, established in 2015, initiated a motion to quash the Ministerial instruction banning the wearing of abayas and

³¹⁷ For example, Equality Tribunal, *Reilly v. The Licensee, the Foxhunter Pub, Lucan, Dublin*, DEC-S2003-026, 17 April 2003; Equality Tribunal, *Sweeney v. Saehan Media Ireland Ltd.*, DEC-E2003-017, 1 May 2003.

³¹⁸ Ireland, Equality Tribunal, *Regan v. Old Bawn Community School*, DEC-S2010-043, 31 August 2010.

³¹⁹ Ireland, Labour Court, *The Minister for Justice and Equality v. Onyemekeihia*, EDA2217, 20 July 2022.

³²⁰ Ireland, High Court judgment in *Data Protection Commissioner v. Facebook Ireland Ltd & anor*, [2016] IEHC 414, 19 July 2016.

³²¹ Judgment of 14 March 2017, *Asma Bougnaoui and ADDH*, C-188/15. Judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15. Judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15.

³²² ECtHR, *Hirtu v France*, no. 24720/13, 14 May 2020. Observations of the *Defender of Rights*.

³²³ Judgment of 29 April 2015, *Léger*, C-528/13.

³²⁴ France, Conseil d’État, Plenary Assembly, Amnesty International et al., 11 October 2023, no 454836, *decision of the Conseil d’État*.

³²⁵ France, Parliamentary legislative proposal no 1610 to repeal Law 69-3 regulating Travellers. *Parliamentary legislative proposal no 1610 to repeal Law 69-3 regulating Travellers*. See also, Conseil d’État, 19 November 2014, *10th and 9th Sections*, no 359223.

³²⁶ *Observatory of Informal Living*, composed of Fondation Abbé Pierre, an NGO specialising in housing rights, Human Rights League, Romeurope, FNASAT, ANGVC.

³²⁷ Defender of Rights, *Bilan d’application de la circulaire interministérielle du 26 aout 2012*.

³²⁸ Court of Cassation, Criminal Chamber, 11 June 2002, N° 01-85.560. Court of Cassation, *Criminal Chamber, 7 June 2005*, no. 04-87.354.

³²⁹ United Nations, Press release, *France: Banning the niqab violated two Muslim women’s freedom of religion – UN experts*, on 23.10.2018.

³³⁰ United Nations, *International Covenant on Civil and Political Rights*, 04.12.2012.

³³¹ *France: Hijab ban during sports, “discriminatory and must be reversed” say experts*, UN.

qamis in public schools, which was dismissed by the Conseil d'État.³³² In matters of disability, APF France Handicap has supported many ongoing claims against Easy Jet for cases where they refused to allow persons with disabilities to board their planes, leading to multiple prosecutions and convictions, some of them still pending.³³³

Besides the right to act in support of victims of discrimination, although the legislation in **Poland** does not use this expression, NGOs may act de facto as an *amicus curiae*. If an NGO does not participate in the proceedings, it may still present its opinion on the case to the court.³³⁴ An important ruling by the Constitutional Tribunal referred to an *amicus curiae* brief provided by an NGO in a case before the court, thus in a way recognising the use of an *amicus curiae* by the courts even without a clear legal provision allowing for this.³³⁵ Over the past decade, the Polish Society of Anti-Discrimination Law which offers legal support to individuals subjected to discrimination and engages in advocacy activities related to anti-discrimination legislation, has been involved in numerous strategic litigation cases concerning equality and non-discrimination, leading to significant institutional changes, including within local government.³³⁶

In **Slovakia**, according to Section 95 of the Civil Dispute Act, 'the court can also without any proposal invite into the court proceeding a public body whose aim is protection of fundamental rights and freedoms or a legal entity which is entitled to rights protection, to engage in proceedings, if the relevant party agrees'.³³⁷ These provisions make it possible for the Slovak National Centre for Human Rights and NGOs (and possibly also trade unions) to engage in cases of discrimination upon an invitation by the court. The NGOs using this form of engagement do not report any difficulties from the courts in implementation of this provision. For example, in a case of the forced eviction of Roma, the Court accepted the international human rights NGO the European Roma Rights Centre as a third-party intervenor, based on the provision of the Civil Dispute Act cited above.³³⁸

2.4.3 Challenges for NGOs and trade unions acting on public interest grounds

The fact that in some Member States the legislation does not provide for the possibility for NGOs to join a case on behalf of a public interest is problematic, as it would allow organisations to engage to some extent in court proceedings without incurring the costs associated with a potential loss. In contrast to the status of intervenors, organisations submitting observations would not need to be parties in the case. In the Member States where this type of engagement was allowed in the domestic civil proceedings, such a recognition enables NGOs and trade unions to pursue human rights protection with fewer financial and human resources as noted by **Croatian** NGOs advocating for the possibility to act as friends of the courts.³³⁹

³³² France, Conseil d'État (Council of State), 27 September 2024, no 487944, 487974, 489177. Decision of the Conseil d'État on the merits of 27 September 2024.

³³³ For example, Easy Jet Switzerland was ordered to pay a EUR 40 000 fine on 13 September 2024.

³³⁴ Poland, Code of Civil Procedure, 17 November 1964, Article 63.

³³⁵ Poland, Constitutional Tribunal, judgment of 16 January 2006, no. SK 30/05, justification No. p. I. 8. p. III 2.2.

³³⁶ Polish Society of Anti-Discrimination Law.

³³⁷ Slovakia, Civil Dispute Act, 160/2015, Section 95.

³³⁸ Slovakia, decision of the Košice II District Court, no. 15 C 190/2014- 650, 21 January 2022.

³³⁹ Croatia, Human Rights House, Đaković, T. (2024), Access to funding for human rights organizations in Croatia: Obstacles and recommendations.

3 NGOs and trade unions before equality bodies and courts

'European becomes the language of rights and entitlements.'³⁴⁰

3.1 Substantive equality litigation – key cases brought by NGOs, associations and trade unions before national courts in Member States and before the CJEU

Strategic or public interest litigation is an important tool for human rights enforcement and legal mobilisation in general and it has often been used by NGOs in an attempt to promote the rule of law or to respond to attempts to dismantle the domestic system of institutional guarantees to protect human rights.³⁴¹ In this regard strategic litigation has proved to be both crucial for countering democratic backsliding³⁴² and 'a catalyst of social change'.³⁴³ Strategic litigation is also an important tool used by NGOs to bring the standards of EU anti-discrimination law home, at the national level, contributing to changing society and challenging the status quo. Equality strategic litigation brings forward landmark cases that challenge discriminatory laws or practices, thereby helping to shape future legislation and judicial interpretations.

The road does not finish at the national level, as NGOs often use strategic litigation in order to initiate or foster legal dialogue between domestic courts and their European counterparts. As noted in the academic literature, despite all the flaws in the Union's 'Garden of Earthly Delights', EU anti-discrimination law currently offers one of the highest standards of protection in comparative anti-discrimination law and this continuing development is fostered by the Court of Justice. In this context, it is essential to recognise how collective interest actors such as trade unions or NGOs have used their legal standing and brought strategic cases which 'enabled the Court of Justice to develop an even broader and more refined anti-discrimination jurisprudence'.³⁴⁴ In particular, on sensitive topics which may seem difficult to challenge at the national level due to cultural or societal legacies, litigation on equality and non-discrimination issues leads to the advancement of rights protection, in spite of political deadlock.³⁴⁵

Recent literature defines strategic litigation broadly as: 'legal action initiated to achieve broader social, political, or economic ends' which can be used both in the private and public interest.³⁴⁶ Notably, public interest strategic litigation, more specifically, equality and non-discrimination litigation used by NGOs to achieve social change goals, is used within broader advocacy strategies. These equality strategies entail not only legal mobilisation before courts or equality bodies but also community building, empowering the beneficiaries who are potential victims of discrimination to stand up and speak up and awareness-raising through communication campaigns targeting the general public, influencing public policies and legislation, and contributing to the professional education of the different stakeholders.

³⁴⁰ Belavusau, U. and Kochenov, D. (2016).

³⁴¹ Şerban, M. (2018), 'Stemming the tide of illiberalism? Legal mobilization and adversarial legalism in Central and Eastern Europe', *Communist & Post-Communist Stud.*, Vol. 51, 177.

³⁴² Ploszka, A. (2024), 'Strategic litigation in a time of populism: Poland's experience', *German Law Journal*, 25(6): 893-909, doi:10.1017/glj.2024.62.

³⁴³ Lantschner, E. (2020), 'Strategic litigation: equality bodies' strategic use of powers to enforce EU non-discrimination law', *European Equality Law Review* 1, 2020.

³⁴⁴ Belavusau U. and Henrard, K. (eds) (2018).

³⁴⁵ Cichowski, R. A. (2007).

³⁴⁶ Cebulak, P., Morvillo, M. and Salomon, S. (2024), 'Strategic litigation in EU law: Who does it empower?', *German Law Journal*, 25(6), 893-909, doi:10.1017/glj.2024.62.

The 2000 Equality Directives, through the novelty of the dual role recognised for NGOs and trade unions, provided a foundation for the empowerment of civil society as a proactive legal actor. This capacitating of NGOs led in turn to the concrete implementation of national laws adopted for the transposition of the Equality Directives and to the continuing development of EU anti-discrimination law.

It was noted that the Equality Directives seek to facilitate litigation by supporting or encouraging the involvement of a broad range of actors besides individual victims.³⁴⁷ The seeds for strategic equality and non-discrimination litigation thus seem to have been sown in the very standards of the Equality Directives. Collective actors involved in preliminary references will have a right to intervene before the CJEU only if they are formally a party, including being a third party, in the domestic proceedings. The legal strategies submitted before the national courts have the potential to influence the referrals. Once involved through the preliminary ruling procedures, the CJEU has the opportunity to interpret EU law in this dynamic context and propose incremental changes through its landmark decisions. The Directives brought into focus two new categories, in addition to the individual victim, which can initiate EU law mobilisation promoting integration: the national equality bodies and the NGOs and trade unions. The broadening of the legal standing to include these two categories of new actors is important as it ‘essentially revolutionises future development of anti-discrimination law in Europe. Such a litigation option provides a veritable boost to otherwise “desperate” cases with no individual plaintiffs available’.³⁴⁸

The first landmark case of an NGO exercising its collective redress standing with an impact both at the national and European level was *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării* (NCCD) in **Romania**, which was also the first case to be decided by the CJEU in relation to discrimination in recruitment on grounds of sexual orientation.³⁴⁹ Notably, ACCEPT acted as the convener of an informal coalition of NGOs working with different vulnerable groups and acting as an anti-discrimination coalition. In this sense, the legal mobilisation in Case C-81/12 was meant to counteract what was perceived as a systemic failure of the national equality body NCCD to effectively sanction discrimination as well as the failure of the Romanian authorities to amend and improve the domestic legal framework. The facts in the case confirmed the NCCD’s tendency at the time which was to apply the lower level of sanctions (written warnings and recommendations).³⁵⁰

Case C-81/12 *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*

There was no individual victim willing to step up when Mr Becali, publicly known as patron of the SC Fotbal Club Steaua București SA, stated: ‘Not even if I had to close *Steaua* down would I accept a homosexual on the team... There’s no room for gays in my family, and *Steaua* is my family’. In the rather homophobic environment which existed in Romania in 2010, privacy concerns and fear of retaliation from a perpetrator who wielded significant financial, political and media power, meant that the only solution available was to use the right provided for in the Romanian legislation for an NGO to take the case before the National Council for Combating Discrimination (NCCD), a quasi-judicial body with the power to find discrimination and issue sanctions. Just as Unia in Belgium

³⁴⁷ Muir, E., Kilpatrick, C., Miller, J. and de Witte, B. (2017), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

³⁴⁸ Belavusau U. and Henrard, K. (eds) (2018).

³⁴⁹ Judgment of 25 April 2013, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, ECLI:EU:C:2013:275.

³⁵⁰ Romania, NCCD, *Report regarding the implementation of the Framework Directive (2000/78/EC) in Romania 2003-2010*, (2011) pp.174-200. Between 2003 and 2010, the NCCD reported issuing administrative fines in only 17 out of 124 cases of discrimination under Directive 2000/78/EC (representing 13.7 %).

had to initiate the complaint in the *Feryn* case³⁵¹ as there was no identifiable victim, ACCEPT,³⁵² the oldest Romanian LGBT NGO, filed the complaint against Mr Becali, a Romanian tycoon and Member of Parliament, as well as against the football club, Steaua Bucharest, as the employer with a potentially discriminatory employment policy. In its arguments before the national equality body, the NGO cited, in addition to the Romanian and EU anti-discrimination standards, current FIFA standards against discrimination. The NCCD decided that Becali's statements infringed the human dignity of all homosexuals as protected in the Romanian anti-discrimination legislation and issued him a warning carrying no financial value (the decision came after the prescribed six-month rule and thus no fines could be applied by law). At the same time, the NCCD rejected the claims against Steaua of discrimination in employment, reasoning that at the time when he made his statements, Becali was not a representative of the club, in spite of the fact that it was well-known that he was controlling the club de facto, as evidenced by his own statements which were never challenged or publicly contradicted by the club representatives. ACCEPT challenged the NCCD decision and the appeal judge referred the case to the CJEU.

In its ruling, the CJEU clarified basic elements of the burden of proof in discrimination cases when it stated that the employer did not clearly distance itself from the statements which are relevant when assessing the recruitment policies. The interpretation of Article 17 on the meaning of 'sanctions, which may comprise the payment of compensation to the victim, [and] must be effective, proportionate and dissuasive' led to the pronouncement which ended up being the standard for assessing the mechanisms of remedies: 'a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78'.³⁵³

While technically ACCEPT did not win in its case against Mr Becali before the domestic courts and the warning was maintained as the sole sanction, the impact of the case was visible both at the national and European level. Domestically, after seven years of silence, the Romanian anti-discrimination law was significantly amended in three different rounds in 2013 to ensure further harmonisation with the Equality Directives. The wording of the provisions on the burden of proof, genuine occupational requirements and statutory limitations was upgraded.³⁵⁴ In addition, an assessment of the practice of the national equality body shows that in the years following the *ACCEPT* decision, the NCCD was more willing to issue fines when finding discrimination.³⁵⁵

³⁵¹ *Asociația ACCEPT*, C-81/12, para. 62, citing *Feryn* paras. 38 and 40.

³⁵² *ACCEPT Association*, the first Romanian LGBT human rights organisation, has been engaged in promoting equal treatment in Romania since 1996. The organisation is also actively involved in promoting tolerance through media campaigns and the organisation (since 2005) of an annual gay pride, a week-long festival promoting tolerance and non-discrimination through cultural and artistic events. The NGO was the first Romanian NGO to be allowed to submit an *amicus curiae* before the European Court of Human Rights and to plead before the CJEU and developed an in-house litigation strategy which was part of its advocacy strategy. Since 2008 it has been the driver of the informal Anti-discrimination Coalition.

³⁵³ Judgment of 25 April 2013, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, ECLI:EU:C:2013:275, para. 64.

³⁵⁴ In the context of the proceedings in C-81/12, in 2013 there were three rounds of legislative amendments touching on some of the key legal concerns in the case: Law 61/2013 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, in 21 March 2013; Emergency Ordinance 19/2013 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, in 27 March 2013; and Law 189/2013 for the ratification of Emergency Ordinance 19/2013 for the amendment of the Government Ordinance 137/2000 regarding the prevention and punishment of all forms of discrimination, in 25 June 2013. See also, Mercat-Bruns, M. (2020), 'A comparative study on collective redress in France, Norway and Romania: the challenges of strategic litigation' *European Equality Law Review* 1, 2020.

³⁵⁵ For a picture of the dynamic of NCCD sanctions over time, see Iordache, R. (2024), *Country report. Non-discrimination. Romania 2024*, Publications Office of the European Union / European network of legal experts in gender equality and non-discrimination.

Most importantly, ACCEPT took its legal mobilisation experience further and brought other ground-breaking cases before the CJEU, such as the two Grand Chamber judgments in C-673/16³⁵⁶ on the recognition of same-sex families in the context of exercising freedom of movement in the EU and C-4/23 on recognition of gender identity reassignment carried out in another Member State.³⁵⁷ These sustained strategic litigation efforts reaffirmed the value of communicating equality and anti-discrimination principles both to the general public and to the national legal community through the EU legal framework. As foretold in the academic literature,³⁵⁸ the litigation route taken by ACCEPT (essentially *actio popularis*) created a new legal opportunity for gay and lesbian organisations to engage with the CJEU after their substantial defeat in the ‘gay cases’ in the 1990s and early 2000s and proved to be the inspiration for subsequent litigation in other Member States and before the CJEU, as demonstrated by the *Rete Lenford* follow-up litigation from **Italy**.³⁵⁹

As key conclusions to the *ACCEPT* case, there are several takeaways in addition to the substantive reasoning provided by the CJEU on burden of proof and what constitutes an effective, dissuasive and proportionate remedy in cases of discrimination. Firstly, Articles 27 and 28 of the Romanian anti-discrimination legislation, providing for collective redress for civil society groups, made it possible for ACCEPT to challenge anti-gay discrimination where a complaint by a victim was almost impossible as it had the potential to turn their sexuality into the subject of public attacks in an already hostile environment.

Secondly, it was noted that with the *ACCEPT* case, the CJEU went beyond the individualistic and remedial approach to sanctions and developed a more preventive, proactive approach.³⁶⁰ The interpretation proposed by the CJEU in this case was repeated and reinforced in subsequent cases, both by the European court and by domestic courts as well as by legislators.

Thirdly, although it is for the national court making the referral to draft the questions sent to the CJEU, the NGO plays an essential role in identifying the key concepts to be interpreted, drafting the language of the proposed questions, bringing on board Member States with similar interests, and making available to the Court very specific expertise.

Fourthly, for ACCEPT strategic equality litigation was part of long-term strategic planning which included communication, capacity building of beneficiaries, collaboration with authorities, training for civil servants and magistrates, and coordination in an informal coalition of NGOs sharing the objective of supporting victims of discrimination and improving state responses to discrimination. The holistic approach to carrying out its statutory aim of combating discrimination is a key marker of the success ACCEPT had in C-81/12 and in its subsequent cases.

Cases C-335/11 and C-337/11 *Ring and Werge*

Joined Cases C-335/11 and C-337/11 (*Ring and Werge*) of 11 April 2013, in which the CJEU had the opportunity to interpret the concept of disability under Directive 2000/78/EC, were brought by a **Danish** trade union, Handels- og Kontorfunktionærernes Forbund Danmark (HK Danmark), acting on behalf of Jette Ring and Lone

³⁵⁶ Judgment of 5 June 2018, *Coman, Hamilton, ACCEPT împotriva Inspectoratului General pentru Imigrări și a Ministerului Afacerilor Interne*, C-673/16, ECLI:EU:C:2018:385.

³⁵⁷ Judgment of 4 October 2024, C-4/23 ECLI:EU:C:2024:845.

³⁵⁸ Belavusau, U. and Kochenov, D. (2016).

³⁵⁹ Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, ECLI:EU:C:2020:289.

³⁶⁰ Tobler, C. (2005), *Remedies and sanctions in EC non-discrimination law*, p.8.

Skouboe Werge.³⁶¹ Both complainants represented by HK Danmark had their employment relationship terminated after absences from work for medical reasons. Jette Ring had been employed as a customer service centre operator for the firm Dansk Almennyttigt Boligselskab (DAB). Lone Skouboe Werge had been employed as an administrative assistant by the firm Pro Display A/S.

HK Danmark, one of the largest trade unions in Denmark covering both the private and the public sector is, like ACCEPT in Romania, a recurring presence before the CJEU. Under Danish law, a trade union is permitted to file suits in its own name on behalf of its members, but formally speaking, the member (and not the trade union) remains the only party to the case. An analysis of preliminary references initiated by Danish courts showed that trade unions participated in all referrals under Directive 2000/78 or under the gender equality directives until 2015.³⁶²

The Danish disability reference in *Ring and Werge* came as a result of the information campaigns and outreach work done by trade union HK Danmark after the Danish legislation was amended in order to transpose Directive 2000/78 and in response to the restrictive interpretation of the disability-related provisions by the Danish courts.³⁶³

The *Ring and Werge* case strengthened worker protections and allowed the Court to discuss whether the refusal to pay compensation for untaken leave due to long-term illness/disability amounted to indirect discrimination against persons with disabilities and that failure to accommodate workers with long-term disabilities (including through leave policies) could violate Article 5 of Directive 2000/78/EC. The CJEU ruling clarified the concept of disability under Directive 2000/78/EC, bringing a broad, functional definition of disability which was in line with the UN Convention on the Rights of Persons with Disabilities (CRPD) as hoped by the HK Danmark lawyers, who also built the cases in response to the restrictive approach of the Danish courts regarding the definition of disability and their refusal to acknowledge that a reduction in working hours could be considered a reasonable accommodation. The Court also indirectly broadened the scope of protection for workers with disabilities in the EU, ensuring equal treatment in the application of working time and leave rights. In terms of advocacy impact, the ruling prompted reforms in national laws, shifting the focus in disability cases from medical diagnosis to the impact of the condition on work capacity: **Denmark** amended its Holiday Act, **Germany**, **France** and **Spain** also amended their legislation that limited sick workers' ability to claim paid leave.

Besides HK Danmark being a recurring presence before the Court, other trade unions have also actively used EU anti-discrimination law, thus allowing researchers to conclude that trade unions 'appear to be the only collective actors in **Denmark** with the legal expertise, financial resources, and motivation to take legal battles all the way to Luxembourg'.³⁶⁴ For example, in *FOA on behalf of Karsten Kaltoft vs Billund Kommune*, Case C-354/13, Mr Kaltoft who was dismissed from his position of childminder by the Municipality of Billund for being considered obese, was represented by Fag og Arbejde (FOA), the third largest union in Denmark. Mr Kaltoft, who had been considered obese during his whole career and who was encouraged by his employer to lose weight,

³⁶¹ Judgment of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S*, C-335/11 and C-337/11, ECLI:EU:C:2013:222.

³⁶² Atanasova, A. and Miller, J. (2017), 'Collective actors and EU anti-discrimination law in Denmark', in Muir, E., Kilpatrick, C., Miller, J. and de Witte, B. (eds), *How EU law shapes opportunities for preliminary references on fundamental rights: discrimination, data protection and asylum*, EUI LAW, 2017/17.

³⁶³ Atanasova, A. and Miller, J. (2017).

³⁶⁴ Atanasova, A. and Miller, J. (2017).

claimed that his dismissal was a result of discrimination on the basis of obesity.³⁶⁵ While the CJEU did not accept the argument regarding obesity in itself as a self-standing ground of discrimination, it did list the requirements under which obesity could be recognised as a disability. The decision aligned with the social model of disability, focusing on the effect of the condition on the individual's ability to participate in working life, rather than on the medical diagnosis. This approach proved to serve as an inspiration for thinking about disability in a broader way, for example 'including psychological conditions such as ADHD and depression'.³⁶⁶

The role of NGOs in facilitating opportunities for the CJEU to further interpret the Equality Directives continue. For example, a request for a preliminary ruling from the Østre Landsret, in pending Case C-417/23 (the so-called Ghetto case against the Danish Government),³⁶⁷ was initiated by the Almen Modstand coalition.³⁶⁸ The NGOs initiated a challenge in the national courts in Denmark in relation to national legislation which requires the adoption of development plans for public housing units in certain residential areas known as 'parallel societies' (previously, 'ghettos'). They are described as such owing to the majority of the population in those areas being 'immigrants from non-Western countries and their descendants'.

In **Italy**, the sensitive topic of housing segregation of Roma was also tackled by NGOs working together to mobilise in the context of the legal system. In 2015 a case under the non-discrimination framework was brought to the Court of Rome concerning a large settlement on the outskirts of the city. The case was filed by two NGOs, ASGI and Associazione 21 Luglio, which argued that the discriminatory treatment of the Roma community had caused social exclusion, resulting in racial discrimination as prohibited by Directive 2000/43/EC. In a judgment issued on 9 June 2015, the Court of Rome convicted the Municipality of Rome of indirect discrimination, in accordance with Article 2 of Legislative Decree 215/2003 implementing Directive 2000/43/EC.³⁶⁹ The Municipality of Rome was ordered to stop allocating housing to anyone else in La Barbuta camp and to remove the effects of the allocations already in force; to publish the judgment in the national newspaper, *Corriere della Sera*; and to pay half of the legal costs incurred by the two claimants.

It is not only legal successes that are relevant in NGO work, unsuccessful litigation can also lead to successful advocacy. The **Irish Stokes** case, on indirect discrimination in school admissions policies initiated by the Irish Traveller Movement, while not successful in court³⁷⁰ and thus being considered 'a severe blow to human rights',³⁷¹ provided the impetus for a campaign to reform the ESA as it concerns school admission policies. IHREC,³⁷² the Ombudsman for Children³⁷³ and NGOs³⁷⁴ drew on the case in their calls for reform of school admission policies, including in submissions to international human rights bodies, as well as in consultations on legislative reform. Several changes aimed at addressing discrimination in accessing schools were enacted under the Education (Admission to Schools) Act 2018.³⁷⁵ The 2018 Act included a reform that should improve

³⁶⁵ Judgment of 18 December 2014, *Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft, V Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund*, C-354/13, ECLI:EU:C:2014:2463.

³⁶⁶ Atanasova, A. and Miller, J. (2017).

³⁶⁷ *Opinion of AG Capeta* delivered on 13 February 2025, *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge v MV, EH, LJ, AQ and LO, joined parties: BL – Danmarks Almene Boliger, Institut for Menneskerettigheder and XM, ZQ, FZ, DL, WS, JI, PB, VT, YB, TJ, RK v Social- Bolig- og Ældreministeriet*.

³⁶⁸ *Almen Modstand coalition*.

³⁶⁹ Court of Rome, *ASGI, Associazione 21 Luglio v. Rome Capital and Italian Government*, 4 June 2016.

³⁷⁰ Ireland, Supreme Court, *Stokes v. Christian Brothers High School, Clonmel*, [2015] IESC 13, 24 February 2015.

³⁷¹ Harvey, B. (2016), *Making a difference: Capturing the learning from the Atlantic Philanthropies Human Rights Programme in Ireland*, p.12.

³⁷² Irish Human Rights and Equality Commission (2016), *Observations on the Education (Admission to Schools) Bill 2016*.

³⁷³ Ireland, Ombudsman for Children (2017), *Advice of the Ombudsman for Children on the Education (Admission to Schools) Bill 2016*.

³⁷⁴ See, for example, Pavee Point (2013), *Submission to the Oireachtas Joint Committee on Education and Social Protection on the Draft General Scheme of an Education (Admission to Schools) Bill 2013*.

³⁷⁵ See this [note on the relationship between the Stokes case and legislative reform](#).

the situation encountered in *Stokes*. In 2022, a parliamentary committee also recommended that the provision be deleted³⁷⁶ and a bill to that end was introduced.³⁷⁷ However, the bill lapsed with the dissolution of the last Parliament.

Case *Stokes v. Christian Brothers High School*

An application had been made on behalf of the complainant, Mr Stokes (a minor), to a secondary school and was unsuccessful in the first and second round allocations of places. In assessing first round applications the school selected boys who fulfilled several criteria. The impugned criterion gave priority to the sons of former pupils, which according to the Irish Tribunal was liable to put members of the Traveller community at a particular disadvantage compared with non-Travellers. Proof of group disadvantage was established through statistical evidence, in the form of census data and figures on secondary school enrolment provided by the Department of Education, which demonstrated that Travellers of the complainant's father's generation were far less likely to have progressed to secondary-level education than the settled population. The Tribunal considered that Mr Stokes was put at a particular disadvantage by the admission criterion and that the school was unable to justify use of the provision in question. It claimed that the criterion strengthened family loyalty to the school by rewarding fathers who supported the school in various ways. The Director accepted that this aim was a legitimate one. However, giving a blanket priority to children of former pupils was not an appropriate or necessary means of advancing that aim.

The case was ultimately appealed to the Supreme Court, which determined that the evidence presented by the complainant did not demonstrate that the school's policy placed Travellers in a situation of particular disadvantage. It held, *inter alia*, that national data on the educational profile of Travellers was insufficient to shift the burden of proof: 'it was also necessary that some attempt should have been made to apply the national figures to the context of Clonmel, and in particular to the context of Clonmel High School and its history of previous Traveller pupils' (para. 11.8). In effect the Court held that detailed statistical evidence was required to establish that the provision actually put Travellers at a particular disadvantage.

Strategic litigation as a legal tool used for social and legal change has proved its value, as evidenced both by domestic cases and by cases brought before the CJEU. In terms of impact, strategic equality and non-discrimination litigation have contributed to advocacy efforts in amending legislation or helping to clarify concepts, thus supporting the national legal communities, but also aiding efforts to raise awareness in relation to sensitive or forgotten topics, as in the case of discrimination in employment against LGBT individuals or cases of segregation in education against Roma children.

3.2 Remedies provided to NGOs and trade unions

Infringements of anti-discrimination laws must be met with 'effective, proportionate and dissuasive' sanctions, which may include compensation being paid to the victim (Article 15, Racial Equality Directive; Article 17, Employment Equality Directive).³⁷⁸ In a case in which a Romanian LGBT NGO used its legal standing the CJEU

³⁷⁶ Ireland, Joint Committee on Education, Further and Higher Education, Research, Innovation and Science (2022), *Report on the pre-legislative scrutiny of the Education (Admission to Schools) Bill 2020*.

³⁷⁷ Ireland, parliamentary committee *debate*.

³⁷⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.

had the opportunity to provide specific indications regarding the EU legal requirements in relation to remedies in discrimination cases. In particular, as noted by the Court in its ruling in *Asociația ACCEPT* in 2013,³⁷⁹ the ‘severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect... while respecting the general principle of proportionality’.³⁸⁰ The CJEU further noted that ‘a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78’.

But what are the effective, proportionate and dissuasive remedies when NGOs and trade unions engage in litigation? The comparative analysis showed that, depending on the specific legal environment, a wide range of possible remedies exist and they vary depending on the type of law (e.g. civil, criminal or administrative remedies), the punitive or non-punitive character of the remedies, their orientation as backward-looking or forward-looking (the latter meaning remedies that seek to adjust future behaviour) and the level at which they are intended to operate (individual/micro or group/macro level).³⁸¹ Remedies may be available through various, possibly complementary, enforcement processes (administrative, industrial relations and judicial processes). Depending on such features, the remedies offered by a particular legal order will reflect different theories of remedies (e.g. remedial, compensatory, punitive and preventative justice) and also different concepts of equality (e.g. an individual justice model, a group justice model or a model based on equality as participation).

NGOs or trade unions cannot make compensation claims in the majority of Member States if they are not acting on behalf of a victim /if there is no identified victim of discrimination who entrusts them with legal representation. This rule can be found in **Austria, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain** and **Sweden**.³⁸²

3.2.1 Models for remedies provided in discrimination cases filed by NGOs and trade unions

Lacking specific guidance on the remedies granted, Member States which recognised the right of NGOs and trade unions to access courts and national equality bodies, chose one of two options. One model is not to differentiate between remedies in cases filed by NGOs and remedies in other types of cases as applies, for example, in **Austria** and **France**. The other model limits the types of remedies that can be granted as compared to individual victims (no compensation). This is also an area of development in which legislators recognise the importance of equipping NGOs and trade unions with the same type of remedies. This is the case in the legislative changes of 2019 in the **Netherlands**.³⁸³ The new act passed made it possible for foundations or associations to claim pecuniary damages on behalf of those they represent, whereas previously such damages could only be claimed by individual victims. The possibilities opened up by Article 3:305a of the Dutch Civil

³⁷⁹ CJEU, Case C-81/12, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, judgment of 25.04.2013, ECLI:EU:C:2013:275.

³⁸⁰ With regard to the ‘genuinely dissuasive effect’ of sanctions, the Court cited Case C-383/92 *Commission v United Kingdom*, 8.06.1994, ECLI:EU:C:1994:234 and Case C-180/95 *Draehmpaehl*, 22.04.1997, ECLI:EU:C:1997:208. With regard to the general principle of proportionality in relation to sanctions, the Court cited Case C-101/01 *Lindqvist*, 06.11.2003, ECLI:EU:C:2003:596, and Case C-430/05 *Nttonik and Pikoulas*, 5.07.2007, ECLI:EU:C:2007:410.

³⁸¹ Iordache, R., Ionescu, I. (2014), *Discrimination and its Sanctions – Symbolic vs. Effective Remedies in European Anti-discrimination Law*, Comparative analysis of remedies provided in 34 countries in response to discrimination from the perspective of the CJEU ruling in C-81/12 *ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, European Anti-discrimination Law Review, No.19.

³⁸² Romanița Iordache, Iustina Ionescu (2014).

³⁸³ Netherlands, Act on the settlement of damages in collective action cases, Staatsblad 2019, 130. The Act entered into force on 1 January 2020.

Code come with a series of conditionalities.³⁸⁴ Courts may accept collective action claims made by foundations or associations that do not meet the newly imposed requirements if the claim is of an idealistic (non-commercial) nature and the financial interests involved are very limited. In that case, however, no pecuniary damages may be sought.³⁸⁵

In **France**, in civil equality law cases or criminal prosecutions, compensation (financial losses and symbolic compensation of non-pecuniary loss) is the same for the victims. Trade unions or NGOs will themselves request damages, which are often only symbolic except if they pursued the case through many jurisdictions and appeals. They can also request awards for costs in application of Article 700 of the Code of Civil Procedure or Article 475-1 of the Code of Penal Procedure. This award may reach EUR 500 or 1 000. However, this compensation never covers the real costs incurred and lawyers representing the NGOs generally work for free unless they represent the victim and are paid on contingency fees.

Although national law provides for collective complaints mechanisms, in **Croatia**, associations filing collective complaints, unlike individual victims in individual anti-discrimination procedures, cannot seek compensation.³⁸⁶ In **Hungary**, in proceedings before the Ombudsman, associations and trade unions may seek all the sanctions that are generally applicable by the Ombudsman. Before a civil court, out of the list of sanctions applicable in lawsuits initiated for the violation of inherent personal rights, NGOs and trade unions may seek all the sanctions with the exception of damages.

The absence of compensation from the list of remedies granted to NGOs, does not mean lack of remedies. As observed in the literature, non-pecuniary damages are ‘forward-looking remedies which indicate commitment to tackling the pervasive effects of discrimination; these are systemic non-pecuniary remedies or substantive remedies which entail both a proactive, constructive approach and a punitive one’.³⁸⁷ Such remedies which can be granted in collective redress cases might also include orders to desegregate schools (**Slovakia** and **Hungary**), the withdrawal or temporary suspension of authorisations or licences (**Czechia**, **Germany**, **Hungary**, **Ireland**, **Portugal** and **Romania**), withdrawal of state funds, exclusion from public procurement tenders (**Italy**),³⁸⁸ confiscation of items (**Czechia** and **Portugal**) and the obligation to publish the decision or a statement of public apology (**Belgium**, **Czechia** and **Romania**).

3.2.2 Promising practices regarding remedies provided in discrimination cases filed by NGOs and trade unions

The type and total amount of remedies granted by courts in cases of discrimination filed by NGOs and trade unions is not static, being itself subject to the dialogue between domestic and European courts, a dialogue often initiated by NGOs. In the final acts of the **Italian** case which led to the CJEU judgment in *NH*,³⁸⁹ the national court ordered the defendant to publish the judgment in a newspaper with nationwide coverage and to pay EUR 10 000 as a ‘dissuasive sanction’ in accordance with Italian legislation interpreted in line with Directive 2000/78/EC and with the *ACCEPT* judgment (C-81/12). The defendant was also ordered to pay EUR

³⁸⁴ Netherlands, Article 3:305a(2) Civil Code. Netherlands, Article 3:305a(2) Civil Code. Netherlands, Article 3:305a(2) Civil Code provides that foundations or associations claiming damages on behalf of those represented have to meet a series of conditions, including procedures for the representation of the persons on whose behalf they are acting, and a generally accessible website providing information about the foundation or association itself, the proceedings it is engaged in and the possibilities for membership.

³⁸⁵ Netherlands, Article 3:305a (6) Civil Code.

³⁸⁶ Croatia, Anti-discrimination Act, Article 24(2).

³⁸⁷ Lordache, R. and Ionescu, I. (2014).

³⁸⁸ Italy, Immigration Decree, Article 44(11).

³⁸⁹ Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, Case C-507/18.

5 000 in legal costs to the NGO which exercised its legal standing in line with Article 5, paragraph 2, of Legislative Decree 216/2003.³⁹⁰ This judgment is an example of the perfect transposition of the *Feryn – ACCEPT* case law: the facts are similar and the arguments of the court identical.

The dissuasive sanction of EUR 10 000 for discrimination in employment is not common in Italy. Still, the court justified this private sanction, a sort of punitive damages, since no damage had effectively been suffered by one or more identified victims, as being in accordance with Article 28 of Legislative Decree 150/2011, interpreted in line with Directive 2000/78/EC and with the *ACCEPT* judgment (C-81/12) Italian doctrine and jurisprudence have previously asserted that such sanctions are contrary to general principles of civil liability. However, an identical provision to that applied in this judgment is laid down in Article 37, paragraph 3, of the Equal Opportunities Code (Legislative Decree 198/2006). These are not defined as punitive damages but are paid to a collective body that has not, in fact, suffered any damage. The issue of (punitive) damages in cases of collective discrimination is thus emerging from the case law as a result of a broad interpretation of the written law with the support of the CJEU jurisprudence. Not surprisingly, with a historic judgment in the field of health, the Supreme Court interpreted the national system of redress as also including punitive damages.³⁹¹

To increase the effectiveness of legal protection against discrimination, some countries, such as **Luxembourg**, have taken a different approach and established the possibility for NGOs to seek remedies either in the form of punitive damages or as awards *in nome proprio* in civil cases and thus they have the means to pursue their work in the public interest. **Luxembourg** is the only country where any compensation awarded goes to the association filing the claim, as provided by Article 7 of the framework anti-discrimination law of 28 November 2006.³⁹²

In the countries where judicial fees are calculated depending on the total amount of the financial claims, the judicial fee waiver applied to all discrimination cases is also beneficial to NGOs or trade unions undertaking strategic litigation. Such is the case in **Romania** where the national anti-discrimination legislation exempts all complainants, individual or collective actors, from paying the judicial fees when filing a case in the civil courts. The provisions before the national equality body are also tax exempted.³⁹³

3.2.3 Challenges regarding remedies provided in discrimination cases filed by NGOs and trade unions

The challenges encountered by NGOs when engaging in representative litigation, just as in the case of litigation on behalf of the victims, are also of financial nature. Even in the few countries in which NGOs can claim compensation for non-pecuniary damages, as is the case in **France** or **Slovakia**, the damages awarded are so low that they cannot in themselves sustain litigation. According to **Slovak** legislation, the claimant is supposed to pay a judicial fee amounting to 3 % of any amount claimed as financial compensation for non-pecuniary damages. This means that the higher the amount claimed as compensation for non-pecuniary damages, the higher the judicial fee. This hinders claimants from even requesting amounts that would be effective,

³⁹⁰ Italy, Supreme Court, judgment of 15 December 2020 no. 28646, T.C. c. Associazione diritti LGBTI – Rete Lenford.

³⁹¹ Italy, Supreme Court, judgment of 5 July 2017, no. 16601.

³⁹² Luxembourg, Law of 28 November 2006, the general anti-discrimination law.

³⁹³ Romania, Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (Anti-discrimination Law), 31 August 2000

proportionate and dissuasive. The judicial fees are paid in advance in every instance, and they are doubled in cases before the Supreme Court.³⁹⁴

In **Sweden** financial concerns are also an important issue, given the economic risks involved. NGOs usually file their cases as small claims cases for which the cost risks are minimal, but this also limits the amount of discrimination compensation that can be requested. The reason is that according to Sweden's general rules of procedure, the loser is required to pay the costs of the successful party. It is seldom that NGOs representing victims of discrimination, or the individuals representing themselves, have the economic capacity to risk being ordered to pay the costs of the other party if they lose. While complainants can generally hope at best for a discrimination compensation award of EUR 3 000 to 10 000, they risk being ordered to pay from EUR 10 000 to 20 000 and more if they lose.³⁹⁵ In some extreme cases, the individual complainant was ordered to pay in excess of EUR 100 000 to the successful party.³⁹⁶ If a case is filed as a small claims case with a claim of a maximum of EUR 2 300, the legal costs that can be ordered in case of a loss are minimal. The Discrimination Act, Chapter 6 Section 7, contains a rule that is designed to ease the risk of an individual or an NGO being ordered to pay the successful party's costs, if the complainant had reasonable grounds for bringing the dispute to court:

...each party may be ordered to bear its litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court. However, this does not apply when the Equality Ombudsman brings an action on behalf of an individual under Section 2.

This rule was intended to provide an incentive to NGOs and individuals to file 'reasonable' cases, hopefully leading to the development of case law in the field. The problem identified by national experts is that, as this is an exception from the general rules of procedure, the courts, and especially the Labour Court, have been reluctant to apply it. In several important cases the Labour Court has indicated a strong reluctance to apply such a rule.³⁹⁷

Ironically, in **Romania**, when the proceedings in the case of *ACCEPT v. Consiliul Național pentru Combaterea Discriminării (CNCD)*³⁹⁸ reopened in 2015 before the national courts, it became apparent that there were significant limitations in the understanding of the national equality body and of the courts regarding the standing of NGOs and of their 'interest' in an effective remedy. In its final decision in the proceedings reopened after the CJEU decision in case C-81/12, the High Court of Cassation and Justice concluded that 'the complainant association (ACCEPT) cannot justify the infringement of a legitimate public interest, under the meaning of Article 2(1)(r) of Law 554/2004, given the fact that the NCCD issued a warning to George Becali and not an administrative fine'.³⁹⁹ When discussing the warning applied to Mr Becali as a sanction in the first

³⁹⁴ If, however, the first instance court awards some but not all of the requested compensation, the fee before the second instance court (and later possibly before the Supreme Court) is only calculated from the difference between the amount originally claimed and the amount actually awarded.

³⁹⁵ Lappalainen, P. (2024), *Country report. Non-discrimination. Sweden 2024* Publications Office of the European Union / European network of legal experts in gender equality and non-discrimination, p. 65.

³⁹⁶ Sweden, *Labour Court 2015 case no. 57*.

³⁹⁷ European network of legal experts in gender equality and non-discrimination, Sweden, questionnaire response.

³⁹⁸ Judgment of 25 April 2013, *ACCEPT v. Consiliul Național pentru Combaterea Discriminării (NCCD)*, C-81/12, EU:C:2013:275. Request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Romania).

³⁹⁹ Romania, High Court of Cassation and Justice, Decision 224 of 29 May 2015, case no. 12562/2/2010. See 'Romania - High Court confirms rejection of the action of ACCEPT in the case based on CJEU C-81/12'.

instance, which was challenged by the complainant NGO as not being ‘dissuasive, proportionate and adequate enough for a case of discrimination’, the High Court stated that:

‘Contrary to the statements of the complainant (ACCEPT), warning (as sanction) is not incompatible with Article 17 of Directive 2000/78/EC and cannot be considered *de plano* as a purely symbolic sanction [original emphases]. In applying this sanction, the NCCD has a margin of appreciation under which it is assessing multiple elements, among which the context in which the deed was perpetrated, the effects or the outcome and the person of the perpetrator played an important role. Not lastly, the publicity generated by the decision to sanction the author of the deed of discrimination who excessively exercised his freedom of expression played a dissuasive part in the society.’⁴⁰⁰

This statement contradicts the very specific guidance offered by the CJEU when discussing this case, which stated that: ‘In any event, a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78’.⁴⁰¹

In **Hungary**, the elimination of public interest fines was a step that reduced the potential efficiency of available sanctions in *actio popularis* lawsuits. Article 84 of the old Civil Code (Act IV of 1959) stipulated that ‘if the amount of damages that can be imposed [in a lawsuit launched due to a violation of inherent personality rights] is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalise the person having committed a violation by ordering him/her to pay a fine to be used for public purposes’. This fine was not a type of punitive damage, as it was payable to the state and not the victim. In a number of *actio popularis* lawsuits, where damages could not be imposed on discriminators (since the NGOs initiating the lawsuits did not themselves suffer damages – either pecuniary or moral), the courts did resort to public interest fines. This obviously added to the dissuasiveness and effectiveness of the sanctions, and also provided a possibility to express the severity of the violation in pecuniary terms, so it also contributed to the proportionality of the sanction applied by the courts. However, the possibility of applying a public interest fine was left out of the new Hungarian Civil Code⁴⁰² (according to its explanatory memorandum, this was due to the fact that ‘courts very rarely apply it’ and ‘it is alien to the concept of civil law because of its public law nature’). The disappearance of public interest fines from the Hungarian legal system may – in the context of non-discrimination cases – be regarded as a regression in terms of the effectiveness of the system of remedies.

This chapter has presented the argument for emergent equality strategic litigation which became an important tool used by NGOs to bring the standards of EU anti-discrimination law home and to contribute to the dialogue on equality and non-discrimination at the European level. The landmark cases brought by NGOs or trade unions that challenge discriminatory laws or practices shape legislation, policies and judicial interpretations at both the national and European levels. The examples identified also indicate that successful equality strategic litigation goes beyond the mere legal argumentation and requires constant work with the beneficiaries, coalition building and strategic communication around the cases, as well as follow-up work as part of long-term advocacy strategies.

⁴⁰⁰ Romania, High Court of Cassation and Justice, Decision 224, case no. 12562/2/2010, 29 May 2015. See ‘Romania - High Court confirms rejection of the action of ACCEPT in the case based on CJEU C-81/12’.

⁴⁰¹ Judgment of 25 April 2013, *ACCEPT v. Consiliul Național pentru Combaterea Discriminării* C-81/12, EU:C:2013:275. Request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Romania).

⁴⁰² Hungary, *Act V of 2013 on the Civil Code*, 26 February 2013.

The chapter concludes with a discussion of remedies and engagement in monitoring the enforcement of remedies in NGO-initiated litigation. The positive practices identified at the national level include giving the courts the possibility to choose from a diverse set of remedies. A comprehensive and diverse toolbox of remedies allows courts to identify the sanctions which are effective, proportionate and dissuasive in the particular context. Other positive practices identified in the context of assessing remedies granted to collective actors are: not differentiating between the remedies granted to individual complainants or collective actors; granting judicial fee waivers instead of calculating the judicial fees depending on the compensation requested; or establishing limits to the legal costs which can be ordered for the losing party in the case of parties acting in good faith. All these elements have the potential to ease the financial burden and facilitate NGO and trade union engagement in litigation.

4 Other key roles undertaken by NGOs and trade unions

Legal mobilisation is just a part of the broad role NGOs and trade unions can play in promoting equality and combating discrimination. In their role of partners in dialogue, collective actors are also engaged in monitoring the transposition of EU equality law at the national level, advocating for the improvement of national legislation and policies, and running public campaigns to educate disadvantaged groups, citizens, civil servants and legal professionals.

4.1 Monitoring and reporting

In all Member States surveyed, NGOs monitor the implementation and enforcement of EU standards and the enforcement of the national non-discrimination legislation. Depending on resources and their specific mandates, NGOs engage with potential victims and stakeholders to collect data on discrimination and to identify systemic issues and subsequently report their findings to national authorities or relevant international actors, such as the Council of Europe, various UN committees or the European Commission and European Parliament. NGOs also produce shadow reports that complement official EU reports, offering an independent perspective on how well non-discrimination laws are being upheld. Shadow or alternative reports filed with the various UN treaty bodies were mentioned in all countries, either as general anti-discrimination reports⁴⁰³ or focusing on a variety of topics, including racism,⁴⁰⁴ Islamophobia,⁴⁰⁵ disability,⁴⁰⁶ homophobia, discrimination in education⁴⁰⁷ and housing. Some of the NGOs implement their monitoring and reporting mandate at the European level and inform the European Commission when the national context seems to be in violation of European standards, so that the Commission can consider initiating infringement proceedings or monitor enforcement of key judgments of the European Court of Human Rights and report to the Committee of Ministers of the Council of Europe.

NGO monitoring and reporting work is sometimes used by national equality bodies or brought before the courts as arguments that provide the context which is relevant in understanding discrimination. The monitoring and reporting work can also help in narrowing down the scope of the legal intervention. For example, the **Slovak** NGO Center for Civil and Human Rights (Poradňa) provides a positive example of such monitoring and reporting work in relation to the discrimination faced by members of the Roma communities and subsequently building strategies for securing legal remedies.⁴⁰⁸ The fieldwork carried out in 2023 by trained Roma women mediators, based on direct testimonies from people from various Roma communities, led to the publication of a report which describes a wide range of discriminatory practices that reveal systemic forms of anti-gypsyism in a number of areas of public life. The next logical step taken by Poradna was to provide legal assistance to Roma who had experienced discrimination in many specific cases, including resolving issues through the involvement of the national equality body in **Slovakia**.

⁴⁰³ Austria, [Klagsverband](#).

⁴⁰⁴ Austria, [ZARA](#).

⁴⁰⁵ Austria, [Dokustelle](#).

⁴⁰⁶ Austria, [BIZEPS](#).

⁴⁰⁷ Austria, [Initiative für ein Diskriminierungsfreies Bildungswesen](#).

⁴⁰⁸ Slovakia, [Poradna](#).

4.2 Advocacy: fostering social dialogue with social partners and civil society organisations as a priority

When monitoring the implementation of anti-discrimination norms and policies, NGOs and trade unions also seek to influence the development of the law and public policy, bringing the voices of marginalised or vulnerable groups into public fora and advocating for stronger non-discrimination laws at both the national and EU levels. NGOs engage with EU institutions such as the European Commission and the European Parliament, submitting policy recommendations and raising awareness about gaps in existing legislation. NGOs may also influence national governments to implement or strengthen the national norms transposing EU directives on non-discrimination. In many cases, NGOs have advocated for the adoption of anti-discrimination legislation or for the improvement of existing legislation.

The **Czech** Helsinki Committee and League of Human Rights have played key roles in lobbying for stronger legal protections against discrimination. In **Finland**, in preparation for the renewal of the Non-Discrimination Act, NGOs formed a task force which was invited to highlight the problems of discrimination people face and to give their view on various legislative options. In **Germany**, numerous civil society organisations in the field of anti-discrimination work and community organisations representing the interests of people affected by discrimination formed an alliance (*Alliance AGG Reform NOW*) in order to support the planned AGG reform and called for a comprehensive amendment of the law.⁴⁰⁹ In **Romania**, NGOs convened an informal Anti-discrimination Coalition with a shared advocacy strategy and contributed to the amendments of the national law. They responded together during the appointment procedures for the members of the Steering Board of the national equality body, sometimes acted together in the courts or before the NCCD and took critical positions when the equality institutions failed to meet their mandate.

In 2013 the Equal Treatment Network was founded in **Estonia**. It unites NGOs whose main activities include protecting the equal rights of their target groups. The objective of the Network is to support its members across specific target groups and cooperate in finding common interests, to speak up jointly to achieve this, and to organise other activities. The Network collaborates with national institutions on shared interests and advocates with the institutions to better follow and value the principle of equal treatment. Members of the Network include: the Estonian Human Rights Centre, Estonian Centre of Disabled Persons (EPIK), Estonian LGBT Association, Estonian Vegan Association, Estonian Refugee Council and others.

In **Spain**, 14 NGOs created the Alliance for the Equal Treatment Act, that is, they formed an Alliance for the approval of a Law on Equal Treatment, which was finally achieved in 2022 with Law 15/2022. In 2024, the Alliance for the Equal Treatment Act issued a manifesto: 14 leading NGOs in the fight against discrimination positively assessed the progress made in the creation of the Independent Authority for Equal Treatment and stressed the importance of providing it with sufficient resources.⁴¹⁰ In **Sweden**, various organisations joined together to protest against the Government's failure to include as a form of discrimination inadequate accessibility outside of working life. Among other things, the 'March for Accessibility' contributed to the amendment of the Discrimination Act to include inadequate accessibility as a form of discrimination (Chapter 1 Section 4 (3)).

⁴⁰⁹ Germany, AGG-reform.

⁴¹⁰ Spain, CEAR.

NGOs often work in coalitions with other organisations, including trade unions, minority rights groups and international bodies. These coalitions amplify their advocacy efforts, increasing their influence on law-making or policy-making processes and helping to push for comprehensive reforms in non-discrimination legislation.

National and local consultative committees as spaces for dialogue in France

In **France**, consultation with NGOs is formalised through national and local consultative government committees that are operational at the central and local level: the National Consultative Commission of Travelers (CNCGDV) and the National Consultative Commission of Persons with Disabilities (CNCPH). These national consultative commissions monitor consultation and reporting on all policies within their field of competence.

In addition, the Interministerial delegate on the fight against racism, antisemitism and LGBT+ hatred (*Délégué interministériel à la lutte contre le racisme, l'antisémitisme et la haine anti-LGBT – DILCRAH*) supports the action of NGOs all over France and coordinates their involvement in the national action plans (against racism and LGBTQIA+) for which it is responsible.

The National Consultative Commission on Human Rights (CNCDH) coordinates a subgroup bringing all anti-racist NGOs together with anti-discrimination NGOs acting in matters of discrimination on the ground of origin, migration and Islam, which monitors implementation of the national action plan on racism and publishes an annual report on the situation of racism and antisemitism in France.⁴¹¹ It also evaluates implementation of the national action plan on racism by DILCRAH in dedicated reports of its sub-group of anti-racist NGOs and institutions, and a subgroup bringing together all LGBTQIA+ NGOs monitoring the national action plan for LGBTQIA+.⁴¹²

The CNCDH criticised both national action plans (against racism and LGBTQIA+), stressing insufficient consultation of civil society, absence of dedicated funding and the fact that they are essentially limited to pursuing actions which were insufficiently implemented in the previous action plans. In November 2023, the CNCDH, in its function as evaluator of the national action plan on LGBT+, published a very critical report following the plan's adoption on the inadequacy of the process of consultation that preceded the publication of the 2023-2026 national action plan, and the insufficiencies of the plan itself.⁴¹³

Disability NGOs were directly involved in the process leading to the adoption and enforcement of Law no 2005-102 of 11 February 2005 for equal rights and opportunities, participation and citizenship for persons with disabilities. They were closely consulted for all policies relating to disabilities through the National Consultative

⁴¹¹ France, CNCDH (2025), *La lutte contre le racisme, l'antisémitisme et la xénophobie. Année 2024* (Annual report 2024 on combating racism, antisemitism and xenophobia).

⁴¹² France, CNCDH (2023), *Évaluation du plan national d'actions pour l'égalité des droits, contre la haine et les discriminations antilgbt+ (2020-2023)* (Evaluating the national action plan for equal rights and against LGBT+ discrimination and hatred (2020-2023)).

⁴¹³ France, CNCDH (2023) The report points to the absence of dedicated financing, the confusion between objectives and concrete measures or targets, the absence of qualitative indicators, the poor quality of training given in the police, the dependency on the resources of NGOs and priorities of various levels of Government. It adds that the plan has only been partially implemented, which is reflected in the fact that most measures of the 2023-2026 action plan reiterate former measures without addressing the cause of their insufficient implementation and the deteriorating relations between DILCRAH and civil society in the implementation and preparation of a new action plan.

Council of persons with disabilities (CNCPH⁴¹⁴), to which all NGOs are invited, and at the local level the CNDPH (Departmental Consultative Council of Persons with Disabilities).

Irish teachers' unions played an instrumental role in challenging a sweeping religious ethos exception which was modified under the Equality (Miscellaneous Provisions) Act 2015.⁴¹⁵ Such organisations have also sought to defend equality legislation and equality infrastructure from regressive policy measures. For instance, the Equality and Rights Alliance (ERA) was formed in 2008 by civil society organisations that were concerned inter alia about budgetary cuts to the national equality body and the national human rights institution. By 2011, it comprised 93 NGOs, seven trade unions and dozens of individual members.⁴¹⁶ The Alliance was disbanded in 2018 due to lack of funding.⁴¹⁷ A report commissioned by a philanthropic foundation that funded its work noted that:

'At times, human rights organizations focused on defending existing rights. One of the biggest wins concerned a government decision in 2008 to downgrade and merge the Human Rights Commission and Equality Agency. The hurriedly convened Equality and Rights Alliance established by Atlantic's key grantees organized a campaign to save these agencies from further cuts. The alliance set down a roadmap for the re-establishment of a merged agency so that it would conform to international best practice. Eventually, a new and arguably stronger Human Rights and Equality Commission was re-established through fresh legislation in 2014.'⁴¹⁸

In recent years, **Irish** NGOs and trade unions have continued to engage with law reform processes. In July 2021, the Irish Government launched the first comprehensive review of Irish anti-discrimination law since its enactment over two decades before.⁴¹⁹ The first phase comprised a public consultation process with written submissions elicited by early December 2021. In June 2023, the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) published a synthesis of the 569 submissions received, 93 of which were submitted by NGOs, with the remainder authored by individuals.⁴²⁰ The Irish Congress of Trade Unions (ICTU)⁴²¹ and three individual unions (SIPTU - Services Industrial Professional and Technical Union; Irish National Teacher's Organisation; Unite the Union), as well as the Irish National Teacher's Organisation LGBT+ Teachers' Group, produced written submissions. Dozens of NGOs working in the fields of disability rights, older people's rights, Traveller and Roma rights, LGBTIQ equality, and anti-racism also contributed written submissions. The impact of this work should become more apparent this year when the outline law reform proposals published in January 2025 are discussed in parliament.⁴²²

⁴¹⁴ France, CNCPH.

⁴¹⁵ On trade union opposition to the religious ethos exemption see further: ICTU (2013), *Congress Submission on Proposed amendment to section 37 of the Employment Equality Acts 1998–2011*; Fahie, D. (2016), "Spectacularly exposed and vulnerable" – how Irish equality legislation subverted the personal and professional security of lesbian, gay and bisexual teachers, *Sexualities*, 19(4), 393–411.

⁴¹⁶ Equality and Rights Alliance (2011), *Response on proposed merger of the Equality Authority and the Irish Human Rights Commission*.

⁴¹⁷ Ireland, *The Equality and Rights Alliance Reports*.

⁴¹⁸ Harvey, B. (2016).

⁴¹⁹ Ireland, Government of Ireland (2023), *Review*.

⁴²⁰ Government of Ireland (2023), *The Equality Acts Review: Summary of the submissions received to the 2021 Public Consultation on the Review of the Equality Acts*.

⁴²¹ Irish Congress of Trade Unions (2021).

⁴²² Ireland, Government of Ireland, *Review*.

The agreement reached in 2024 by the **Spanish** Government and the main Spanish trade unions on equality and non-discrimination for LGBTI people in the workplace⁴²³ led to the adoption of regulations applicable to companies to guarantee equality and non-discrimination for LGBTI workers by means of the Royal Decree 1026/2024 of 8 October 2024.⁴²⁴

4.3 Non-legal services provided to victims

Legal mobilisation is based on human mobilisation. The legal successes before the CJEU and ECtHR were explained by the legal team representing ACCEPT in C-81/12 as being based on the many years of providing legal aid to the community, but more importantly on an integrated approach which includes the non-legal support empowering their beneficiaries, the safe space created and the focus on empowering the beneficiaries to stand up as their own advocates. This insight corresponds to the conclusion of Kádár when looking at the key elements of presence in the community and capacity building within the community: ‘the litigators have the support and involvement of the community, all aspects of the litigation become much more effective, including the enforcement of the decision, especially, since the enforcement stage may take even longer than the actual procedure, and if the community is behind the case, they can be drivers of that process and make sure that it is not sabotaged’.⁴²⁵

Social services and psychological support, community building, mental health services and employment programmes were provided as examples of non-legal support provided mostly by NGOs all across Europe. In **Germany**, ARIBA (*Anti-racist Intercultural Educational Work*),⁴²⁶ for example, sponsors OPRA,⁴²⁷ a contact point offering psychological counselling for victims of right-wing, racist and antisemitic violence and their families. **Estonian, Bulgarian** and **Romanian** LGBT associations provide psychological counselling and peer support. This has a substantial impact for the communities they serve. The **Greek** NGO, HAIAS, is notable for training key community members to recognise emotional distress as a result of crisis or emergency and in how to respond with empathy and respect. It also develops community support and peer groups, facilitating opportunities for connection in a safe environment, and linking people with necessary services, thus promoting a culturally sensitive approach to help people cope with adversity, all of which may be useful for them in the future. Another Greek NGO, METAdrasi provides soft skills training, traineeship opportunities and work placements to vulnerable groups, mostly refugees. In **Germany**, Ver.di (United Services Trade Union), for example, provides practical advice in cases of discrimination and racist mobbing.⁴²⁸

4.4 Awareness-raising and capacity-building

NGOs run public campaigns to educate potential victims, public servants, legal professionals and citizens about their rights under national non-discrimination laws, as well as how to apply non-discrimination laws in practice. These campaigns aim to combat societal discrimination, change public attitudes and encourage individuals to take action when faced with discriminatory practices.

⁴²³ Spain, [La Moncloa](#) on 26.06.2024.

⁴²⁴ Spain, [Flash report](#) on Royal Decree 1026/2024 of 8 October 2024.

⁴²⁵ Kádár, A. (2022), ‘*Actio popularis – potentials and challenges*’, *European equality law review*, 2022/1, Publications Office of the European Union / European network of legal experts in gender and non-discrimination, pp. 1-21.

⁴²⁶ Germany, [ARIBA](#).

⁴²⁷ Germany, [OPRA](#).

⁴²⁸ Germany, [Ver.di](#).

The rise of the **German** extreme right-wing party, Alternative for Germany (AfD), has prompted various initiatives aiming to support democracy and anti-discrimination policies. Amnesty International prepared a catalogue of demands in the context of the 2025 German federal election, focusing on structural discrimination in Germany.⁴²⁹ DGB, an umbrella organisation for eight membership trade unions in Germany, was equally active, organising various events such as discussions, film nights and demonstrations against right-wing extremism.⁴³⁰ Ver.di (United Services Trade Union) youth section maintains a special portal dedicated to discrimination, entitled Active Against Discrimination.⁴³¹ The Central Council of Jews in Germany (*Zentralrat der Juden*) launched the 'Meet a Jew' project with the aim of combating prejudice by introducing Jewish life and Jewish individuals to people who have never had encounters with Jews before.⁴³²

In **Bulgaria**, the Amalipe Center for Interethnic Dialogue and Tolerance, which is a Roma organisation, frequently organises campaigns on non-discrimination and inclusion of Roma. One of their activities revolves around educating young Roma on discrimination and protection against discrimination. In January 2025 they organised an essay competition for school children on 'How to fight bias'. The **Finnish** League for Human Rights has for many years successfully campaigned against discrimination in sports. They have been able to bring this ethos to the general public through powerful advertising campaigns and have also persuaded all major sport organisations to commit to working on this topic.⁴³³

The **Irish** Congress of Trade Unions (ICTU) launched the Stronger Together: Anti-Racism Workplaces and Trade Unions Project in 2024. As part of this project, it published an anti-racism toolkit⁴³⁴ which 'is designed to familiarise trade union members at all levels of organising with the nature and impact of racial discrimination in the labour market and workplace, and support the development of strategies for anti-discrimination and inclusion actions. It can also be used for capacity building activities such as preparing training materials for union staff and members'. The project 'also included training on anti-racism actions, capacity building for migrant and minority ethnic trade union members and research on experiences of workplace racism and trade union responses to racism'.⁴³⁵ The research findings are due to be published in 2025. The project is funded by the Ireland Against Racism Fund,⁴³⁶ which is a Government funding scheme aimed at supporting implementation of the National Action Plan Against Racism 2023-2027 (NAPAR) adopted in March 2023.⁴³⁷

In **Romania**, besides its impressive record of legal successes before the ECtHR and CJEU and the Constitutional Court, ACCEPT is constantly engaged in providing training for medical personnel, psychologists, social workers, teachers, law enforcement, judges, prosecutors, trade unions and employers, students, and the staff of the national equality body, often in partnership with the Romanian national equality body NCCD and other NGOs members of the Anti-discrimination Coalition.

Diversity Charters, which are increasingly common, notably emerge as places where NGOs and trade unions come together, also enlisting private actors, in order to raise awareness among the general public of equality and non-discrimination issues. For example, in **Lithuania**, the Diversity Charter, a non-governmental

⁴²⁹ Germany, [Amnesty](#).

⁴³⁰ Germany, [DGB](#).

⁴³¹ Germany, [Active against Discrimination](#).

⁴³² Germany, [Central Council of Jews](#).

⁴³³ Finnish League for Human Rights: [Don't break the game campaign](#).

⁴³⁴ ICTU (2024), [Stronger together: Anti-Racism Workplaces and Trade Unions: Toolkit](#).

⁴³⁵ ICTU (2024).

⁴³⁶ [Ireland against Racism Fund](#).

⁴³⁷ Government of Ireland (2023), [National Action Plan Against Racism 2023-2027](#).

organisation made up of businesses, public institutions and non-governmental organisations, was founded in 2018.⁴³⁸ Its main objective is to create an open and inclusive work environment and strengthen social responsibility. Similarly, in **Luxembourg** the Diversity Charter, is coordinated by IMS Luxembourg (an NGO for corporate social responsibility). Several Luxembourg trade unions have signed the Charter, underscoring a strategic commitment to preventing discrimination and promoting equality at work. This initiative regularly brings together companies, NGOs and trade unions to develop best practices against discrimination on grounds such as race, gender, age, disability and sexual orientation and it encourages signatories (including unions, companies, NGOs and public institutions) to implement diversity and anti-discrimination measures. They offer training sessions, conferences and capacity-building workshops on topics like cultural diversity, gender equality and inclusion of persons with disabilities.

The mapping highlighted that the effectiveness of input from NGOs and trade unions is facilitated by external ingredients, such as ensuring the prerequisites for cooperation and partnerships between civil society actors or developing a holistic approach and offering comprehensive packages to potential victims that increase the overall impact of any equality and non-discrimination intervention.

⁴³⁸ Lithuania, The Diversity Charter.

5 Highlights from the national and the European level.

Recommendations for filling the possible gaps identified

The survey of the policies and practices in the EU Member States revealed that NGOs and trade unions are essential actors in contributing to effectively combating discrimination. Although their standing and resources vary and consequently their engagement across Europe is diverse, they do have the potential to generate social change by engaging with courts, national equality bodies and quasi-judicial bodies mandated to provide remedies in cases of discrimination, or as social partners in much needed dialogue. This chapter reviews key highlights revealed by the mapping of both these dimensions. Based on these main highlights, the chapter concludes with a third type of consideration regarding the elements which are conducive to increasing the capacities of NGOs and trade unions so that they can successfully fulfil their mandate.

5.1 Highlights of the mapping of NGO and trade union engagement

5.1.1 Locus standi for NGOs and trade unions

A first key conclusion of the mapping of national provisions and practices regarding NGO and trade union engagement on equality and non-discrimination is that NGO and trade union legal activism was more visible where Member States went beyond the minimum standard required in the Equality Directives and recognised full legal standing for NGOs and trade unions to act on behalf and in support of victims on all protected grounds and in all areas. The other key observation is that where collective standing was granted to NGOs and trade unions, often the legal mobilisation they managed to bring together led to equality strategic litigation before domestic and European courts. A third key finding is that where the states invested in designating and capacitating NGOs with a specialised role in combating discrimination, this investment led to increased enforcement.

For example, in **Austria** having one NGO, the Litigation Association of NGOs Against Discrimination,⁴³⁹ as a specialised umbrella organisation of more than 70 NGOs that specialises in strategic litigation on all discrimination grounds seems very helpful and necessary to ensure the legal provisions are used and tested. The long-term specialisation and expertise built up over 20 years also means that the opinions and comments they submitted to the Parliament during consultation periods for new or amended legislation are usually taken seriously by the legislator.

5.1.2 Support provided to NGOs and trade unions to fulfil their mandate

Member States support NGOs and trade unions in two ways: firstly, by providing funding and necessary resources and by creating facilities that help them to fulfil their mandate and secondly, by recognising them a privileged position as partners speaking out on behalf of victims, bringing their expertise and engagement to the table.

⁴³⁹ The Litigation Association of NGOs against Discrimination is a strategic partnership, as the office serves as the legal department in discrimination cases for all member NGOs (more than 70).

Financial support

Trade union activities are mostly funded by membership fees. NGO funding, however, depends on organisations' capacity to attract the necessary resources and they are confronted by dependence on external funding and instability in public funding. The existence of dedicated, independent funding for strategic litigation in discrimination cases would allow NGOs to effectively help victims of discrimination who are often reluctant to file complaints themselves. Another advantage would be that dedicated funding for victim support or for litigation would ease the concerns of many of the NGOs which are reluctant to sue public institutions liable for discrimination in access to public services, education, housing and health services. A 2024 report prepared by Calouste Gulbenkian Foundation⁴⁴⁰ produced findings that can be extrapolated from **Portugal** and applied to all Member States regarding the volatile funding affecting the work of human rights NGOs.

State intervention in supporting NGOs in a stable, predictable and consistent framework was shown to make a difference in the mapping of the various models. In **Austria**, the two big umbrella organisations with special roles in litigating discrimination cases, the Austrian National Council of Persons with Disabilities and the Litigation Association of NGOs Against Discrimination, both receive basic funding from the national budget, as well as from membership fees and project work. The most active organisation in the field is the Litigation Association of NGOs Against Discrimination which supports individual cases by providing a grant for the claimant to keep them free of procedural costs in court, representing them before the Equal Treatment Commission, providing expert counsel or by intervening in the case or using the legal provisions to litigate in a group action. The **Estonian** Ministry of Social Affairs has regularly funded NGOs whose main area of activity is to promote human rights and equal treatment (such as the Estonian LGBT Association or the Estonian Human Rights Centre) through strategic partnership contracts. In 2022 an open call was organised to select organisations which would promote equal treatment and gender equality. The projects ended in December 2024 with a new call published in April 2025 by the Ministry of Economic Affairs and Communications, thus reinforcing the stability needed for equality litigation.⁴⁴¹

Croatia has a regulated system of free legal aid, which is offered by registered associations and legal clinics.⁴⁴² Most providers of free legal aid are NGOs, which have established free legal counselling centres, financed from state funds distributed by the Ministry of Justice through a tender within a three-year financing model for the provision of free legal aid (starting with 2023).⁴⁴³ Additionally, associations can provide free legal assistance to their beneficiaries, even if they are not officially registered with the state to provide free legal aid. These activities may be funded through specific projects that address particular issues relevant to the association, as well as through donations and other means. The favourable Croatian framework can be contrasted with the **Hungarian** context in which, for example, the Chance for Children Foundation, which carried out flagship strategic litigation on segregation of Roma children in education, had to terminate its activities due to the lack of continued funding. The fact that NEKI (Legal Defence Bureau for National and Ethnic Minorities), another

⁴⁴⁰ Calouste Gulbenkian Foundation, *Diagnóstico das ONG em Portugal 2015–2024* (Diagnosis of NGOs in Portugal 2015–2024) provides statistical and administrative data on the evolution of NGOs (in the field of culture and the arts, human rights and international activities) between 2014 and 2024.

⁴⁴¹ Estonia, data on the open calls on equality and non discrimination.

⁴⁴² Croatia, Act on Free Legal Aid, 1 January 2014, Official Gazette no. 143/13, 98/19.

⁴⁴³ Human Rights House, Stojković, F. M. (2024), *Pravna podrška žrtvama kršenja ljudskih prava — mogućnosti i izazovi za organizacije civilnog društva u Hrvatskoj* (Legal support for victims of human rights violations — opportunities and challenges for civil society organizations in Croatia) (in Croatian).

Hungarian Roma rights organisation which also conducted anti-discrimination litigation, had to end its activities for the same reason⁴⁴⁴ highlights sharply the crucial issue of funding in this area.

Thanks to an Interinstitutional Agreement on Access to Justice in **Italy**, which was adopted in 2013 and confirmed in the following years, a solidarity fund for access to justice by victims of discrimination was set up (*Fondo di solidarietà per la tutela giurisdizionale delle vittime di discriminazione*). The fund was created by the national equality body UNAR in order to facilitate access to justice by victims of discrimination, providing lawyers with part of the legal costs for actions brought before the courts (about EUR 600 for each level of judicial proceedings). This amount is not sufficient to cover the overall legal expenses, but it is sufficient to act as an incentive for lawyers engaging in discrimination cases. In the event of a favourable judgment, the legal aid provided must be refunded to UNAR. Applications must be sent to the National Lawyers' Association by individuals or by collective bodies with the right to legal standing (a maximum of three per year). A steering committee made up of lawyers and public officials from UNAR decide on the allocation of aid, which is an alternative to the legal aid provided by the state for those who are eligible on the basis of their incomes.

In 2020, the **Irish** Free Legal Advice Centres (FLAC), in cooperation with a Steering Group made up of representatives from each of the national Traveller organisations, established a dedicated Traveller Legal Service (TLS), supported by the Community Foundation Ireland, a philanthropic organisation that provides grants to NGOs.⁴⁴⁵ 'The Steering Group organisations were the driving force behind the creation of the TLS and provide it with an essential link to the Traveller community.'⁴⁴⁶ It 'functions on the basis of referrals from advocates working with the Traveller community in circumstances where advocacy efforts have proved unsuccessful and legal input is required'.⁴⁴⁷ FLAC receives funding for its Roma Legal Clinic under the auspices of the National Traveller and Roma Inclusion Strategy 2017–2021 (NTRIS).⁴⁴⁸ Action 119 of NTRIS specified that: 'The Department of Justice and Equality will support a legal advice and advocacy service for Travellers and Roma.' The clinic was established in June 2018. NTRIS expired at the end of 2022. FLAC continued to receive funding for the clinic in 2023 from the Department of Children, Equality, Disability, Integration and Youth.

In addition, FLAC established an LGBTQI+ Legal Clinic in 2022 to meet the specific needs of the gay and trans community.⁴⁴⁹ It is funded by the Department of Children, Equality, Disability, Integration and Youth under the LGBTQI+ Community Services Funding Scheme which aims to advance the actions set out under the National LGBTQI+ Inclusion Strategy 2019–2021.⁴⁵⁰ The Strategy was extended into 2023 because of implementation issues due to the Covid-19 pandemic. The Department made a one-off funding award to FLAC through the LGBTQI+ funding scheme to identify the extent of unmet legal need and to prepare a report into how this could be addressed through the provision of dedicated legal services, information and training. That funding ran until August 2023. Further funding to operate the clinic was secured under the same scheme in 2023.⁴⁵¹

⁴⁴⁴ The website is no longer available and the last post from [NEKI's Facebook](#) page is dated 2021.

⁴⁴⁵ Free Legal Advice Centres (2021), *Annual Report 2020* p. 34.

⁴⁴⁶ Free Legal Advice Centres (2021), p. 30.

⁴⁴⁷ Free Legal Advice Centres (2021), p. 30.

⁴⁴⁸ Department of Justice and Equality (2017), *The National Traveller and Roma Inclusion Strategy 2017–2021*.

⁴⁴⁹ Ireland, FLAC LGBTQI+ Legal Clinic.

⁴⁵⁰ Government of Ireland (2019), *National LGBTQI+ Inclusion Strategy 2019 – 2021*.

⁴⁵¹ Ireland, Government of Ireland, [funding opportunities](#).

Dedicated funding is established by law in **Portugal**, on specific priorities: equality in general, supporting disability NGOs, work against racism and support for LGBT NGOs. The Portuguese Decree-Law 106/2013,⁴⁵² which defines the statute for NGOs for persons with disabilities, establishes that the state supports the contribution of NGOs in defining and implementing national policy on the prevention, rehabilitation and participation of people with disabilities. Public support may take the form of operational support or support for projects. The 'Pessoas 2030' Programme for Demography, Qualifications and Inclusion⁴⁵³ is aimed at the least developed regions of mainland Portugal and it has interventions in the areas of active employment policies; education, professional and higher education training; combating material deprivation; and social inclusion and equal opportunities.

In November 2024, applications were opened for technical and financial support for civil society organisations (NGOs) working in the area of equality and non-discrimination, with the aim of strengthening their technical and financial capacity, as well as support for other non-profit civil society organisations working and prioritising their interventions in the areas of equality and non-discrimination, in order to consolidate the role of these organisations among the communities in which they operate. The Action Plan to Combat Discrimination on the grounds of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (2023–2026)⁴⁵⁴ provides technical and financial support to NGOs working in the areas of citizenship and equality. The funding is intended for NGO projects, measures and actions that promote gender equality and the rights of LGBTI people.

Similarly, in 2023, the Portuguese Government established the Observatory on Hate Speech, Racism and Xenophobia, with a view to producing, collecting, processing and disseminating information and knowledge about racism, xenophobia and discrimination in the various areas covered by the National Plan to Combat Racism and Discrimination (PNCRD) 2021–2025. The work of this body also includes three other objectives: support for policymakers, researchers and professionals through the preparation of diagnoses and opinions on racism and discrimination, and practical tools to promote equality and non-discrimination; the promotion of education, training and awareness-raising on human rights and the prevention and combating of racial discrimination; and support for civil society organisations.⁴⁵⁵

The **Swedish** Government provides subsidies to 18 local anti-discrimination bureaux run by local civil society organisations working on all grounds.⁴⁵⁶ It should be noted that the 2016 Swedish Government white paper 2016:87, on measures to improve the implementation of the anti-discrimination principle, proposed a substantial increase in funding for the local anti-discrimination bureaux, given that their workloads had increased substantially due to the Equality Ombudsman's reduced focus on individual complaints.⁴⁵⁷ The primary result of the white paper was increased funding. Some of the bureaux, such as Malmö against Discrimination (MMD), have become adept not only at providing advice and assistance, but also at taking discrimination cases to court, including in strategic cases. In some years MMD, which currently has eight employees, has taken as many cases to court as the Swedish Equality Ombudsman, in spite of its significantly different budget. What makes MMD unique in its approach is the fact that it invested in employing lawyers from the very beginning, thus developing its legal capacity. Having on its board representatives from various

⁴⁵² Portugal, Decree-Law 106/2013, 30 July 2013.

⁴⁵³ Portugal, 'Pessoas 2030' Programme for Demography, Qualifications and Inclusion.

⁴⁵⁴ Portugal, Action Plan to Combat Discrimination on the grounds of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (2023–2026).

⁴⁵⁵ Portugal, Observatorio do Racismo e Xenofobia.

⁴⁵⁶ Byrån mot diskriminering, 'Kontakta din närmaste antidiskrimineringsbyrå' (Contact your closest anti-discrimination bureau). For more general information, DO, 'Organisations and authorities you can contact'.

⁴⁵⁷ Swedish Government white paper 2016:87, on measures to improve the implementation of the anti-discrimination principle.

local or regional NGOs, MMD also invested early on in other forms of support, i.e. support from local government as well as accessing project funding from the Swedish Inheritance Fund with a focus on disability and youth and EU funds.⁴⁵⁸

Recognising NGOs and trade unions a proactive role as partners

In **France**, disability NGOs are closely consulted for all policies relating to disabilities through the National Consultative Council of Persons with Disabilities (CNCPH⁴⁵⁹), to which all NGOs are invited, and at the local level the Departmental Consultative Council of Persons with Disabilities (CNDPH) and Law 2005-102 on Disability structures all the national and local commissions involved in establishing policies concerning persons with disabilities and enforcing their rights. In addition, a Departmental Commission for the Rights and Autonomy of Persons with Disabilities has been established, which is competent for all decisions relating to the orientation of persons with disabilities. Its members are representatives of public services, NGOs, trade unions and social partners and at least 30 % are persons with disabilities (Article 66 of the Law on Title IV of the Code of Social Welfare).

NGOs in France have traditionally had public sector tasks delegated to them in terms of support for persons with disabilities and their families. Furthermore, under the authority of the Ministry of the Interior and the prefect, the departmental bodies dedicated to combating racial discrimination are the Commissions for the Promotion of Equality and Citizenship (COPEC).⁴⁶⁰ They bring together all local actors under the authority of the national state representative in the department (the prefect). The same method is used by DILCRAH (Interministerial delegate on the fight against racism, antisemitism and LGBT+ hate) in implementing the national action plans on racism and LGBT+ rights. They are intended to generate cooperation and dialogue for the promotion of equality and access to rights addressing all grounds of discrimination.

The Defender of Rights also coordinates several consultative committees with NGOs on all grounds of discrimination. These six-monthly meetings provide an opportunity to keep NGOs informed of the Defender of Rights actions and likewise to keep the Defender of Rights informed of the concerns of NGOs. There are consultative committees on sex discrimination, LGBT+ rights, rights of persons with disabilities and discrimination in housing and employment. Since 2017, there has been a committee dedicated to consultation with NGOs about discrimination on the grounds of origin and religion, the interaction between the two grounds and intersectional discrimination. From 2019, a committee on the rights of older people was put in place and in 2023 a committee on the rights of economically vulnerable/precarious persons was created.

During the **Polish** ‘rule of law crisis’, NGOs engaged in strategic litigation received support from the national human rights institution, the Human Rights Commissioner (the ‘Ombudsman’).⁴⁶¹ In the context of almost one hundred resolutions by local authorities establishing so-called LGBT-ideology-free zones cases, the Ombudsman was one of the few actors possessing legal standing to challenge such norms before the administrative courts. The Ombudsman was also one of the few public institutions that sided with the LGBTI

⁴⁵⁸ Information provided by Paul Lappalainen, Swedish expert.

⁴⁵⁹ France, Conseil national consultatif des personnes handicapées.

⁴⁶⁰ Ministerial Instruction, Circulaire COPEC NOR/INT/K/04/00117/C, 20 September 2004, Missions nouvelles des commissions départementales d'accès à la citoyenneté (CODAC), commissions pour la promotion de l'égalité des chances et la citoyenneté (COPEC) (New missions for the *Departmental Commissions on Access to Citizenship and the Commissions for the Promotion of Equality*).

⁴⁶¹ Adam Ploszka, Strategic Litigation in a Time of Populism: Poland's Experience. *German Law Journal*. 2024;25(6):893-909. doi:10.1017/glj.2024.62.

community when LGBTI rights were attacked in Poland. Ultimately, the courts overturned all of the resolutions the Ombudsman challenged.⁴⁶² The mapping of practices in the Member States showed the need for external support for the helpers in the form of legal standing, facilities and funds to make their work possible.

5.2 Recommendations for filling the gaps: how to help the helpers?

5.2.1 Recommendations for the EU

- Maintain and consolidate dedicated funding at the EU level, such as the Citizens, Equality, Rights and Values programme, to support the work of NGOs and trade unions in combating discrimination, notably through litigation on behalf or in support of victims of discrimination or in their own name on public interest grounds, exchange of practices at the European level and joint campaigns, as well as shared data and research and knowledge sharing.
- Use Commission calls to encourage partnerships between national equality bodies and social partners by prioritising support for developing joint action plans, funding advisory councils, roundtables and consultative forums. Pre-requirements for tenders could include, for instance, shared decision-making and adoption of national memoranda of understanding outlining shared priorities of intervention and modes of cooperation.
- Conduct studies assessing NGO and trade union actions aimed at combating discrimination on all the protected grounds, including gender, and in all fields covered, focusing on education and access to services. Identify and map promising practices of NGOs and trade unions effectively addressing discrimination.
- Enhance efforts for the implementation of Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law.
- Within the annual EU equality summits and conferences include a specific section on sharing promising practices of collective actors acting on equality and non-discrimination and models of structured cooperation between NGOs, trade unions and national equality bodies.

5.2.2 Recommendations for national authorities

- Remove unnecessary and restrictive requirements conditioning the legal standing of NGOs and trade unions to engage on behalf or in support of victims of discrimination on all grounds such as prior recognition, the number of members or number of years of experience, or any other criteria other than having a legitimate interest in the issue in question in the case.
- Consider adopting waivers for the judicial fees of court cases in discrimination cases, as well as fee-shifting so that the parties pay their own legal costs, including lawyers' fees, unless the defendant can

⁴⁶² Bojarski, L (2025), *Country report. Non-discrimination Poland 2024*, Publications Office of the European Union / European network of legal experts in gender equality and non-discrimination.

show that the complainant brought the case in bad faith. Furthermore, the complainants should be able to recover their legal fees if they are successful.

- Where this is not already the case, adopt legislation to allow NGOs and trade unions as well as national equality bodies to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*);
- Take measures to implement the European Commission's Recommendation on common principles for collective redress mechanisms.
- Transpose the cooperation provisions of the Directives 2024/1499 and 2024/1500 appropriately and encourage equality bodies and other partners to make use of EU funding opportunities by creating facilities which would ease access to EU funding.
- Amend legislation to ensure effectiveness of remedies granted to NGOs and trade unions by extending the type of remedies granted to include systemic non-pecuniary remedies or substantive remedies which entail both a proactive, constructive approach and a punitive one: orders to adopt codes of conduct or internal regulations, orders to carry out equality trainings, orders to desegregate schools, the withdrawal or temporary suspension of authorisations or licences, withdrawal of state funds or exclusion from public procurement tenders, confiscation of items or the obligation to publish the decision or a statement of public apology.
- Adopt special provisions on victim consent required for NGOs and trade unions acting on behalf of victims of discrimination in cases where obtaining formal authorisation can be difficult, e.g. from minors or persons under guardianship.
- Secure the continuity and stability of funding for support for victims of discrimination by establishing a state-funded civil legal aid system or dedicated funds for litigation and victim support accessible to NGOs and trade unions on a competitive basis.
- Recognise NGOs and trade unions as strategic partners in developing, adopting and implementing national human rights or equality strategies or national action plans. Enhance cooperation with civil society by establishing advisory bodies with the purpose of assessing and proposing strategic guidelines and collecting data for annual reports. Adopt joint action plans based on shared priorities and establish platforms for dialogue and shared decision-making.

5.2.3 Recommendations for equality bodies

- National equality bodies can prioritise the coordination and regular cooperation with NGOs and trade unions by engaging these relevant stakeholders in their strategic planning and in their advisory boards, by establishing a framework of constant cooperation such as social partner forums, consultations, mutual learning or advocacy initiatives and joint projects. Organise periodic equality summits to monitor developments, identify challenges and positive practices and coordinate responses.
- Consult with advisory bodies inviting NGOs, trade unions and academics representing the various protected groups on the strategic directions of the national equality bodies, including the research priorities and the positions of the institution in high impact cases.

- National equality bodies can establish long-term partnerships with NGOs and trade unions by providing training, developing joint campaigns or projects and jointly designing focused interventions responding to specific needs in changing circumstances.
- In the case of quasi-judicial equality bodies: secure publication of the decisions, order the publication of the decision by the perpetrator when possible as a potential remedy and include communication with the media, particularly in key cases, thus contributing to the effectiveness of the sanctions.
- Provide support to trade unions through collective bargaining and social dialogue processes.
- Facilitate engagement of NGOs and trade unions in consultations when amendments are being made to legislative acts with the potential of affecting the rights of vulnerable persons.
- Where the national legislation allows, strategically develop the capacity to intervene in strategic litigation cases before courts.
- Act as intermediaries in grant programmes, channelling funding to NGOs or trade unions working on equality.
- Further support Equinet (European Network of Equality Bodies) to develop guidance on the engagement of NEBs with NGOs and trade unions through multi-stakeholder advisory councils and institutionalised platforms for dialogue. Provide Equinet with the resources to catalogue promising practices and convene peer learning opportunities inviting participation by NGOs and trade unions.

5.2.4 Recommendations for NGOs and trade unions

- Trade unions should embed equality and non-discrimination on all grounds in their wider strategies and agendas, securing the continuity of the actions oriented both internally towards their own members as well as externally towards the employers, public authorities and the wider public.
- Trade unions should establish a dedicated organisational structure to deal with equality and non-discrimination issues and prioritise training of the trade union leadership on equality and non-discrimination.
- NGOs and trade unions should prioritise long-term coalition building and strategic collaborations between NGOs or between NGOs and trade unions, ideally with academic partners as this can lead to a higher impact due to the diversity of resources and increased advocacy power. Such an approach can also entail pooling strategic litigation resources. The memoranda of understanding adopted can outline the shared goals and priorities, shared values and roles and the modes of cooperation including through joint projects.
- When structuring their equality and non-discrimination work, NGOs and trade unions should build comprehensive packages including non-legal support for victims as well as communication as part of a broader advocacy strategy.

After a broad review of the different roles NGOs, associations and trade unions play in the effective enforcement of non-discrimination law both at the national and at the European level, mapping the different approaches

taken by the Member States, the promising practices, the impact of the NGOs as well as the constraints they encounter in fulfilling their mandates, it can be concluded that the bold and novel ‘collective actor defence of rights requirement’⁴⁶³ introduced by the Equality Directives has consolidated the role of NGOs and trade unions in supporting the enforcement of non-discrimination law. It can also be concluded that the consolidation of the role of the collective actors through the implementation of the Directives has contributed to the development and consolidation of European anti-discrimination law.

Although promising in terms of supporting effective implementation of the Directives, this is still a work in progress. A key conclusion of this mapping is that NGOs and trade unions were more effective in the countries where the Member States proactively established mechanisms to help the helpers by providing for legal standing, building on the NGO role in acting on behalf or in support of victims of discrimination, building institutionalised, regular structures for consolidated dialogue, and providing financial resources or adopting incentives intended to ease the financial burdens of the litigation. The highlights from the ground which are promising practices identified in the various Member States show that it is possible to help the helpers fulfil their mandate and that in this way the level of awareness regarding discrimination increases, the rights of some groups which are usually marginalised are upheld, and the legal system itself becomes more aware of the needs and challenges encountered by victims of discrimination and of the systemic nature of discrimination.

⁴⁶³ Muir, E., Kilpatrick, C., Miller, J., de Witte, B. (eds) (2024).

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