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The Common Market Law Review is designed to function as a medium for the understanding and implementation of Community Law within the Member States and elsewhere, and for the dissemination of legal thinking on Community Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Authors are requested to submit two copies of their manuscript, typed and double spaced, together with a summary of the contents. Manuscripts may range from 3,000 words (case notes) to 9,000 words (articles) or approximately 25 pages. The title of an article should begin with a word useful in indexing and information retrieval. Short titles are invited for use as running heads. All notes should be numbered in sequential order, as cited in the text.

The author should submit biographical data, including his or her current affiliation.

Bjørn Jacobsen, *Assistance to Victims of Discrimination by Equality Bodies of the EU Member States*. Copenhagen: Djøf Publishing, 2010. 372 pages. ISBN: 9788757421569. DKK 500.

Article 13(1) of Directive 2000/43/EC provides that Member States shall “designate a body or bodies for the promotion of equal treatment of all persons without discrimination on grounds of racial or ethnic origin”. Furthermore, Article 13(2) of the Directive prescribes that “Member States shall ensure that the competences of these bodies include: (1) without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination; (2) conducting independent surveys concerning discrimination; (3) publishing independent reports and making recommendations on any issue relating to such discrimination”. In 2002, this was followed by a similar provision as regards sex discrimination (Art. 8a(2) of the Amended Equal Treatment Directive 2002/73/EC, later incorporated in Art. 20 of the Recast Directive 2006/54/EC, and Art. 12 of the Gender Goods and Services Directive 2004/113/EC.) On this basis, EU Member States have designed and installed a variety of institutions which are entrusted with the task to enhance the effective implementation of equal treatment legislation at the national level. (An overview of existing equality bodies can be found at <[www.equineteurope.org](http://www.equineteurope.org)>.)

Since the relevant provisions of EU Directives do not prescribe in a detailed manner how such equality bodies should be structured, or how they should function (e.g. in terms of their tasks or their legal and financial independence), it remained and remains unclear how these provisions should be implemented correctly by the Member States. It appears that as far as the task of “assistance of victims in pursuing their complaints about discrimination” is concerned, in practice there are several “models”: some equality bodies concentrate on giving legal guidance and support to victims, some function as an “ombud”, and some function in a quasi-judicial way, i.e. they give binding or non-binding “judgments” or “opinions” about the discriminatory or non-discriminatory nature of particular contested actions, behaviour or rules. In his book, Jacobsen has investigated how equality bodies function in practice in three Scandinavian countries (Denmark, Norway and Sweden). On the basis of this research, he has written

a PhD thesis, successfully defended at the University of Copenhagen in February 2009. Jacobsen has chosen to concentrate on one particular problematic issue: is it possible/desirable to combine two possible tasks of such bodies: (1) to support or assist victims of discrimination and (2) to investigate individual claims of discrimination? Is an equality body that has the task to support or assist victims able also, independently and in an impartial way, to investigate complaints about discrimination? In some Member States, this seems possible, but there are also examples of a contrary position. In the Netherlands, for instance, there is a common understanding that this combination of functions is not possible; for that reason, the Dutch Equal Treatment Commission, which hears complaints about violations of the equal treatment legislation, does not support or assist victims of discrimination. This particular function is performed by another national organization, called "Art. 1", which in turn supports local Anti Discrimination Bureaus. In relation to his main question, Jacobsen describes and analyses three different aspects of the functioning of Scandinavian equality bodies: the impartiality issue; the necessary investigatory powers of equality bodies; and the rules concerning the burden of proof. The objective of the book is to "clarify the law in this field and to give guidance on how these functions may be combined so that assistance to victims of discrimination is provided effectively"(p. 22).

Jacobsen's question is urgent since many Member States are struggling with the question how to implement these provisions of the equal treatment directives. At first sight, a combination of the two functions (support of victims and hearing complaints) might undermine the necessary confidence or trust that both the victims and the (presumed!) perpetrators (or suspects) of discrimination need to have that the body hearing and investigating their case is absolutely impartial and not prejudiced in any way. An institution that has the official task to combat discrimination, to promote equality and to support victims does not have the necessary appearance of absolute impartiality and therefore should not hear and investigate individual complaints.

On an abstract or theoretical level, one could say that any institution that in an impartial way investigates complaints of discrimination, while using sufficient investigating powers and while applying the EU standards as regards the (partially shifted) burden of proof, is indeed supportive of victims of discrimination. Such an abstract conclusion also goes for the national court system that deals with civil law, criminal law or administrative law cases concerning (alleged) discrimination. When victims in general can count on a correct, independent and thorough investigation of their case, and where a low threshold or low cost institution is available for that, this will support the effective implementation of the principle of equal treatment. Jacobsen in his final conclusion, tends to interpret the relevant directives in this way, where he states that "hearing and investigating complaints is, in itself, a means of assisting victims" (p. 331).

This abstract kind of support, however, in my view is not what is meant by the directives' phrase "assisting victims of discrimination". In that context, concrete victims and concrete instances of discrimination are meant. Assistance in that context means to support the victim in order to make the discrimination stop or to get effective and dissuasive compensation or sanctions for the perpetrator. I agree with Jacobsen (p. 331) that the Directive does not prescribe that the equality body should act as the victims' "advocate" or should be able to represent him/her in court proceedings. There are many ways of providing support or assistance. Although it may be true that in the Scandinavian countries equality bodies have proven to be able to perform this double function without jeopardizing their impartiality, I do continue to see the problematic aspects of this combination. This is even more so when the equality body is able to give binding decisions or to impose sanctions, i.e. acts as a quasi judicial organization, which is one of the recommendations of the author (p. 332). Jacobsen acknowledges that there is a great risk that the "accused" will not accept the outcome of the procedure when an equality body combines several tasks (i.e. supporting victims, promoting equality, conducting surveys and giving advice about the implementation of the equality principle), but in my view

he too easily sets aside this objection in favour of a plea for continuing this double function. Although indeed an informal, easy accessible and cost-free procedure before a “complaints committee” or “ombud” may be desirable in terms of improving the effectiveness of the equal treatment legislation, there is no law (also not at the EU level) that prescribes that this function needs to be combined with other functions, such as e.g. giving information to victims about their legal rights, supporting them to formulate and issue a complaint, investigating structural patterns of discrimination, giving advice about non-discrimination legislation, etc. In other words: the relevant Directives do not prescribe that Member States should have only one equality body that performs all of these functions at the same time. Therefore, although the book offers a lot of interesting material as regards the issues of impartiality, the necessary investigating powers and the burden of proof, it does not, in my view, convincingly argue in favour of such a combination of powers and tasks of equality bodies.

Rikki Holtmaat  
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