



Secretariat of State for Equality
Madrid, 2nd-3rd november

Conference 2011

The Role of Equality Bodies in the Fight against Ethnic and Racial Discrimination



Summary of conclusions and key challenges



COUNCIL FOR THE PROMOTION
OF EQUAL TREATMENT AND
NON-DISCRIMINATION ON THE GROUNDS
OF RACIAL OR ETHNIC ORIGIN



GOVERNMENT
OF SPAIN
MINISTRY
OF HEALTH, SOCIAL POLICY
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Consejo para la promoción de la igualdad de trato y no discriminación
de las personas por el origen racial o étnico

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1. Context

The fight against discrimination and the promotion of equal treatment are two key elements of European democracies. In fact, the right to equal treatment and anti-discrimination policies have developed significantly in Europe over the last few years. This progress is shown on different levels:

- a) on the legal sphere, not only through the approval of the Treaty of Lisbon, but also with the final incorporation of the Charter of Fundamental Rights into the Treaty and with the directives adopted in the last few decades,
- b) from a political perspective, through important initiatives and policy measures and the creation of institutions such as the European Union Agency for Fundamental Rights and,
- c) in terms of knowledge, thanks to the bureaus of statistics and the work of the many research centres, which have made it possible to create an awareness in Europe of the phenomenon of discrimination.

One of the basic elements of the European model of equal treatment and of the fight against discrimination is the establishment of independent equality bodies, to which three basic functions are attributed: to provide assistance to victims, to carry out studies on the relevant issues and to put forward recommendations to the various public institutions and administrations.

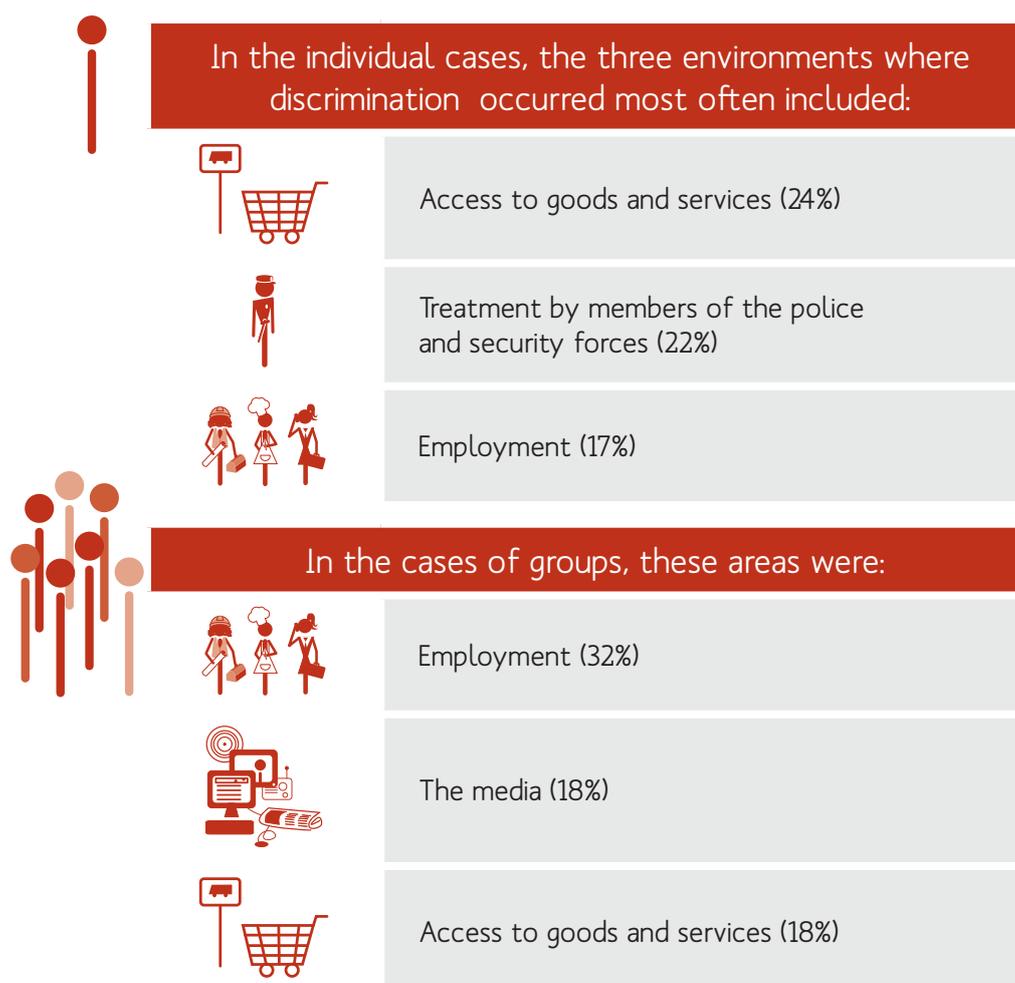
In Spain, the effective start-up of the Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin occurred at the end of 2009. This body is conceived as a consultative body of the General Administration of the State with representatives from all three levels of government: national, autonomous community (regional) and local, together with representatives of business and trade unions and civil society organisations working for the promotion of the right to equal treatment and non-discrimination based on racial or ethnic origin.

In January 2010, the Plenary of the Council approved its first working plan 2010-2012 centred on three fundamental lines of action:

1. Assistance to victims of discrimination.
2. The preparation of studies, reports, recommendations and proposals on key issues.
3. Information, awareness-raising and training.

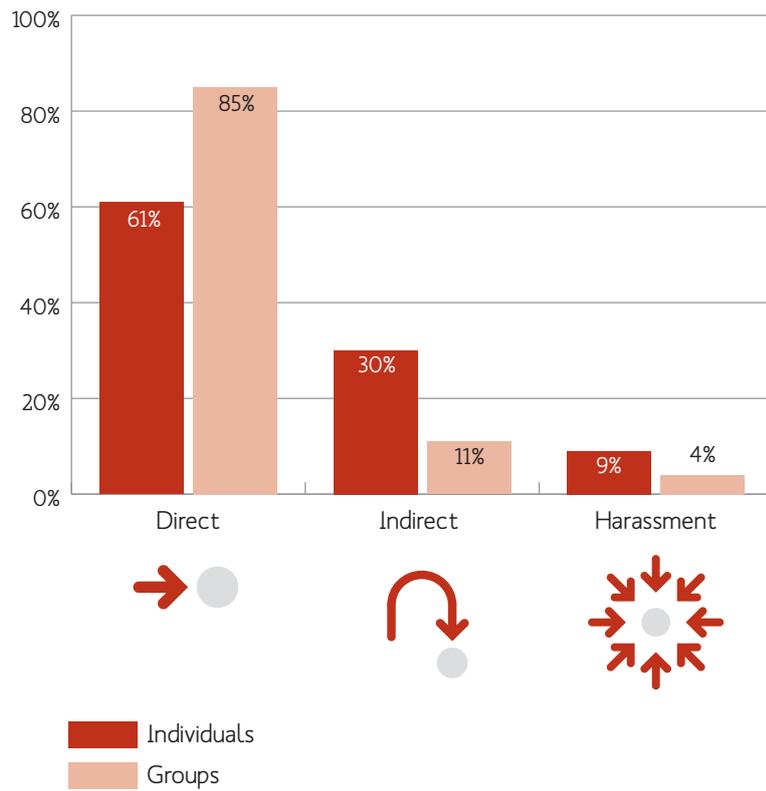
In a context where the resources are very limited and the needs are many, the Council decided to set in motion actions with continuity in the medium term, capable of enhancing what had already been undertaken in the area and conducive to inter-institutional cooperation with a view to achieving greater efficiency and impact.

Particular mention must be made of the Network of Centres for Assisting Victims of Discrimination which was created as a pilot project in June 2010 with eight NGOs and which, in its first six months of operation in 2010, dealt with 235 consultations on discrimination, 188 of which were individual cases and 47 collective cases, finally confirming a total of 212 discriminatory incidents¹. During 2011, the Council was determined to give impetus to this Network, by further developing the protocols and tools for attending victims with the objective of dealing with a minimum of 500 consultations. From an examination of the cases in 2010, the following trends have been identified:



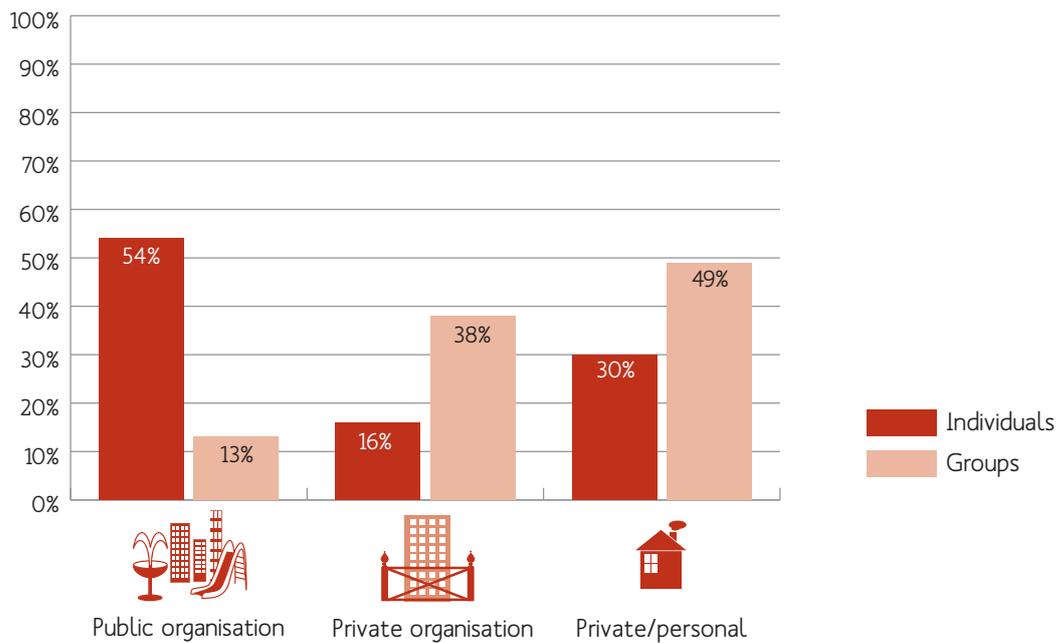
1. <http://equalityynodiscriminacion.org/recursos/publicaciones/2011/informe2010.htm>

Illustration 1. Type of discrimination.



Source: Annual Report on the Status of Discrimination and the Application of the Principle of Equal Treatment on the Grounds of Racial or Ethnic Origin in Spain, 2010 (page 74).

Illustration 2. Places where the cases of discrimination occurred.



Source: Annual Report on the Status of Discrimination and the Application of the Principle of Equal Treatment on the Grounds of Racial or Ethnic Origin in Spain, 2010 (page 75)

Likewise, and to look more closely at the victims, the "Panel on Discrimination Based on Racial or Ethnic Origin (2010): the Perception of the Potential Victims"² has put on the table what the different forms of discrimination are and the principal fields where it occurs, as well as the effects discrimination has on its potential victims. The principal results of this study show that:

- **The self perception of the victims with respect to the image which Spanish society has of them varies between groups:** the differences existing in the image which each of the groups perceives that Spanish society has of them are significant:
 - The worst self-perceived image is that expressed by the Roma population, one of the most discriminated groups (the words or adjectives mentioned most by the persons surveyed, in proportions higher than those of other groups -more than 10%-, are those of "thieves, lazy, drug traffickers and bad people").
 - The next group is the North African population, who also experience considerable degrees of discrimination (among the words or adjectives mentioned most frequently are those of "radicals and thieves").
 - On the contrary, the Asian population considers that, in general terms, it projects a good image (the characteristic mentioned most often, far above the rest -34%- is that they are "hardworking people").
- **The low level of comprehension of discrimination:** a fact to be noted particularly is the lack of an awareness or an understanding of the meaning of discrimination, which could be due to two reasons:
 - On the one hand, the fact that in the society of origin of the individuals or specific population groups discrimination may be a more accepted and assimilated phenomenon, which could mean that they tend to perceive discrimination as something "normal" in their lives; that is, discrimination only acquires a significance and a meaning in a society where equality is a fundamental value.
 - On the other hand, a low educational level and the language barrier are factors which tend to contribute to explaining the difficulties in comprehension.
- **The different levels of consciousness and perception of discrimination:** there is a significant distance between the discrimination identified spontaneously (*a priori* subjective perception) and the objective facts attributable to discrimination on ethnic grounds (subjective perception based on life experiences). Thus, around 70% of the persons surveyed who initially indicated that they had not felt themselves discriminated personally on the grounds of racial or ethnic origin, when asked about very specific situations that could be described as discriminatory in different dimensions of their daily lives, they admitted to having experienced discrimination directly, a situation which would reveal a high threshold of *a priori* detection of discrimination and high tolerance in this regard.

2. <http://equalitynodiscriminacion.org/recursos/publicaciones/2011/panelDiscriminacion.htm>

- Environments in which a higher degree of discrimination is perceived:



Housing and neighbours associations



The police and security forces



Employment



Public and leisure spaces

- **Low percentage of reporting discrimination:** the levels of reporting identified through the survey are very low, in fact, only 4%, approximately, of the people surveyed who were victims of a discriminatory situation said that they had reported any of the situations listed.

Finally, within the Council's competence for making recommendations to the public administrations, it is worth highlighting the Council's recommendation on "the application of the right to equal treatment and non-discrimination of the East European Roma population" should be highlighted. This recommendation, an outcome of a constructive debate, indicates to the public authorities what measures, in the Council's opinion, should be taken in order to avoid undesirable outbreaks of racism directed against this community.

All of these studies confirm the fact that discrimination based on the racial or ethnic origin of persons continues to be present in our societies, that it is not diminishing, but rather is becoming increasingly more present in our society and, therefore, that we must continue to work for the recognition and management of the diversity of our citizens as an asset of society, as well as for the eradication of all forms of discrimination.

We are facing difficult times in which governments, authorities and citizens, pressured by social circumstances, could be tempted to think that fundamental rights are less enforceable in times of crisis. For this reason, the work of bodies such as the Council is even more important and vital, in the understanding that respect and fair treatment of all persons are fundamental, not only in order to prevent the degradation of democracy, but also because they are at the core of the right which all human beings have to be respected as persons.

On 2nd and 3rd November 2011, the Council organised its first conference through which it invited key institutions and stakeholders to:

- Analyse and debate on the right to equal treatment and non-discrimination in Spain.
- Examine in depth the topics that are essential for the Council's activities and working programme.
- Discuss on what are the challenges and initiatives that should be put in place to prevent and eradicate discrimination.

Through the Conference's programme, the Council wanted to analyse and discuss on the different types and models of equality bodies that exist in the EU and on what are the key issues, the best preventive activities or key services to fight against discrimination, taking into account the experience of other countries.

A total of 120 people took part in this Conference from the following organisations:

- ACCEM
- Alta Comisión para la Inmigración y el Diálogo Intercultural (Portugal)
- Amnistía Internacional
- Asociación Multicultural ARIBA
- ARI-PERU
- Asociación de Artistas Ecuatorianos (BCN)
- Ayuntamiento Alcalá Henares
- Ayuntamiento Azuqueca
- Ayuntamiento Córdoba
- Ayuntamiento Madrid
- Colegio de Abogados Córdoba
- Colegio de Abogados Madrid
- Comisiones Obreras
- Comité Español de Ayuda al Refugiado
- Centro de Formación de la Policía Nacional
- Fundación CEPAIM
- Confederación Española de la Pequeña Y Mediana Empresa
- Cidalía
- Cruz Roja Española
- Defensor del Pueblo
- Diásporas
- Equality and Human Rights Commission (Reino Unido)
- Equinet
- Embajada de Brasil
- Embajada de Colombia
- Embajada de Marruecos
- Federación de Mujeres Progresistas
- Federación Española de Municipios y Provincias
- Federación estatal de lesbianas, gays, transexuales y bisexuales
- Fiscalía Provincial de Barcelona
- Folia Consultores
- Fundación Secretariado Gitano

- Gobierno Vasco
- Grupo ALTER
- Instituto de la Mujer
- Poder Judicial
- Kamira
- Meldpunt Discriminatie Internet
- Movimiento contra la Intolerancia
- Ministerio de Educación
- Ministerio de Fomento
- Ministerio de Presidencia
- Ministerio de Trabajo e Inmigración
- Ministerio de Sanidad, Política Social e Igualdad
- Movimiento por la Paz, el Desarme y la Libertad
- Observatorio de la Mujer
- Observatorio Español del Racismo y La Xenofobia (Ministerio de Trabajo e Inmigración)
- Oficina para la no discriminación (Ayuntamiento de Barcelona)
- ONG Rescate Internacional
- Organización para la Seguridad y La Cooperación en Europa
- Plataforma de La Gestión Policial de la Diversidad
- Policía Municipal Madrid
- PSOE
- Red 2 Red
- Red Acoge
- Red Internacional contra el Ciberodio (INACH)
- Unión Democrática de Pensionistas
- Unión General de Trabajadores
- Unión Nacional de Jefes y Directivos de La Policía Local
- Unión Romaní
- Universidad a Distancia de Madrid
- Universidad de Huelva
- Universidad de Valladolid
- Unión Sindical Obrera

The Conference's programme was divided in 6 sessions: an opening speech, four round tables and a round table of conclusions to debate the key issues and challenges through which we involved a participation of a variety of institutions and organisations experienced in the defence of the right to equality at international, European and national level with the aim of enriching the national debate.

This document summarises the information given by the different organisations and institutions as well as the key ideas and challenges for the future taking into account all the discussions.

2. Opening Speech

Equality Bodies in Europe

Speaker

Mandana Zarrehparvar

Chair of the Equinet (European Network of Equality Bodies) Executive Board

→ Can you describe to us what kinds of equality bodies exist in the EU? What are their differences? And their similarities?

The European Directives 2000/43 (on the implementation of the principle of equal treatment irrespective of racial or ethnic origin), 2004/113 (on the implementation of the principle of equal treatment between men and women in the access to goods and services) and 2006/54 (on the implementation of the principle of equal treatment of men and women in matters of employment and occupation) establish in their regulation the need to create equality bodies which, as a minimum, would undertake to:

- Provide independent assistance to persons who have been victims of discrimination.
- Carry out independent surveys on the phenomenon of discrimination.
- Publish independent reports and recommendations on issues associated with discrimination.

According to a study by the European Commission³, there are two kinds of equality bodies:

- Predominantly oriented towards the judicial and administrative treatment of cases of discrimination.
- Predominantly oriented towards the promotion of the right to and the principle of equality.

There is a wide range of equality bodies, which are differentiated by their mandates and powers; by their size; by the grounds covered; by their organisational structure; by their experience; by their budget.

→ In your opinion, what are the role and the functions an equality body should have in the fight against discrimination?

The existence of these bodies has great potential for:

- Assisting victims of discrimination and therefore guaranteeing that rights to equal treatment contained in legislation are real and effective.
- Developing and promoting knowledge on discrimination, inequality and equality.

3. European Commission (2011): Study on Equality Bodies set up under Directives 2000/43, 2004/113 and 2006/54: http://www.equineteurope.org/263270_3.html

- Increasing the awareness of rights in relation to discrimination and how to realise them.
- Informing and communicating about the principle and right to equality and non-discrimination to society as a whole.
- Supporting organisational change among public administrations, companies and service providers through guidance on good equality practice.

These functions should enable these bodies to play the following role in society:

- Support the victims of discrimination with strategies enabling them to overcome situations of discrimination.
- Support employers not only in complying with the Law, but also in the development of measures that go beyond the Law and promote a proper and adequate management of diversity.
- Influence the planning, approval, monitoring and evaluation of public policies and legislation.
- Support and coordinate their work with stakeholders in order to maximise available resources.
- Influence public opinion and attitudes to create a solid platform for economic and social change.

➔ **What characteristics do you believe that such bodies should have in order to fulfil their mission properly?**

They must have the following characteristics:

- Have a strong legal basis.
- Be fully independent.
- Have sufficient financial resources and adequate human resources well trained to carry out their tasks.
- Be visible and recognised by society.

3. Round Tables

3.1. Round Table: “Overview of Discrimination and Trends”

3.1.1. Brief summary of the current situation

Although in comparative terms within the European Union, Spain cannot be considered as a particularly racist country, nevertheless and, in light of the studies available, it is evident that rejection and the unequal treatment of people who are different, because they are immigrants, members of the Roma ethnic group or simply have a different skin colour, exist in a part of our society and to a larger extent than what is normally thought. These practices also occur in the framework of the public authorities, as shown by the data collected by the Panel on Discrimination and as contained in the Report on the cases dealt by the Council’s Network of Centres for Assisting Victims of Discrimination. Some attitudes which are growing in our societies are of particular concern, such as the transmission of racist and hate speech through the Internet as well as some cases of political discourse, which tend to blame or stigmatise persons of a racial or ethnic origin different from that of the majority.

The study undertaken for the first time by the Council on the way different people perceive discrimination has demonstrated, on the one hand, that discrimination is more frequent than what it may appear and, secondly, that it occurs in a wide range of fields and under very different forms both in the public as well as in the private sphere. Due to the current situation of high unemployment in our country, it is not surprising that employment is one of the fields which could become a scenario for more cases of discrimination and, for this reason, we must be alert to the cases, attitudes and circumstances which could arise in this area. The study we have carried out has also enabled us to detect that many individuals who are victims of unfair treatment either are not aware of it or simply do not stand up for their rights by reporting these situations. Without a doubt this stems from multiple causes, however, it is highly likely that one of these reasons is the lack of expectations these victims harbour with respect to the effectiveness of the legal system.

3.1.2. Challenges

Over the last few years, government authorities have been progressively acquiring an awareness of the phenomenon of discrimination, a fact which is reflected in the public policies implemented and in the gradual introduction of measures and policies in this regard which translate not only into the creation of specialised institutions, such as special units for prosecuting hate crimes and discrimination in Catalonia, Madrid and Malaga, but also into a situation where the public administrations are increasingly more active in this field.

We must also highlight the work of NGOs which have become specialised in this area of action, by progressively incorporating the equal treatment perspective into their programmes and reinforcing collaboration, alliances and work through networking. There is a consensus that, in order to advance towards a more equal society, not only is it necessary to set in motion specific measures but, above all, to incorporate the perspective of equality into the general policies and move ahead in meeting the challenges still pending in Spain.

As the European Commission against Racism and Intolerance has noted in its annual reports on Spain, there is a need to advance in:

- The compiling and publication of data about acts of racism and of racial discrimination as well as on the application of the criminal, civil and administrative provisions in force for combating these acts.
- The ongoing training of the public security forces and private security services as well as for legal operators (prosecutors, judges, lawyers, forensic doctors, etc.).
- The supervision and analysis of the increase in neo-Nazi movements and violent youth gangs, in their public acts and their presence in the Internet, and to initiate criminal proceedings if necessary.
- To guarantee the prohibition of all practices by the police intended for establishing racial profiles. For this purpose, the creation of an independent mechanism for examining the police reports lodged is recommended.

3.1.3. Discussion questions

A brief summary of the main ideas given by the speakers are presented below.

Discrimination and Hate Crimes: an International Perspective

Speaker

Joanna Perry

Hate Crimes Officer, Organisation for Security and Cooperation in Europe

→ In your opinion, what are the principal problems associated with discrimination and hate crimes from the international perspective?

- Absence of the compilation of data by states to facilitate a comparison of the situation across countries and to measure the trend in discrimination and hate crimes. One of the principal problems associated with this circumstance is that there is no common definition of hate crime shared by the various states in their legislation, despite the fact that hate crime is one of the most serious forms of discrimination and that the fight against it is hampered by a problem of underreporting.
- Little capacity for putting into place and developing robust mechanisms for the monitoring and evaluation of the criminal justice system.
- Insufficient connection between the different types of discrimination experienced by various population groups who share a trait, a characteristic, an origin, etc. When discrimination occurs in a variety of environments in the day-to-day lives of people, groups can feel disempowered in order to report such situations, and this could lead to an increase in hate crimes and discrimination.

→ What legislative and political mechanisms do you believe a State should have in order to combat discrimination and hate crimes?

States should have a strong monitoring and evaluation system to measure the trend in hate crimes. An example of this would be the report on racist incidents, including crimes, published regularly by the United Kingdom's Home Office⁴.

4. Racist Incidents, 2010-2011, England and Wales. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosf0111/>

➔ What do you believe are the functions of an equality body in the fight against discrimination?

One of the highest priorities in this context would be to design, in conjunction with the legal operators (judges, prosecutors, police and security forces, lawyers, court clerks, etc.), a comprehensive training programme on discrimination with particular emphasis on legislative issues, data compilation, treatment of cases, treatment of victims, etc.

Another key area of action for equality bodies would be to create and provide platforms for meetings, analysis, discussion or investigation, where the various public authorities and social stakeholders can participate, to discuss and draw up proposals or recommendations for avoiding or reducing discrimination and hate crimes in those environments where these occur most frequently.

Racism and Xenophobia in Spain

Speaker

Nicolás Marugán

Director of the Spanish Observatory on Racism and Xenophobia (Oberaxe),
Directorate General for the Integration of Immigrants (Ministry of Labour and Immigration)

→ In your opinion, what are the principal problems of racism and xenophobia in Spain?

On the basis of the studies and the work performed by the Oberaxe over the last few years, the following problems have been detected:

- An approach to racism and xenophobia by the public administrations excessively specialised by grounds and fields. It is necessary to develop public policies with a special focus on coordination of the work carried out by different administrative levels (national, regional and local, but also among different departments) and by other institutions or organisations (social stakeholders, NGOs, companies, etc.).
- A deficit in the compiling of data and information (statistics, studies and investigations, etc.) on discrimination, hate crimes, racism, xenophobia in Spain, particularly the growing phenomenon of subtle racism.
- An increase in hate speech in political discourse, in the media, especially through the Internet.

→ The Directorate General for the Integration of Immigrants is finalising the work for the approval of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Other Related Forms of Intolerance: what are the principal measures foreseen in this Strategy?

The following are included among the most relevant measures:

- Improvement of the systems for gathering institutional statistical information on "racist and xenophobic incidents", racial discrimination and other related forms of intolerance and draw up regular reports on the basis of the data compiled.
- Step up institutional coordination and coordination with civil society.
- The design and organisation of specialised training for legal operators, public personnel and professionals from stakeholders involved in the fight against discrimination (trade unions, NGOs, etc.).
- Reinforcement and development of the services of assistance to victims of discrimination and hate crimes.

- Specific measures centred on the fields in which the greatest vulnerability to racism, racial discrimination, xenophobia and other related forms of intolerance has been detected: education, employment, health, housing, the media, Internet and sports.
- Reinforcement and development of monitoring and evaluation systems.



In your opinion, how can the role of equality bodies in the prevention and eradication of discrimination and hate crimes be reinforced?

Two issues are essential in order to reinforce the role of the equality bodies in Spain:

1. Promote the approval of the Draft Comprehensive Law for Equal Treatment and Non-Discrimination.
2. Provide the equality bodies existing in Spain with sufficient financial and human resources for the performance of their tasks.

Systems for Collecting Information on Discriminatory Incidents in the Police and Security Forces

Speaker

José Francisco Cano de the Vega

President of the National Union of Local Police Chiefs and Executives (UNIJEPOL) and Spokesman of the Platform for Police Management of Diversity

→ In your opinion, what should the role of the Police and Security Forces be in the fight against discrimination and hate crimes?

First of all, it is important to remember the role of the Police and Security Forces: on the one hand, they must obey the law and enforce it. Spain has a quite well-developed legal acquis, which is not always known or is not applied; secondly, they play a very important role, which is that of preventing conflicts and contributing to good community relations in society.

→ What initiatives/tools do you believe should be implemented within the Police and Security Forces for promoting equality and preventing discrimination in society?

1. The design and organisation of training programmes to improve the skills of police and security forces in order to manage diversity from a double perspective: training in skills (knowledge of the Law), but also in attitudes (how to treat a diverse society more effectively).
2. Initiatives that connect police and security forces with diversity in society, for example by:
 - Designing measures of positive action to guarantee that diversity is represented in police and security forces human resources.
 - Establishing forums, places, etc. to enable police and security forces to meet with representatives of the different groups so that they can share needs, knowledge, etc.
 - Improving technological resources: making interpreting services in several languages and in sign language available to the public, as some police forces are already doing, such as the Basque Country.
3. Designing and implementing procedures and protocols to standardise police actions when dealing with racist and discriminatory incidents. There are already some police forces in Spain working with protocols of action of this kind, for example, the Mossos d'Esquadra and the Local Police of Fuenlabrada.
4. Create a specific register of discrimination incidents to enable the police and security forces to be aware of the real situation and improve their assistance to the public.



What measures should the public administrations take to prevent discrimination by the members of the Police and Security Forces?

The most adequate mechanism for preventing and reducing discrimination in this case is tied to the establishment of protocols of action for the police and security forces, which, in the majority of cases, do not restrict the scope of police action, but rather enhance the effectiveness of officers. In this regard, an outstanding example is the protocol approved by the Local Police Force of Fuenlabrada for street identification through the European STEPS project. This protocol requires the officers making identifications on the street to hand over a form to the person identified indicating the reason for the identification, the person's rights and obligations as well as the mechanisms for lodging a complaint. Three months after the start-up of this protocol, a significant improvement in the effectiveness of police action was already noted: not only was the number of identifications reduced by 50% (from 8,000 to 4,000), but, in addition, the degree of effectiveness of such identifications increased: 3 of every 10 identifications made it possible to identify persons who had committed an offence (in the case of Scotland Yard, which ranks among organisations with the best results, the percentage is 10%). Consequently, the protocol not only makes it possible to prevent and reduce situations of discrimination, but also drives the specialisation and the efficiency of the police.

3.2. Round Table: “The Legal Perspective”

3.2.1. Brief summary of the current situation

In Spain, the right to equality is stipulated in article 14 of the Spanish Constitution of 1978⁵: *“Spaniards are equal before the law and may not in any way be discriminated on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”*.

The Spanish Constitution, therefore, is clearly broadminded insofar as the concept of equality, as, in addition to explicitly establishing that distinctions may not be made based on birth, racial or ethnic origin, sex, religion and opinion, it leaves the door open in order to remedy any other kind of discrimination by adding the phrase *any other personal or social condition or circumstance*, which consequently enables an exhaustive application of the concept of equality.

Moreover, Article 14 of the Spanish Constitution is complemented by Article 9.2 where it is stated that: *It is the responsibility of the public authorities to promote conditions ensuring that the freedom and equality of individuals and of the groups to which they belong are real and effective; to remove the obstacles preventing or hindering their full enjoyment and to facilitate the participation of all citizens in political, economic, cultural and social life*. This article is based on the principle that the mere right to equality does not necessarily guarantee effective equality and that, as a result, in a democracy such as Spain, which seeks to provide an adequate social protection system, the role of the public authorities is not solely to guarantee compliance with the law but rather to take the necessary measures to ensure that equality will be effective.

As we all realise, having good legal provisions in place is indispensable for the proper running of a country under the Rule of Law; however, the existence of the laws in itself is not necessarily a guarantee of the effective and real equality of the individual if such laws are not accompanied by appropriate regulations and by policies capable of giving them real meaning and of ensuring compliance.

Since the introduction of this guarantee in the Constitution, Spain has made significant advances in combating discrimination, with the aim of ensuring the equality of all individuals. Some of these advances have been achieved through the transposition of two European Directives⁶ into Spanish law⁷, at which time the specific legal provisions on non-discrimination for different reasons were reinforced. The advances which our country has made in a number of fields, such as that of gender equality, sexual orientation, civil partnerships, disability, areas in which Spain has placed itself among the most advanced countries in terms of legal provisions, are also well known on the international and, particularly, at the European level.

This legislative progress was intended to culminate in the *Draft Comprehensive Law for Equal Treatment and Non-Discrimination* which, in the end, was not approved during this legislative period.

5. Article 14 of the Spanish Constitution of 1978.

6. Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation, 2000.

7. Act 62/2003 of 30 December, on fiscal, administrative and labour-related measures.

3.2.2. Challenges

The transposition of the Directive 2000/43 was not made through an appropriate procedure: it was included in a law on fiscal, administrative and labour-related measures, without an adequate public debate capable of promoting the social awareness and public visibility these issues require.

The Draft Comprehensive Law for Equal treatment and Non-Discrimination, which included and enhanced the basic guarantees for the protection of the right to equal treatment, through a regime of infringements and penalties and appropriate administrative and judicial proceedings, has come to a standstill. However, there is an evident need for enacting a comprehensive law which, had it been approved in this legislative period, would have made it possible not only to complete the full transposition of the European directives, but also to bring into line the levels of protection with respect to the different grounds of discrimination and set in motion adequate mechanisms for enabling the legal equality to become an effective equality.

Moreover, in terms of criminal law, the implementation of measures to improve the application of the existing criminal provisions against racism and racial discrimination has become indispensable.

Finally, in view of the results of the "Panel on Discrimination Based on Racial or Ethnic Origin (2010): the Perception of the Potential Victims" and of the Report by the Network of Centres for Assisting Victims of Discrimination, one of the fields where situations of discrimination frequently occur is employment. The work carried out by the Network during 2011 confirms this trend: the largest number of cases attended so far this year has arisen in this field and, yet, the number of judgements or formal complaints is insignificant.

3.2.3. Discussion questions

A brief summary of the main ideas given by the speakers are presented below.

Legislative Effectiveness in Spain: Limits of Current Legislation

Speaker

Fernando Rey

Chair of Constitutional Law, University of Valladolid

→ In your opinion, what are the principal problems faced by the victims and legal operators on applying current legislation?

The principal problems can be divided into four groups:

1. Society as a whole: Spain continues to be an intensely racist society, as shown in the studies made by the European Union Agency for Fundamental Rights and recently by the Council. However, the majority of the population is reluctant to accept this idea, a problem, which, in the United States, has come to be called "unconscious racism"⁸.
2. The political players: the issue of ethnic equality has not been a serious item on the Spanish political agenda: despite the advances made in the last two legislative terms, it continues to be an invisible political problem. The majority of political players are unaware of the basic rudiments of the right to non-discrimination and of the obligations arising for Spain from European Union law. In addition to this problem is the fact that the issue of ethnic equality has been addressed exclusively from the perspective of social services and not with a focus on the recognition of cultural diversity. Equal opportunities in the access to rights is necessary, but also a recognition of differences. Finally, a last problem is the connection with gender equality, at least in two aspects: first, the public policies must take the women in minority ethnic groups specifically into account in order to avoid the phenomenon of multiple or intersectional discrimination; secondly, gender policies have been developed to a greater extent in comparison to ethnic policies: the latter need to advance by looking in the mirror of the gender policies and, in no case, should these policies be set against each other: progress must be made simultaneously in both areas.
3. The legal operators: there is generally a lack of specific training in the field of anti-discrimination law. This is intensified by the fact that a serious criminal policy of prosecuting racial discrimination has not been developed in Spain. There are criminal penalties, but there is no inclination to apply them. This is why the creation of special or specialised prosecutors is a highly positive development. This has an impact on the victims, who do not generally access the justice administration because they have no confidence in it, are not aware of their rights or interiorise their position as victims. For this reason, it is absolutely necessary to create a strong and robust equality body which will continue to carry out the work initiated by the Council, but extending its scope of action to all the grounds of discrimination

8. A concept theorised by the U.S. academic Charles Lawrence III in the *Stanford Law Review* of January 1987. His thesis, which has been widely recognised in the English-speaking environment, although it is practically unknown among us, is that racism is an infection which has been communicated to all of us, making it difficult for us to understand the disease. We are all racists, but the majority of us are not aware of it and, in addition, racism, as such, has been admitted by everyone as erroneous from a moral, social and cultural point of view.

4. The ethnic minorities, who should progress in the awareness and exercise of their rights, abandoning a permanent position as victims and becoming full citizens. The ethnic communities tend to lack political representatives of their minorities and successful models of personal development which are not mere topics. They also face the challenge of finding a balance between the evolution and the preservation of their identity, by promoting active policies to combat external (outside of the community) and internal (women, homosexuals, etc.) discrimination.



Do you feel that these difficulties call for legislative reforms?
What areas of legislation do you believe should be reformed as a priority?
What possible legislative actions do you believe could contribute to overcoming the limitations existing in current legislation?

A legislative reform is completely necessary in order to adapt better to the European legislation and to become more effective in the fight against racial discrimination. An appropriate course of action to achieve this reform would be to pass the Draft Comprehensive Law for Equal Treatment and Non-Discrimination, submitted to Parliament on 27 May of this year⁹, for a number of reasons:

- Because there is little awareness of anti-discrimination law in Spain among legal operators, the media, politicians and a large part of the society.
- Because European anti-discrimination law has not been well transposed in Spain.
- Because, with the economic crisis, which has become not only a social crisis but also a crisis of values, racism and xenophobia are growing, and the social and economic costs of not addressing this problem seriously will be greater than if it is tackled with determination.

9. <http://www.mspes.es/novedades/docs/LeyIgualdadTrato.pdf>

Is a Comprehensive Equal Treatment and Non-Discrimination Law necessary in Spain?

Speaker

Ignacio Sola Barleycorn

Deputy Director General for Equal Treatment and Non-Discrimination,
Directorate General for Equality in Employment and against Discrimination,
Ministry of Health, Social Policy and Equality

→ What do you believe are the most relevant aspects which a Comprehensive Equal Treatment and Non-Discrimination Law should contain?

A good comprehensive law on equal treatment and non-discrimination should include, at least:

- A determination of the objective and subjective scope of application of the legislation which will address all of the present and future discriminations in the largest possible number of environments of the economic, social and cultural life of our societies. In the case of Spain, the question of the grounds of discrimination to be covered by legislation of this kind encounters a solution in article 14 of the Constitution which establishes that, "*Spaniards are equal before the law and may not in any way be discriminated on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance*", and it is precisely this last open clause which makes it possible to protect against discrimination on any grounds, without prejudice to the explicit establishment of specific grounds on account of their social impact and which should be similar to those contained in our own constitutional text, European legislation and international treaties.
- Definition of prohibited discriminatory acts, combining the "traditional" definitions (direct and indirect discrimination, harassment or order or inducement to practice discrimination) and others reflecting the latest advances in doctrine and case law on the subject (discrimination by association, by error, multiple discrimination and positive actions).
- In order to give impetus to the mainstreaming of equal treatment and non-discrimination policies, the Law should contain mandates to the authorities to promote the right to equal treatment and non-discrimination with a particular reference to coordination among the different levels of government which should materialise as an instrument of planning. Moreover, reference should be made to the initial and continuing training of the staff at the service of the public administrations, the need to carry out studies on discrimination in different sectors, and the need to collect data on reports and judgements identifying discriminatory content or motives.

- With a view to enhancing the guarantees of the right to equal treatment and non-discrimination, a number of measures for improving the protection of this right should be considered, including, among others, the declaration as null and void of all provisions, acts or clauses of contracts which constitute or cause discrimination, measures of judicial protection of the right, rules for the extension of the legal capacity for the defence of this right, rules in relation to the burden of proof, the creation of specialised prosecutors for dealing with the facts constituting an offence with a discriminatory content and the creation of a body which, in fulfilment of the mandates of Community legislation, provides independent assistance to victims of discrimination, prepare studies and reports and make recommendations to the authorities on equal treatment and non-discrimination. Nevertheless, together with these "Community" tasks, other could be added, such as those relating to mediation, representation in the judicial proceedings of victims, ex officio investigation and the taking of whatever actions of communication and awareness-raising as deemed appropriate for the promotion of this right.
- Finally, the establishment of an effective and proportionate system of infringements and sanctions.

→ **What structure and functions should be designed in such legislation for a future equal treatment body?**

The European experience in this regard enables us to say that there are multiple possibilities: ranging from a body integrated within the administration to bodies with a legal personality of their own and independent of the administration. However, the most important consideration is that such a body should be able to perform its tasks in an independent manner, that is, without being subject to instructions or a hierarchical dependence. In this context, it is essential to put mechanisms into place to safeguard the independence of its president and/or its senior positions of representation (duration of mandate, reasons for removal from office, appointment by consensus, etc.), the existence of a differentiated budget and the freedom to approve and implement its own action plans.

Provision should also be made for the mechanisms necessary to ensure the participation of the key players: public administrations of different levels, social stakeholders and civil society organisations, without placing its independence at risk.

As per its functions, in addition to the tasks included in the Community Directives (providing independent assistance to victims of discrimination, preparing studies and reports and making recommendations to the authorities on equal treatment and non-discrimination) other duties can be established, including: initiating *ex officio* or at the request of third parties investigations on the existence of possible situations of discrimination, taking judicial action in defence of the rights derived from equal treatment and non-discrimination, to promote the adoption of codes of good practice in the context of the fight against discrimination or to issue expert opinions on draft legislation on this subject, etc.

The Protection of the Courts against Discrimination in Employment

Speaker

Pablo Aramendi

Magistrate - Labour Court No. 33 of Madrid

→ Could you tell us what the principal jurisdictional tools for combating discrimination in employment are? Do you feel that these tools are sufficient?

The Spanish legal system has a number of instruments for reporting discrimination offences and claiming the rights of persons who have suffered discrimination in the employment environment, the use of which should be reinforced and promoted. These instruments include, among others:

- The shifting of the burden of proof, contained in European Directives 2000/43 and 2000/78, through which the burden of proof can be shifted to the alleged discriminating agent whenever the victim of discrimination presents sufficient indications that discrimination has effectively occurred.
- The guarantee of indemnity: protection given to persons who have suffered victimisation.
- The possibility contained in Act 36/2001, 10 October 2001, which regulates the labour jurisdiction¹⁰, that a public or private organisation could accompany the victim in reporting discrimination.

10. <http://www.boe.es/boe/dias/2011/10/11/pdfs/BOE-A-2011-15936.pdf>

3.3. Round Table: "Assistance to Victims of Discrimination"

3.3.1. Brief summary of the current situation

Discrimination in our country is an evident fact, in view of the available statistics which were mentioned at the beginning of this document and show that, in Spain, discrimination is an increasingly more frequent phenomenon, particularly when the reason for it is racial or ethnic origin.

Despite this, the number of public and private initiatives aimed at assisting, counselling or assessing the victims of discrimination is still limited. In this context, we should note, at the local level, the work of the Office for Non-Discrimination of the Town Council of Barcelona and of the Prosecutor of Discrimination and Hate Crimes of Barcelona, and nationally, the work carried out by a number of NGOs, particularly those dealing with discrimination based on gender, disability and racial or ethnic origin.

It is worth highlighting the Network of Centres for Assisting Victims of Discrimination on grounds of racial or ethnic origin, created in June 2010 with 8 nation-wide NGOs. Thanks to the collaboration of the Council's Assistance to Victims Working Group and to the support of the Directorate General for Equality in Employment and Against Discrimination of the Secretariat of State for Equality, Spain counts with an innovative service for attending cases of discrimination, a point of reference for awareness-raising and the promotion of equality and non-discrimination as well as a platform for networking. Through this Network, criteria and tools are being brought together and consolidated, thereby making it possible to work more effectively in the defence of the right to equal treatment as well as in the analysis of the situation of the victims.

During 2011, the Council has worked to give impetus to this Network and has brought together other NGOs that work in this field to further develop the protocols and tools for assisting victims with the objective of attending at least 500 consultations yearly. Between January and September of this year, the Network of Centres for Assisting Victims of Discrimination has dealt with more than 350 consultations on discrimination referring primarily to:

- Cases involving the administrative procedures dealing with applications for unemployment subsidies, particularly among persons of Moroccan origin or from countries South of the Sahara.
- Cases involving police and security forces, particularly in situations of identification controls using an ethnic profile and of access to the justice system, where an increase of verbal abuse has been detected (when an incident is being reported, when a case is being tried, etc.).
- Cases in employment, not only in terms of access to employment but also with regards to relations with co-workers and management. There is reason for particular concern in the cases occurring in the domestic service sector where the victims are especially vulnerable.
- Cases where a hate and discrimination speech is encouraged, particularly by the media or by political parties.
- Cases in the field of housing where there is very little awareness of the limits to the right to rent accommodation and the right to equality.

It should be noted that the competencies of the Council and of the Network of Centres for Assisting Victims of Discrimination do not extend to judicial actions. This is why the protocol of action developed is based primarily on extrajudicial actions such as speaking on behalf of victims, mediation or negotiation, actions which in many cases have obtained positive results and, at the same time, make others more sensitive to the situation. However, in the most extreme cases, it should be possible to offer victims a defence before the courts, on many occasions, under criminal law. This calls for action requiring resources and experience which many organisations do not have, particularly when taking into account that few of the people who practice as judicial operators (professionals of the Justice system such as prosecutors, lawyers, judges, etc.) are familiar with the legislation on hate crimes and discrimination.

After more than a year and a half in operation, the Network of Centres for Assisting Victims of Discrimination has been able to identify two alarming issues, which has also been detected in results of the "Panel on Discrimination Based on Racial or Ethnic Origin (2010): the Perception of the Potential Victims":

- On the one hand, there is a situation of **acceptance of discrimination**: many victims of discrimination have experienced discrimination on repeated occasions throughout their lives and, therefore, it seems normal to them to be rejected in their relationship with society. That is, suffering a situation of discrimination is something that has become routine in their lives.
- The **levels of the reporting of situations of discrimination are very low**. Only 4% of cases are reported: the rejection has been assimilated; the victims have no confidence in the response of the system or they lack sufficient information or do not understand it adequately; they are afraid of victimisation, especially when the alleged discrimination has happened within police and security forces or in employment.

3.3.2. Challenges

In view of the foregoing, we face a number of challenges for improving the defence of the victims of discrimination:

- To continue informing the victims of discrimination through valid channels.
- To accompany the victims throughout the process for the defence of their rights, including in the judicial environment, since to date, no legal service has been established for exercising the strategic defence of Equality and Non-Discrimination.
- There should be a firm response by the Spanish legal system to discrimination. Up to now the response has been weak, for which reason it is necessary to establish a regime of penalties and infringements, to guarantee the application of the legal provisions for combating discrimination in this area and, above all, to introduce harsher penalties into Spain's legislation for obtaining the adequate penalisation of hate crimes and discrimination.
- There is a need for the involvement and training of all sectors of our society in this area, particularly key stakeholders: media professionals, police and security forces, professionals in the legal and educational fields, political representatives, public servants, etc.

- There is a need to put into place rapid response mechanisms in the face of discriminatory incidents; protocols of action for the police and security forces and for professionals in the legal field.
- Spanish society must be made aware of these issues through social awareness-raising campaigns reinforcing the idea that discrimination should be viewed as a reprehensible conduct in our society.
- The visible and empowered existence of an independent body is necessary for defending this fundamental right -the right to the equal treatment- in consonance with Directive 2000/43/EC and the recommendations of international organisations such as the ECRI.

3.3.3. Discussion questions

A brief summary of the main ideas given by the speakers are presented below.

Extrajudicial Attention to Cases of Discrimination

Speaker

Guadalupe Pulido

Director of the Office for Non-Discrimination (OND) of the Town Council of Barcelona

- The Office for Non-Discrimination has been dealing with cases of discrimination in Barcelona for more than ten years, could you explain to us what you feel are the principal difficulties when dealing with a case of discrimination?

The following difficulties are particularly significant:

- Citizens lack awareness of their rights.
- Clarification of what is a discriminatory act and what is not: this is a matter which is closely related to the emotional state of the person concerned.
- A problem of perception: when a person is a victim of a discriminatory act, the person concerned often does not feel they are victims of an unfair and illegal act; a positive reinforcement and empowerment is lacking.
- Difficulty in involving the discriminator in the settlement of the conflict.
- Lack of a capacity to apply sanctions when the situation requires it.

- On the basis of the experience of the OND, what extrajudicial strategies have proven to be effective in the fight against discrimination and in what environments?

The most effective strategies have been:

- The alternative management of conflicts.
- Information/clarification of situations.
- Mediation between the parties.
- Management of the expectations of the victims: it is fundamental in the interventions undertaken to avoid double discrimination and the victimisation of the person affected.
- In extrajudicial strategies, a key element has been a good coordination with the various services and familiarity with relevant associations and civil society.
- The most effective strategy has always been to make people capable of resolving their conflicts: as individuals we are unique and this is why it is very important to tailor our work to each situation.

→ In your opinion, what are the advantages of the existence of equality bodies? What is the balance of the OND after more than 10 years defending the right to equal treatment and non-discrimination?

Advantages to be highlighted include:

- Equality bodies can provide a service of direct assistance to persons victims of discrimination, which, in the majority of cases, is experienced as a crisis situation.
- They are an excellent public service for preventing and reducing social conflict.
- They build tools and offer spaces, which give the victim an opportunity to be compensated by the damage suffered.
- They are essential for raising awareness of society with regards to the right to equality and non-discrimination.
- Their role in channelling information and training stakeholders (legal operators, authorities, NGOs, social stakeholders, etc.) and society is crucial.
- They enable greater social involvement in the promotion of equal rights.

In relation to the balance, the OND feels that the work performed over the last few years has been essential for placing the right to equal treatment and non-discrimination as an issue of fundamental rights and not as a problem associated with social policies. Nevertheless, after all of these years, the OND detects that there are still challenges to be met, relating to:

- The need for providing more information to the general public.
- The importance of the horizontal and comprehensive treatment of anti-discrimination policies.
- The need to continue training and raising awareness as a strategy for involving key stakeholders and the legal operators in the defence of these rights.
- The need for greater awareness and active involvement by society.

Judicial Attention to Cases of Discrimination

Speaker

Miguel Ángel Aguilar

Prosecutor-Coordinator of the Hate Crimes and Discrimination Unit
of the Provincial Prosecutor's Office of Barcelona

→ How can a criminal offence motivated by hate or discrimination be reported? To what authorities can a claim be lodged?

There are three possible channels in Spain for reporting offences of this kind:

- Police and Security Forces (112)
- Court on duty
- Public Prosecutors' Offices (in the case of Barcelona, the Prosecutor's Office has a Hate Crime and Discrimination Service)

If what is to be reported is a serious fact, it is advisable to always approach the Police and Security Forces. If it is not a case with serious violence and an investigation is necessary, the recommendation is to approach the Public Prosecutor's Offices.

→ What legal strategies and tools have been most effective for obtaining a favourable judgement?

With respect to the strategies for dealing with hate and discrimination crimes, the following have been highly effective:

- The specialisation of the Public Prosecutor's Offices, that is, having staff with knowledge and specific experience in anti-discrimination legislation and the legal instruments for prosecuting hate and discrimination offences. A good tool for this is the creation of specialised working committees within the Public Prosecutor's Offices with key stakeholders who work in this area. For example, there are two such committees in the Prosecutor's Office of Barcelona, one dealing with discrimination on the ground of sexual orientation and the other with racism and xenophobia. Specialised NGOs, the Office for Non-Discrimination of the Town Council of Barcelona, the Mossos d'Esquadra participate on both committees. The committees meet every 3 or 4 months for the purpose of exchanging information and knowledge.
- The drawing-up of protocols of action for the Public Prosecutor's Offices with regards to hate and discrimination offences. In the case of Barcelona, there is a specific instruction (1/2009) for the service and a specific protocol for acts of hate provocation.

With respect to the most effective legal tools, the following stand out:

- Keep up-to-date with current legislation, both national as well as international, and with its interpretation, as well as with national recommendations; this will enable to argue each case adequately.
- Be thoroughly familiar with the problems and difficulties of the victims.
- Reinforce the testimony of the victims with other means of evidence (objective witness, video, etc.) as the courts distrust the testimony of the victims *a priori*.
- Transmit the results to public opinion, regardless of whether they are positive or negative, and explain the impact this has for the persons concerned.



What recommendations would you give to the organisations assisting/advising victims of discrimination?

1. Make every effort to inform citizens about their rights
2. Offer quality counselling and legal guidance
3. Assess victims and take part in the most serious or relevant cases
4. Cooperate with institutions to settle cases through extrajudicial channels
5. Encourage people who have been victims of discrimination to report, informing them of the personal and collective benefits this could have.
6. Create and disseminate knowledge of anti-rumour networks which make it possible to detect false information circulating about certain minorities.

The Advantages and Drawbacks of strategic Litigation

Speaker

Keith Ashcroft

Senior Lawyer (Solicitor)

Equality and Human Rights Commission (United Kingdom)

→ How can an equality body assist a case of discrimination more effectively?

In order for an equality body to be effective, it is important to analyse in each case what is the appropriate mechanism for acting in the framework of its powers. Litigation is important, but is not always the most appropriate channel. It is important to know how to combine the various tools:

1. Conciliation or mediation when both parties agree to use this method.
2. Formal inquiries through which it can be ascertained whether discrimination has actually occurred, giving rise to a report and action by the equality body.
3. Drawing-up of practical recommendations
4. Investigation of cases of discrimination

→ In the framework of strategic litigation, what criteria are used for selecting the cases to be brought before the courts?

In the case of the Equality and Human Rights Commission, there is a strategy on how cases are selected available on the website¹¹. This strategy takes into account the following criteria:

1. If the case will help to clarify an ambiguity or expose a gap in legislation.
2. If a recognised right is at risk.
3. On account of the potential the case may have if a favourable judgement is handed down, that is, how many people will benefit from such a judgement.
4. If the case has possibilities as a leading news item for the specialised (legal) press, but also for the generalist press. In this regard, the legal team works in close cooperation with the communications team.

11. <http://www.equalityhumanrights.com/legal-and-policy/legal-strategy/>

→ What are the principal difficulties involved in strategic litigation?
How can they be overcome?

The principal difficulties include:

1. The high economic cost of bringing a case before the courts. In general, action only tends to be taken in cases under appeal, although exceptionally they may be taken up in courts of first instance.
2. The risk to have a regression in legislation if an unfavourable judgement is handed down.
3. If the facts of the case are not "attractive", there are more possibilities that the case will be judged unfavourably.

In order to confront these difficulties it is crucial to have a good strategy in place for selecting cases, as mentioned in the preceding question. Moreover, a key element is to ensure that the information is as consistent as possible. In addition, care must be taken with the media strategy, as an improper dissemination of information on the case could have a negative effect on society.

3.4. Round Table: “The Role of the Media in the Promotion of the Right to Equality and to Non-Discrimination”

3.4.1. Brief summary of the current situation

As described in the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Other Related Forms of Intolerance, the impact of the media on public perception is unquestionable. The role and transcendence of the information disseminated by the media today call for an extra dose of responsibility in its treatment and management, considering the fact that information is a fundamental right. It has been observed that greater media emphasis on a particular issue or social matter tends to awaken greater concern about that issue in public opinion; that is, media information tends to create a public agenda about what should be of concern to citizens and in the interpretation of these phenomena.

A range of studies and analyses¹² have shown how ethnic minorities are depicted negatively in the media based on a range of reporting practices (association of minorities with delinquency and crime, excessive immigration, etc.). The results of the “Panel on Discrimination Based on Racial or Ethnic Origin (2010): the Perception of the Potential Victims” and of the Report by the Network of Centres for Assisting Victims of Discrimination reveal that one of the areas in which a significant number of situations of discrimination occur and are perceived to exist is in the area of the media and the Internet. In fact, this situation has been worsening over the last few years due to the proliferation of a large number of websites or blogs where not only the intolerant speech is accepted, but in addition, racism, xenophobia and other forms of intolerance are promoted.

Over the last few years, a number of very interesting initiatives have been taken by public administrations, trade unions and organisations of civil society, such as:

- On a legislative level, the approval of Act 7/2010, of 31 March, the General Audiovisual Communications Act, for the purpose of regulating the audiovisual communications with national coverage and of establishing the basic rules for the audiovisual sector.
- The publication by the Secretary of State for Emigration and Immigration, through the General Directorate for the Integration of Immigrants and the Spanish Observatory on Racism and Xenophobia, of:
 - The reports on the “Media Treatment of Immigration” containing an objective analysis of the treatment of immigration by the media in Spain: the focus used, the textual, visual and sound treatment on radio, television and the press.
 - The publication of the “Guía Práctica para los profesionales de los medios de comunicación” (Practical Guide for Media Professionals), on the treatment of Immigration in the media, which includes recommendations for media professionals.

12. *Racism and Cultural Diversity in the Mass Media*, EUMC, 2001; Lorite García, Nicolás: *Tratamiento informativo de la inmigración en España (Media Treatment of Immigration in Spain)*, Ministry of Labour and Social Affairs.

- The publication, with the collaboration of the Directorate General for Social Policy, Families and Children of the Ministry of Health, Social Policy and Equality, of:
 - “Journalists against Racism”, by Unión Romání, in which an analysis is made of reports on the Roma population published over the year in the various national media.
 - “Practical Guide for Journalists: Equal Treatment, the Media and the Roma Community” by the Fundación Secretariado Gitano.

In addition, the use of the Internet for the dissemination of ideas and racist and xenophobic actions is a cause for the growing concern of international organisations and States. Given the evident difficulty in applying the law in this environment, the Internet is increasingly more widely used by racist and xenophobic groups for disseminating documents and mobilising actions which, otherwise, could be considered illegal. International organisations draw attention to the fact that the items of information of this kind are housed on websites and with services providers in States which put obstacles in the way of the investigation and pursuit of these actions.

The following advances have been made in this regard:

- The establishment of a Special Prosecutor on Cybercrime in all of the Public Prosecutor’s Offices. The delegated Division Prosecutor for computer crimes is responsible for coordinating the actions by the prosecutors’ offices in the exercise of criminal actions in relation to crimes committed through the Internet, by making proposals with respect to the investigation and formulation of the relevant accusation, determining appropriate criteria with respect to the investigation which the central government police and security forces and regional police corps are to carry out, seeking a configuration of protocols of action to facilitate the exercise of such actions before the courts, all with the aim of achieving the unification of criteria of action in the suppression of these criminal acts. The Special Prosecutor is also responsible for the task of liaising with the Legal Studies Centre of the Ministry of Justice for the coordination of the basic training of prosecutors in relation to the investigation of crimes committed through the Internet.
- The creation of Police services specialised in Cybercrime. The Technological Investigation Brigade and the Electronic Crime Unit are the police units set up to respond to the challenges posed by the new forms of delinquency, such as child pornography, swindling and fraud through the Internet, threats, defamatory speech and slander, including crimes of incitement to racism and xenophobia.

3.4.2. Challenges

Despite the advances made over the last few years, there are still major challenges to be met in this area, as indicated in the Fourth Report on Spain of the European Commission against Racism and Intolerance (ECRI):

- To urge the media to be aware of the need for not contributing to the creation of an atmosphere of hostility and rejection towards minority groups, by establishing a dialogue with the media in order to achieve this objective.
- To establish mechanisms of regulation for all of the mass media, compatible with the principle of media independence, which will make it possible to guarantee compliance with standards of ethics and of conduct, including the standards with respect to intolerance.
- To incorporate training in racism and xenophobia as well as knowledge of codes of conduct into the Study Plans for students of journalism.
- To establish measures for combating the dissemination of racist, xenophobic and anti-Semitic propaganda.
- To investigate crimes in the Internet.

In addition to these priorities, the following are considered to be key challenges:

- To raise awareness about the right to equality and not to suffer discrimination as well as about the problems of multiple discrimination. To reinforce the message that all individuals have the right to the same treatment, without distinctions based on sex, ethnic or racial origin, religion or beliefs, disability, age or sexual orientation.
- To facilitate and celebrate diversity and equality: by underlining the positive contribution all persons can make to society.
- To promote a more cohesive society: by increasing the importance of eliminating stereotypes, prejudice and violence, promoting good relations among all members of society, and particularly among the youth, as well as disseminating the essential values of the fight against discrimination.

3.4.3. Discussion questions

A brief summary of the main ideas given by the speakers are presented below.

Communicating and Raising Awareness of Equality: Challenges, Difficulties and Prejudices

Speaker

Juan de Dios Ramírez Heredia

Deputy Chair of the Council and President of Unión Romaní

→ In your opinion, what are the principal prejudices held by Spanish society with respect to ethnic minorities?

It would be impossible to give an exhaustive description of the prejudices existing with respect to each of the minorities living in Spain. However, it is possible to find common prejudices: on one hand, a negativity attitude towards minority groups, that is, there is a preconceived idea that the members of these groups are suspicious persons who must be watched and considered with a preventive attitude; on the other, the level of income of the person associated with a minority, that is, the poorer the person, the more intensified will the prejudice become, a factor which very much influences the degree of prejudice.

→ How do you believe such prejudices can be combated?

There are four key elements for combating these prejudices:

1. Strive to ensure an education which is inclusive and based on equality (only culture and education make peoples free) and on mutual knowledge in which the majority society can get to know the minorities and vice versa.
2. Promote self-responsibility and the autonomy of minorities: continue to empower minorities in such a way that they themselves can lead the changes.
3. Further develop the right to equality and non-discrimination.
4. Improve the effectiveness of current legislation so that those who discriminate are sanctioned appropriately.

Strategies for Raising Media Awareness: the Experience of the Portuguese Equality Body

Speaker

Vasco Miguel Geraldes Fernandes Malta

Legal Advisor, High Commission for Immigration and Intercultural Dialogue (ACIDI) of Portugal¹³

→ Could you provide us a brief description of the mission and functions of your organisation?

The ACIDI is a public institute created in 2007 and appointed directly by the Prime Minister. Its mission is to collaborate in the design, implementation and evaluation of the horizontal and sector-wide public policies, relevant for the integration of immigrants and ethnic minorities, as well as to promote dialogue among the different cultures, ethnic groups and religions. Its action is guided by 7 fundamental principles:

1. Equality: recognise and guarantee the same rights and opportunities.
2. Dialogue: promote effective communication.
3. Citizenship: promote active participation in the exercise of rights and duties.
4. Hospitality: learn how to welcome diversity.
5. Interculturality: differences enrich.
6. Proximity: shorten the distances in order to learn and provide a more adequate response to needs.
7. Initiative: pay attention and have the capacity to anticipate needs.

13. <http://www.acidi.gov.pt/>

→ Your organisation has been very active in the area of raising media awareness. Could you explain to us briefly what the strategy and the activities implemented by your organisation are?

The core of ACIDI's strategy for raising the awareness of the media has been to involve them in our projects and work *side by side* with the sector from the perspective that the media are opinion makers and therefore can be a discriminating agent, but also a key agent for combating discrimination. In this context, a set of initiatives has been developed and has been very well received:

1. An hour-long television programme called "us" which is broadcast Sundays at 10pm. A topic is chosen each week in relation to the different cultures living in Portugal and is addressed from a positive perspective.
2. A 30-minute radio programme broadcast every Saturday at 1pm with a similar approach to that of the television programme, but taking care to ensure that the weekly subject matter is not the same.
3. A journalism prize with an awards presentation ceremony.
4. Day-long training meetings on how to treat information on immigration and on immigrants, with the aim of avoiding the dissemination of stereotypes in the media (to date, 100 journalists have taken these courses).
5. Database of immigrants, who are experts on a range of subjects and are available for being interviewed by the media in order to verify certain news items. For example, a Ukrainian nuclear researcher is included on this list.

→ What are the principal difficulties you have encountered in raising media awareness? What recommendations would you make to the organisations interested in working on this aspect?

The two principal difficulties encountered have been:

1. The need to devote significant economic resources, although the European Union is a source of funding to be explored.
2. Breaking the stereotypes of the journalists, to which a large part of the effort was devoted, particularly at the start.

The key for working with the media is to find attractive information for supplementing the information they look for, focusing our efforts on providing data and persons who contribute a positive vision.

How Can an Equality Body Address the Discourse of Cyber Hate?

Speaker

Suzette Bronkhorst

Member of the Executive Board of Meldpunt Discriminatie Internet (MDI)¹⁴
and First Secretary of the International Network against Cyber Hate¹⁵ (INACH)

→ Could you give us a brief description of the mission of Meldpunt Discriminatie Internet and INACH?

MDI is a Dutch organisation founded in 1997. It is a service which deals with complaints of discrimination affecting Dutch society (it does not deal with complaints affecting specific persons; when complaints of this kind are received, they are referred to the most appropriate service in each case). When complaints are received, they are investigated and, if found to be discriminatory, the organisation asks the owner of the website or its moderator to remove the content (95% of the requests made by MDI obtain a positive result). If material is not removed, the MDI considers what further steps to take. This can be filing charges with the appropriate public prosecutor's office, although this is done on a strategic basis and depending on the case, as this is a long process, 2 years on average. Seeking publicity "naming and shaming" might also be an effective strategy. This is always used as a last resort. MDI also organises training courses for media moderators including, among others, the country's major newspapers. This has given rise to a handbook on how to moderate a website. Finally, the organisation also produces publications on specific issues, for example, "The Dutch Extremist Right in the Internet".

INACH is an association comprised by organisations from 19 countries whose mission is to combat discrimination in the Internet. Its principal activities include:

1. Cooperate in the settlement of cases of transnational discrimination.
2. Provide training.
3. Cooperate and share experiences.
4. Negotiate and dialogue with the leading companies: Facebook and Google.
5. Place cyber hate on the international political agenda.

14. <http://www.meldpunt.nl/>

15. <http://www.inach.net/>



Could you provide a general overview of cyber hate in Europe? How do you measure this issue?

As each different country has different laws concerning cyber hate, and some have virtually none, every member has different methods to get materials removed. However all members do participate in a registry system to record their work. INACH has their own, universal definition of cyber hate and members do mark in the system whether material is illegal or not in their country.

To give an example, in the case of the Netherlands, in 2010, MDI registered 1,174 complaints concerning 1,572 expressions of hate speech in relation to:

- Anti-Semitism, the reason for the largest number of complaints (414, including the negation of the holocaust).
- The second group of most frequent complaints is related to anti-Muslim sentiment (276).

The greatest problem encountered by MDI and INACH is that a large part of the servers of these websites are housed in countries where the legislation on freedom of speech is extremely broad. For this reason, work is in progress on a change of focus to determine the action to be taken, depending not on the location of the server, but rather on the place where the contents are being loaded.

Of the total number of complaints, 684 were classified as punishable by Law. It is significant that the majority were lodged through interactive websites (forums, social networks, etc.) and that hate speech combined with instigation to violence has increased. In 2007, MDI registered only 88 complaints of this kind, while in 2010 there were 234. When analysing what is occurring in other countries, this fact is of very high concern and enables us to conclude that the general atmosphere in the Internet is increasingly more violent. Moreover, MDI has observed that hate speech is no longer a prerogative of extremist sites, but rather is penetrating the discourse of politicians and opinion makers, a particularly alarming development, considering that the support to non-discrimination is at stake.

In Germany, the INACH member has found that the number of extremist websites has decreased from 1,872 in 2009 to 1,708 in 2010, however, the neo-Nazi groups in the Internet have increased their presence (there are 58 new websites aimed at young people, with the objective of capturing new members). In France, the number of complaints increased from 700 in 2009 to 1,300 in 2010. The legal department of the International League against Racism and Anti-Semitism (LICRA) dealt with 531 cases and was successful in having contents removed in 164. However, the scarcity of resources has meant that the organisation still has 749 cases pending review. In France, the lack of commitment on the part of Internet providers to implement effective systems for hate speech complaints is something to be concerned about. The INACH website can be consulted for information on other countries.

➔ From your perspective, what is the most appropriate way to combat cyber hate: the judicial system or extrajudicial action?

The extrajudicial strategies tend to be the most effective; nevertheless, it is important to maintain the legal perspective because it helps to convey the message that hate speech is punishable by Law. The problem of the legal perspective is the scope of freedom of speech which tends to be very broad, particularly in the case of websites, blogs, social networks, etc. located in the United States, where the freedom of speech has a very high degree of protection.

In the long run the judicial system is not the solution. It's better to prevent than to cure. Therefore the members of INACH, both as a network and as individual organizations work on education. Specially for youth, media awareness training should be part of school curricula, so people can find their way through the massive amount of unfiltered (and sometimes fact free) information on the Internet.

➔ What key recommendations would you make to the organisations combating cyber hate?

There are three recommendations I would make to these organisations:

1. Devote sufficient resources to becoming familiar with and documenting the situation of cyber hate in each country.
2. Seek advice from others with more experience in this field, such as the organisations belonging to INACH.
3. Further international cooperation, because cyber hate is very well organised and globalised and, therefore, it is important to call for action on the same level.

4. Conclusions and Colloquium

As an outcome of these talks, the key ideas arising from the discussions, as well as the challenges associated with them, are highlighted below.

As the **main idea**, there was a generalised consensus among all of the participants (speakers and attendees) in that a stronger impetus and political commitment are necessary in order to provide Spain with legislation and public policies capable of adequately ensuring respect for the right to equality and non-discrimination. Similarly, it is crucial for the key players to act more strategically, that is, in a more coordinated, comprehensive and specialised manner.

With respect to **the opening speech, "Equality Bodies in Europe"**, the importance of equality bodies for guaranteeing the effective implementation of legislation was stressed. In this context, to be efficient, these bodies must meet certain conditions: have strong legal bases, be independent, have sufficient funding and resources, have trained and specialised human resources and leaders and be visible. They should have the capacity to provide comprehensive assistance to victims, without overlooking their function of influencing legislation, public policies and public opinion.

With respect to the **"Overview of Discrimination and Trends" round table**, it was evidenced that discrimination, hate, racism and intolerance are increasing and adopting new forms. Of particular concern are the hate and discrimination offences, which require legislation and public policies more in consonance with the seriousness of this kind of crime and the development of protocols of action in the Justice Administration and in the Police and Security Forces, to establish a more specialised and effective framework of assistance and at the same time enable the preparation of comparative annual reports. These protocols have become especially necessary in order to avoid situations where the identifications made by the police would have a racial profile. Finally, it was considered very important that the authorities should take into account the fact that a good number of persons of immigrant origin are now Spanish citizens, when designing and implementing public strategies and policies.

During **"The Legal Perspective" round table**, particular emphasis was given to the fact that the current anti-discrimination legislation is not efficient: on the one hand, it does not reflect the reality of discrimination and, on the other, it is not applied adequately, primarily because the legal operators are not aware of it or do not have appropriate training. It is therefore necessary to reform current legislation, and a good mechanism would be the approval of the Draft Comprehensive Law for Equal Treatment and Non-Discrimination, which was introduced in Parliament on 27 May of this year. However, until this occurs, it is important for legal operators to improve their knowledge of the mechanisms and legal tools available to them in order to deal with discrimination.

During **the round table on "Assistance to Victims of Discrimination"**, concern was expressed regarding the tendency of victims to fail to report situations of discrimination, thereby rendering this phenomenon invisible to society. Distrust of the Justice Administration or the belief that it will not serve to change things rank among the principal causes. In this context, it appeared crucial to address two key problems: the empower-

ment of the victims to report, in such a way that the situations of discrimination can become visible, and the improvement of the assistance provided to victims throughout the entire process (information, assessment, assistance, reporting, extrajudicial settlement, litigation, etc.). Finally, it was highlighted that racism could potentially be decreased with a more adequate and positive management of diversity in society.

Finally, in the round table discussion on “The Role of the Media in the Promotion of the Right to Equality and Non-Discrimination”, the key role that education plays in the development and grass-root prejudices and stereotypes in society was addressed. In fact, education was considered as one of the primary environments where action should be taken as a way to prevent discrimination, hate, racism and intolerance: an education in values and based in the respect for rights is essential in a democratic State based on the principle of and the right to equality. In addition, it was considered crucial to involve opinion makers, including the media, political parties and social networks in order to prevent discriminatory or hate speech from being propagated and multiplied. Finally, it was stressed that if hate is disseminated by global media and tools, global solutions based on international cooperation are necessary, particularly in cases associated with cyber hate.

On the basis of these conclusions, the President of the Council opened a discussion with representatives of institutions and organisations which are key to the fight against discrimination, to whom he addressed the following question:

→ Taking into account these conclusions, what do you feel are the short-term priorities of the Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin?

Maika Sánchez

Spanish Red Cross

As a priority, the Council should:

- Continue to prepare and publish statistics, reports and investigations on equality and non-discrimination on a regular basis.
- Continue to be plural in its composition and intervention.
- Become a platform of training on issues relating to equality and non-discrimination.
- Give impetus to activities furthering transnational and interregional work.
- Carry out initiatives to empower the most vulnerable persons to make use of their rights appropriately.

Pilar Roc

General Workers' Union

As a priority, the Council should:

- Reinforce and develop its structure and work plan. For this purpose the Council would need to broaden its powers so that it can have a more holistic framework of action, enabling it to address all of the grounds of discrimination.
- Make itself more visible in society, in such a way as to enable it to reinforce its capacity to react to discriminatory public events.

Ignacio Sola Barleycorn,

Deputy Director General for Equal Treatment and Non-Discrimination,
Directorate General for Equality in Employment and against Discrimination,
Ministry of Health, Social Policy and Equality

As a priority, the Council should:

- Call for the approval of the Draft Comprehensive Law for Equal Treatment and Non-Discrimination.
- Become a reference organisation that engages closely with and supports key stakeholders and people that have been discriminated against.
- Become a platform of training on issues relating to equality and non- discrimination.

Nicolás Marugán

Director of the Spanish Observatory on Racism and Xenophobia (Oberaxe),
Directorate General for the Integration of Immigrants (Ministry of Labour
and Immigration)

As a priority, the Council should:

- Call for the approval of the Draft Comprehensive Law for Equal Treatment and Non-Discrimination.
- Give impetus to strategies of communication and awareness-raising on rights and duties.
- Reinforce the Network of Centres for Assisting Victims of Discrimination.
- Strengthen the relations with key institutions and organisations on all levels (international, European, national, regional and local).

Miguel Callejo

Movement against Intolerance

As a priority, the Council should:

- Include the perspective of hate crime in its work plan and activities.
- Demand the approval of the Draft Comprehensive Law for Equal Treatment and Non-Discrimination and the amendment of the Penal Code to adapt it to the Council Framework Decision 2008 (913)JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law.
- Continue supporting, reinforcing and expanding the Network of Centres for Assisting Victims of Discrimination to enable it to provide comprehensive counselling and assistance.
- Broaden its powers to be able to litigate strategically.

5. Recommended Reading

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COUNCIL FOR THE PROMOTION
OF EQUAL TREATMENT AND
NON-DISCRIMINATION ON THE GROUNDS
OF RACIAL OR ETHNIC ORIGIN



GOVERNMENT
OF SPAIN

MINISTRY
OF HEALTH, SOCIAL POLICY
AND EQUALITY

SECRETARIAT
OF STATE
FOR EQUALITY

DIRECTORATE GENERAL
FOR EQUALITY IN
EMPLOYMENT AND AGAINST
DISCRIMINATION