

Functional Effectiveness of Georgia's Equality Body: A Legal Assessment of EU Anti-Discrimination Standards and Comparative Good Practice

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LLM in Human Rights Final Thesis

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Vienna, 14 June 2025

Gvantsa Peradze

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Abstract

This study explores the functional effectiveness of Georgia's Public Defender as the designated national equality body under the 2014 Law on the Elimination of All Forms of Discrimination. While the adoption of this law illustrated Georgia's formal commitment to equality, the institutional and legal mechanisms established under the framework remain limited in practice. The thesis examines whether the current mandate and enforcement capacity of the Public Defender meet the normative requirements set out under the EU anti-discrimination directives and assess how these standards can further strengthen Georgia's legal framework to achieve substantial equality.

Using a doctrinal legal methodology, the research analyzes the relevant EU directives, Council of Europe recommendations and national legislation. This review is further developed with a comparative examination of institutional models and operational practices of equality bodies in the EU member states. Particular attention is given to the legal competences related to strategic litigation, binding decision-making authority and the existence of statutory follow-up mechanisms.

The study concludes that improving the Georgian equality body's legal mandate is essential for ensuring effective access to justice for victims of discrimination. Strengthening these aspects is not only vital for fulfilling Georgia's constitutional obligation to ensure equal protection under the law but also for reinforcing the institutional credibility and deterrent function of its national anti-discrimination framework.

Introduction

The principle of non-discrimination is a governing rule enshrined in the various international instruments. It is only natural that the promotion of equality and respect for human rights presents one of the core priorities for the European Union (EU). Consequently, as a result of the developments in the past decades, the EU has established strong legal framework for anti-discrimination and equality bodies. The EU's Anti-Discrimination Directives, such as Directive (EU) 2024/1499² and Directive (EU) 2024/1500³ require member states to adopt specific and concrete measures to establish and ensure the independence of equality bodies and guarantee their effectiveness in combatting discrimination and promoting equality.⁴ These bodies must provide independent assistance to victims, ensure oversight, conduct surveys about discrimination, publish reports and make recommendations.

Most member states have implemented this requirement, either by designating an existing institution with additional mandate or by setting up a new body to carry out these roles. As Kadar notes:

“Consequently, some states have set up equality bodies with a mandate that appears to lack some important tools in order to be effective. This is the case where equality bodies have no power to provide legal assistance other than basic advice on the applicable legislation and avenues of remedy available, or where the decisions of adjudicatory bodies are not legally binding or they are not mandated to apply sanctions in discrimination cases...Some

² Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC [2024] OJ L 1499/1.

³ Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU [2024] OJ L 1500/1.

⁴ Equal Rights Trust, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (Equinet 2024) 5.

of these models raise questions about the ability of the equality body to effectively fulfil its mandate.”⁵

Therefore, according to Kadar, the assessment of whether equality body is proactively combating discrimination, mainly depends on the delegated mandate and enforcement capacity.

In the wake of Georgia’s efforts to align with the EU standards, adopting the 2014 Anti-Discrimination Law marked a critical step forward. Given Georgia’s aspirations to strengthen the relations with the EU, state’s primary aim is to further develop its legal system and policy in accordance with the EU standards. The enactment of law was a part of Georgia’s obligations under the EU-Georgia Association Agreement, which represented the state’s commitment to fostering equality and combating discrimination. Despite this progress, translating these legal provisions into adequate protections for individuals remains an issue, given that the effectiveness of this law has been questioned due to the limited mandate delegated to the Ombudsman.⁶

Generally, the equality bodies have successfully demonstrated their capability of preventing, monitoring and supporting victims of discrimination at the national level. Nonetheless, all equality bodies must be given adequate tools, powers and conditions to do so to the best of their abilities.⁷

In Georgia’s case, the Law of Georgia on the Elimination of All Forms of Discrimination provides the provisions governing Georgia’s equality body, the Public Defender’s Office. As outlined in the law, the Ombudsman has the authority to review applications, examine cases of discrimination on the basis of complaint, as well as *ex officio* and issue relevant recommendations, attempt to resolve the case through amicable settlement, carry out measures to raise public awareness, etc.⁸ However, since the Public Defender lacks the assertive tools at its disposal, this limited mandate

⁵ Tamás Kádár, ‘Equality Bodies: A European Phenomenon’ (2018) 18 *International Journal of Discrimination and the Law* 144, 151.

⁶ Transparency International Georgia, ‘New Anti-Discrimination Law: Challenges and Achievements’ (17 June 2014) < <https://www.transparency.ge/en/blog/new-anti-discrimination-law-challenges-and-achievements> > accessed 10 February 2025.

⁷ Jone Elizondo-Urrestarazu, ‘Equality Bodies: New Standards, New Challenges’ (2023) 9 *IgualdadES* 245, 252.

⁸ Law of Georgia on the Elimination of All Forms of Discrimination 2014, art 6.

might undermine public trust in the state's commitment to combating discrimination, as the existing framework risks being perceived as symbolic rather than substantive.⁹

Therefore, the core issue of the research lies in the question of whether the equality mandate of Georgia's Public Defender aligns with the EU anti-discrimination standards, and if not, what developments could strengthen its role on the examples of selected EU member state practice. To address this overarching question, firstly, the research will explore to what extent does the Georgian framework meet the provisions set out in the EU directives for equality bodies and outline the key limitations. Additionally, thesis will highlight the practices from the institutional models of equality bodies in the selected EU member states and based on that, emphasize the developments which could enhance Ombudsman's mandate.

To achieve these objectives, the research will adopt a doctrinal legal analysis combined with a comparative approach. Initially, critical part of the analysis will focus on the article-by-article analysis of the relevant EU directives, focusing on core provisions for equality bodies governing mandate, role powers of investigation and enforcement capacity. This legal framework will be systematically compared with the legal status and institutional practice of Public Defender's Office as Georgia's designated equality body with the aim of identifying normative or operational gaps.

Consequently, the thesis adopts a doctrinal legal method combined with comparative analysis to assess the legal and functional alignment of the Public Defender's Office and using examples from institutional models in several EU states to highlight reform pathways that could enhance compliance with EU standards and improve effectiveness.

⁹ Transparency International Georgia, 'New Anti-Discrimination Law: Challenges and Achievements' (17 June 2014) < <https://www.transparency.ge/en/blog/new-anti-discrimination-law-challenges-and-achievements> > accessed 10 February 2025.

Defining Effectiveness

As Nikolaidis argues, on the one hand, formal equality ensures the fair and impartial application of other rights by protecting individuals from arbitrary or irrational differential treatment. On the other hand, substantive equality goes further, upholding the inherent dignity and autonomy of individuals by requiring freedom from social oppression, including prejudice, stereotyping and the failure to accommodate difference.¹⁰

Fredman similarly asserts that, formal compliance is insufficient for the realization of the right to equality. She proposes a four-dimensional model of substantive equality, including redressing disadvantage, addressing stigma and prejudice, enhancing participation and accommodating difference, as necessary factors to evaluate institutional effectiveness in practice.¹¹ Therefore, Fredman highlights that the capacity to redress violations is one of the core pillars on which substantive equality depends. Thus, legal powers that enable active enforcement and redress, such as strategic litigation, are critical to achieve this goal. In Georgia's context of limited enforcement culture and passive institutional follow-up, what Fredman terms a "substantive" model of equality is only possible if equality bodies have real functional tools capable of addressing both structural inequality and individual harm.

In this regard, Kádár emphasizes that for an equality body to function effectively, it must be equipped with powers that enable it to address all dimension of its mandate. These may include the ability to advise and collaborate with duty-bearers, carry out or commission research, issue recommendation to policymakers, engage in public communication and awareness-raising, conduct general inquiries and investigate individual discrimination cases. Depending on the

¹⁰ Charilaos Nikolaidis, *The Right to Equality in European Human Rights Law: The Quest for Substance in the Jurisprudence of the European Courts* (1st edn, Routledge 2014) 33.

¹¹ Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 *International Journal of Constitutional Law* 712, 713.

institutional model, additional powers may involve offering legal assistance, initiating court proceedings, issuing findings of binding decisions and applying sanctions in response to discriminatory practices.¹²

The provisions of the EU Equality Directives, emphasize on the importance of the independence and the effectiveness of equality bodies to strengthen the application of the principle of equal treatment. Even though the “effectiveness” is not defined, taking the directives as a whole, the principle of effectiveness can be understood to include four dimensions. Particularly, agency and autonomy dimension, resource dimension, functional dimension and accessibility dimension. These dimensions reflect both structural conditions and operational capacities.¹³

This thesis focuses specifically on functional effectiveness, which refers to the equality body’s capacity to deploy its mandate proactively through investigatory powers, litigation and decision-making functions. These competences are not merely procedural, they are essential mechanisms through which equality bodies fulfil their objectives. As echoed in institutional standards, equality bodies must be empowered to promote equality, prevent discrimination, support access to justice and manage complaints to have real impact. Their effectiveness in doing so depends not only on possessing these powers on paper, but also on their legal authority to use them independently and assertively.¹⁴

Moreover, academic literature further reinforces that substantive equality goes beyond formal neutrality and requires institutional efforts which challenges the symmetrical, one-size-fits-all approach of formal equality and instead emphasized the role of laws, policies and institutional

¹² Tamás Kádár, ‘Equality Bodies: A European Phenomenon’ (2018) 18 *International Journal of Discrimination and the Law* 144, 154.

¹³ Equal Rights Trust, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (Equinet 2024) 19.

¹⁴ Ibid.

action in pursuing transformative social change.¹⁵ Accordingly, equality bodies must not merely exist as advisory institutions but must be equipped with relevant tools to ensure enforcement and structural change. From this perspective, functional effectiveness becomes the central lens for this research, it refers to an equality body's capacity to use its legal competences proactively to enforce anti-discrimination norms, redress individual and structural harm and enable victims to access justice. This understanding aligns with the objectives of EU anti-discrimination framework and Georgia's commitments to harmonization.

While broader institutional context, including accessibility, independence and resources are also important, this thesis narrows its analysis to mandate-related effectiveness, specifically legal competences, structural design and enforcement tools, given their central role in achieving substantive equality and fulfilling EU legal standards. The exclusion of resourcing is a deliberate methodological decision aimed at analytical clarity.

Importantly, this focus is shaped by the Georgian context, where the Public Defender operates within a broader culture of weak enforcement and limited follow-up. Academic literature on equality bodies emphasizes that ability of equality bodies to effectively fulfill their role differs considerably not only based on the scope of their mandate and functions but also on their capacity to implement them in practice.¹⁶ This means that functional powers are necessary but not always sufficient, as their effectiveness depends on how they are designed, exercised and embedded. In this sense, the choice to prioritize functional effectiveness reflects both a normative commitment

¹⁵ Mark Bell, 'Walking in the Same Direction? The Contribution of the European Social Charter and the European Union to Combating Discrimination' in Gráinne de Búrca and Bruno de Witte (eds), *Social Rights in Europe* (OUP 2005) 261, 268.

¹⁶ European Commission, *Commission Staff Working Document: Equality Bodies and the Implementation of the Commission Recommendation on Standards for Equality Bodies, Accompanying the Document: Report from the Commission to the European Parliament and Council on the Application of Council Directive 2000/43/EC and Council Directive 2000/78/EC* SWD (2021) 63 final.

to substantive equality and a practical judgment about what matters most in Georgia's current legal landscape.

Consequently, while defining the "effectiveness" in the thesis, the research supports the approach of the statement: "Effectiveness requires that (equality bodies) are able to deploy all their functions and powers to a scale and a standard that ensures impact and the full realization of their potential. The level of resources made available to the bodies and the functions accorded to them are key factors for Effectiveness."¹⁷ Therefore, for the purposes of this thesis, the effectiveness is defined as the ability of an equality body to proactively enforce anti-discrimination legislation, providing individuals with real safeguards against violations.

Methodology

The study will adopt a doctrinal legal methodology, combining a comparative and critical analysis approach. This involves a comprehensive examination of Georgia's Anti-Discrimination Law, including its drafting history and key provisions to assess the challenges and gaps in the current system. This will be analyzed in light of the EU Directives, and Council of Europe recommendations to establish the legal standards for effective equality bodies. Particularly putting emphasis on the provisions concerning the enforcement of non-binding recommendations and litigation functions. A critical aspect that will be the primary focus of my research is the provisions regarding the Ombudsman's mandate concerning access to justice and the availability of effective remedies for victims, since examination of the EU Directives reveals gaps that undermine the effective fight against discrimination in Georgia.

¹⁷ Council of Europe, *General Policy Recommendation No 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)* (7 December 2017) 12.

To identify effective mechanisms and best practices, the research uses a targeted comparative approach. Rather than an exhaustive mapping of EU equality body models, the comparative method is used to identify institutional practices from selected EU member states that reflect evolving understandings of effectiveness, allowing the research to address the "what works" question.

Criteria for the selection of EU states will be based on two factors. Firstly, the institutional relevance of equality bodies, states were chosen to reflect structural diversity, referring to whether the equality body follows a promotion-type, dual-body etc. model. This is important given that Georgia currently adopts a promotion-type, ombuds-institution model. The variation allows for a comparative assessment of how different institutional models impact mandate-related effectiveness, including the delivery of substantial equality. Secondly, the states were also selected based on the demonstrated effectiveness in implementing anti-discrimination mandates, including follow-up and enforcement mechanisms, litigation capacities and positive assessments by Equinet or academic literature. The inclusion of the selected state practices supports the normative alignment approach of the thesis. The selected examples illustrate how broad legal mandates and procedural mechanisms can advance institutional effectiveness.

Notably, while some states are discussed in greater depth, this reflects their functional relevance to Georgia's context, particularly where lessons relate directly to enforcement powers or litigation functions. Other states are referenced more briefly to highlight specific mechanisms or contrasts. This thematic organization is intended to support the central research question.

While independence and resource constraints are recognized as significant factors in institutional performance, they fall outside the primary focus of this research. For the reasons of analytical precision, the thesis concentrates specifically on mandate-related dimensions of equality bodies,

namely, legal powers, procedural tools and institutional design, as key factors for effectiveness. Therefore, while the comparative analysis draws on the EU member states to mark the best practices, it does not aim to offer an exhaustive review of all models across the EU. Instead, examples were chosen based on their functional relevance and institutional clarity. The comparative analysis draws on a range of sources, including national legislation, institutional reports (such as annual reviews and strategic plans), academic literature and evaluations by bodies such as Equinet and the Fundamental Rights Agency (FRA). By comparing these models with the Georgian framework, the aim is to go beyond comparative degree and draw practical lessons from countries that have faced and tackled similar challenges to identify relevant practices that could strengthen the Public Defender's mandate.

This thesis is structured into four main chapters, initially, first chapter outlines the legal framework of the EU concerning anti-discrimination with the emphasis on the requirements imposed by the EU Equality Directives and soft law instruments regarding the role and powers of national equality bodies. Additionally, second chapter provides an overview of the Georgian legal and institutional framework for non-discrimination through the analysis of Anti-Discrimination Law and established practice. Building onto the European standards and comparative practices discussed in previous chapters, third chapter critically assesses the Georgian Public Defender's Office in its function as an equality body. The examination mainly covers the Ombudsman's mandate, enforcement powers and litigation capacity in reference to the core standards elaborated by the EU Directives, relevant recommendations and academic materials. Through this analysis, the chapter highlights structural strengths and weaknesses of anti-discrimination protection in Georgia. Finally, fourth chapter will propose examples of good practice established by the EU member states and consider possible developments for further enhancements in Georgian framework.

EU Standards and Guidelines Governing Anti-Discrimination Framework

The right to non-discrimination has been one of the core principles of international law since drafting of first soft law human rights instrument. In particular, the Universal Declaration of Human Rights (UDHR) outlines the importance of equal protection against any discrimination. Later, similar provisions regarding equal treatment were enshrined in binding international documents such as International Covenant on Civil and Political Rights (ICCPR),¹⁸ International Covenant on Social and Cultural Rights (ICSCR).¹⁹ On the regional level, concretely in the EU, the principle of non-discrimination is protected through the provisions of the European Convention on Human Rights (ECHR).²⁰ Moreover, scope of protection against discrimination has been extended to cover “any right set forth by law”.²¹

Beyond these instruments, the Council of Europe (CoE) has played a significant role in shaping anti-discrimination framework. In particular, the European Commission against Racism and Intolerance (ECRI) has issued policy recommendations urging states to establish strong and independent equality bodies. Concretely, in 1997, ECRI advocated for the establishment of equality bodies through its original General Policy Recommendation, which until this day remains one of the core documents for the constructive discussions between ECRI and CoE member states.²²

It must be noted that, equality bodies are independent statutory bodies established to protect from discrimination and promote equality. Their main objective is to implement equal treatment

¹⁸ UN General Assembly, *International Covenant on Civil and Political Rights* (16 December 1966) 999 UNTS 171, art 3.

¹⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (16 December 1966) 993 UNTS 3, art 3.

²⁰ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art 14.

²¹ Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 2000, entered into force 1 April 2005) ETS No 177, art 1.

²² Jone Elizondo-Urrestarazu, ‘Equality Bodies: New Standards, New Challenges’ (2023) 9 *IgualdadES* 245, 254.

legislation.²³ They vary in their history, legal basis, structure, mandate and functions. In the beginning, the equality bodies were established in the 1960s and 1970s to guarantee protection against discrimination.²⁴ However, it was not until the adoption of the two EU anti-discrimination directives, which marked a milestone of first internationally binding standards for equality bodies, to design a uniform framework for protection against discrimination for all individuals across member states.²⁵ Initially, the EU Race Equality Directive introduced an obligation for all member states to designate bodies for the promotion of equal treatment on the ground of racial or ethnic origin.²⁶ The minimum requirements for these bodies included providing independent assistance to victims of discrimination, conducting independent surveys concerning discrimination, publishing reports and making recommendations.²⁷ Then, the EU Gender Equality Directives established similar obligation of appointing equality bodies for the ground of sex. There have been no international or regional legislation whatsoever obliging member states to set up equality bodies.²⁸

However, it is evident, that the EU directives allows member states wide margin of discretion since it establishes minimum requirements for the institutional arrangements allowing equality bodies to be adapted to the national contexts.²⁹ Number of equality bodies are vested with additional functions, including the authority to initiate or support legal proceedings and to issue legally binding decisions. Consequently, the diversity in these powers across member states has

²³ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 7.

²⁴ Tamás Kádár, 'Equality Bodies: A European Phenomenon' (2018) 18 *International Journal of Discrimination and the Law* 144, 145.

²⁵ Jone Elizondo-Urrestarazu, 'Equality Bodies: New Standards, New Challenges' (2023) 9 *IgualdadES* 245, 257.

²⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22, art 13.

²⁷ *Ibid.* art 13(2).

²⁸ Tamás Kádár, 'Equality Bodies: A European Phenomenon' (2018) 18 *International Journal of Discrimination and the Law* 144, 146.

²⁹ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 8.

contributed to inconsistent levels of protection against discrimination within the EU, which will be later discussed in further chapters of the thesis.³⁰

ECRI in the revised General Policy Recommendation No. 2 (2017) provided first detailed guidance on standards for equality bodies, including 41 key recommendation and an explanatory memorandum offering further clarification and context. Less than a year later, the Commission issued a recommendation aiming to enhance the independence and effectiveness of equality bodies, however, recognizing that its non-binding nature led to only partial implementation, the Commission later proposed legally binding measures, which resulted in proposals for two directives on standards for equality bodies.³¹ Therefore, while not legally binding, these recommendations served as authoritative soft law guidance. It must be further noted that, ECRI standards often operate in parallel with the minimum requirements established by the EU directives. Subsequently, the two directives: Directive (EU) 2024/1499 and Directive (EU) 2024/1500 amend earlier directives mentioned above and aim to reinforce the implementation of the principle of equal treatment.

The role of equality bodies in enforcing Anti-Discrimination Law is essential for ensuring individuals can access legal remedies and receive protection from discriminatory practices. As the Commission noted: “Strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives”, meaning when given the necessary powers and resources, equality bodies can contribute to the effective monitoring and enforcement of the anti-discrimination legislature.³²

³⁰ Lora Vidović and Antonija Petričušić, ‘Human Rights and Equality Institutions in Europe: Increasing Efficacy by Finding a Balance between Centralisation and Fragmentation’ (2024) 24(1) *Croatian and Comparative Public Administration* 113, 130.

³¹ Equal Rights Trust, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (Equinet 2024) 10.

³² European Commission, *Joint Report on the Application of Council Directive 2000/43/EC and Council Directive 2000/78/EC* COM (2014) 2 final.

Therefore, the mere existence of an equality body does not automatically guarantee the protection of human rights or the prevention of discrimination, since it's the mandate and authorized functions that ensure the impact of their role.

Equality Bodies in Practice: Models, Functions and Powers

The academic literature generally distinguishes between two primary institutional models for the classification and analysis of equality bodies: “Predominantly tribunal-type equality bodies. These equality bodies are impartial institutions which spend the bulk of their time and resources hearing, investigating and deciding on individual instances of discrimination brought before them.” And “predominantly promotion-type equality bodies. These equality bodies spend the bulk of their time and resources on a broader mix of activities that include supporting good practice in organization, raising awareness of rights, developing a knowledge base on equality and non-discrimination and providing legal advice and assistance to individual victims of discrimination.”³³ Among these bodies two models are mainly distinguished through whether they can issue binding decisions and impose sanctions or issue non-binding recommendations. It must be further noted that, models which combine Ombudsperson mandate alongside with an equality mandate usually belong to the latter group.³⁴ Building onto that, through recommendations, the establishment of equality body not limited to non-binding recommendations is encouraged. Moreover, a preference for equipping equality bodies with additional competences to impose sanctions is stated.³⁵

Additionally, another key criterium of diversity is regarding the range of mandates held by the body designated as the equality body. Concretely, the equality bodies can be multi-mandate or

³³ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 43-44.

³⁴ European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation No 2: Equality Bodies to Combat Racism and Intolerance at National Level* (adopted 7 December 2017, published 27 February 2018) CRI(2018)06, para 84.

³⁵ *Ibid*, para 87.

single-mandate equality bodies. Multi-mandate bodies cover a combination of mandates, usually the equality mandate combined with the mandate of a national human rights institution (NHRI) and/or an Ombudsperson Office. This diversity is relevant for the analysis, as Crowley argues, it poses significant challenge for securing visibility for the equality mandate and its implementation.³⁶ Mainly, it is the ambitions and traditional approaches associated with established mandates that raise doubts regarding multi-mandate equality bodies.³⁷

While merging equality bodies with Ombud institutions holds a great potential to enhance the role and broaden the scope of both mandates, some scholars believe that, aligning such distinct frameworks also raises concerns regarding the definitions of roles, purposes and priorities for such merged bodies, alongside with deciding on the powers, functions and models of operation.³⁸ This structural debate is echoed in broader European practice. For instance, France initially established equality institution, HALDE, which operated across eighteen grounds of discrimination. However, despite its initial success, it was later absorbed into a broader human rights institution, the Défenseur des Droits. Similar reforms took place in Sweden, where four specialized equality ombudsmen were merged into one Equality Ombudsman in 2009. These examples show that while single-mandate bodies offer clarity and focus, multi-mandate structures may be driven by broader institutional strategies. Importantly, provisions of the Directives includes both models, requiring only that “a” public body exist, without specifying whether it should be exclusively focused on non-discrimination. While some observers caution that such restructuring may reduce the visibility

³⁶ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 45.

³⁷ *Ibid*, 9.

³⁸ Tamás Kádár, ‘Equality Bodies: A European Phenomenon’ (2018) 18 *International Journal of Discrimination and the Law* 144, 151.

and focus of anti-discrimination efforts, others argue that a more integrated human rights mandate, if properly resourced, could strengthen protection and enforcement.³⁹

Moreover, in Ireland's case, after the merger, the IHREC (Irish Human Rights and Equality Commission) enjoys greater independence compared to the previous bodies.⁴⁰ Consequently, the monitoring function of both human rights and equality standards gave the body broader influence. However, the risk of one mandate overshadowing another in terms of priority-setting, resource allocation and public visibility raises great concerns regarding effectiveness in the literature. In fact, combining the two mandates creates tensions since equality mandate and human rights mandate derive from different traditions and specifics, which could lead to diverse communication strategies, as the arguments presented for equality and human rights are not always the same. Additionally, the challenges would also include resource distribution between the two areas and finally, the separate legal basis could also constrain efforts to adopt an integrated approach.⁴¹ As Crowley argues, there is often a risk, particularly where equality mandates are added to long-standing institutions such as Ombudsperson offices, that the equality function may become more vulnerable. Moreover, multi-mandate bodies may face restrictions in enforcement tools, as the ability to impose sanctions, usually inherent to equality bodies, may be limited once the equality mandate is combined with the broader Ombudsman mandate.⁴² However, this not inherent or inevitable. In cases like IHREC, the equality mandate may, in practice, gain greater institutional influence, particularly when it is supported by strong legal establishment of equality functions and clear statutory obligations under EU law. This can, in some contexts, elevate equality functions

³⁹ Bruno de Witte, 'New Institutions for Promoting Equality in Europe: Legal Transfers, National Bricolage and European Governance' (2012) 60(1) *American Journal of Comparative Law* 49, 63–65.

⁴⁰ Evelyn Collins and Niall Crowley, 'Equality Frameworks on the Island of Ireland' (2023) 34(2) *Irish Studies in International Affairs* 395, 406.

⁴¹ European Network of Equality Bodies, *Equality Bodies and National Human Rights Institutions: Making the Link to Maximise Impact* (Equinet 2011) 12.

⁴² Niall Crowley, *Enhancing the Impact of Equality Bodies and Ombudsperson Offices: Making Links* (Equinet – European Network of Equality Bodies 2017) 35.

above broader human rights work. Therefore, the relative strength of each mandate within a multi-functional body ultimately depends on the legal framework, political context, institutional leadership and the expertise of staff. This suggests that mandate compatibility must be assessed in context and cannot be assumed solely from structural design.

Classifying equality bodies as tribunal-type, promotion-type, single-mandate and multi-mandate models not only defines their institutional structure but also, directly influences their functions and authorities. Consequently, while some equality bodies employ more individual and fierce approach and mainly focus on adjudication, others engage in broader promotional and policy-based activities. However, despite their model, all equality bodies are expected to carry out key functions set out in the directives and recommendations that ensure the implementation of anti-discrimination framework. Concretely, there are three core functions, such as: promotion and prevention, support and litigation and decision-making.⁴³ The scope and strength of these functions depends on the mandate granted to the body.

Despite provisions establishing standards for equality bodies, there is still ongoing issues within states regarding effectiveness derived from lack of competences required for carrying out core functions.⁴⁴ Initially, the directives set out provisions regarding competences necessary for effectively combating discrimination such as, support and litigation functions. Particularly, the Directives, under the Article 6, outlines the role in assisting victims, ensuring they receive effective legal support when pursuing claims.⁴⁵ Therefore, all equality bodies are required to offer comprehensive guidance to the individuals, including providing them with clear information on

⁴³ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 70.

⁴⁴ Niall Crowley, *Strengthening the Role and Independence of Equality Bodies* (Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, European Parliament, PE 747.189, May 2023) 50.

⁴⁵ *Ibid*, 52.

the relevant legal framework, procedural steps, available remedies, as well as, confidentiality rules, data protection measures, etc. This one-stop-shop model ensures that victims are able to access all relevant information and assistance in a single place, enhancing access to justice for victims.⁴⁶

Nonetheless, the extent to which equality bodies can aid victims varies depending on their institutional design. This is particularly relevant regarding multi-mandate institutions, since while most equality bodies are authorized to offer legal advice, representation to the victims of discrimination, for bodies with adjudicatory competences, such assistance is often restricted considering requirements of impartiality. Therefore, Ombudspersons are less likely to provide direct support to complainants, due to its strict neutrality. This poses a significant cultural distinction between Ombudsman's mandate focused on impartial oversight and equality mandate, which prioritizes active advocacy.⁴⁷

Additionally, Article 9 of the Directives further expands on the litigation competences, specifying that equality bodies should have legal standing to represent victims in court proceedings, file cases on their own motion, support claimants in legal actions and act as *amicus curiae* in cases involving discrimination. This authority is vital to enforce anti-discrimination framework both effectively and strategically, since court rulings can set legal precedents and influence broader systemic change. As a general principle, it is recommended that equality bodies be empowered to initiate court proceedings with the complainant's consent. However, if an equality body already has the authority to issue legally binding decisions, the necessity for litigation powers is not as essential presupposing the latter carry the same legal weight as court rulings and establish case law. Additionally, equality bodies granting free legal aid when taking cases to court is the alternative

⁴⁶ Jone Elizondo-Urrestarazu, 'Equality Bodies: New Standards, New Challenges' (2023) 9 *IgualdadES* 245, 264.

⁴⁷ Niall Crowley, *Enhancing the Impact of Equality Bodies and Ombudsperson Offices: Making Links* (Equinet – European Network of Equality Bodies 2017) 12.

of litigation powers, although this approach also creates discretion for equality bodies in deciding which complaints qualify for legal aid, which could potentially risk inconsistency in practice.⁴⁸

It is also further evident that, the Council has given member states a discretion to equip bodies with these legal powers. Concretely, while all equality bodies should have *amicus curiae* role, states can choose whether to grant initiative and participation authority in legal proceedings on behalf of or in support of one or more victims and/or entitle bodies to file proceeding in their own name. This was the result of diplomacy aimed at balancing the diverse interests and existing practices of member states.⁴⁹

Building onto that, the Directives as enshrined in the Article 8 stipulate the importance of decision-making powers and encourages the states to either grant this authority to an existing body or establish separate one for this function. However, a key aspect of this provision is regarding request of information and documents from respondent since instead of imposing this as a binding requirement, the Article only allows member states the discretion to grant this power. This raises serious concerns about effective investigation process. Above-mentioned Article is also relevant to the authority of equality bodies to require corrective action in cases of discrimination. Therefore, addressing violations through issuing orders can have deterrent effect and help preventing similar incidents from happening in the future. However, the Article does not specifically refer to the authority to impose sanctions, weakening the deterring effect essential for equality bodies.⁵⁰

Another important element of the Article is provision allowing equality bodies to make legally binding decisions, with the determination left to individual member states. Even though this

⁴⁸ Equinet Working Group 2 on Strategic Enforcement, *Strategic Enforcement: Powers and Competences of Equality Bodies* (Equinet – European Network of Equality Bodies 2006) 22.

⁴⁹ Jone Elizondo-Urrestarazu, 'Equality Bodies: New Standards, New Challenges' (2023) 9 *IgualdadES* 245, 267.

⁵⁰ Niall Crowley, *Strengthening the Role and Independence of Equality Bodies* (Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, European Parliament, PE 747.189, May 2023) 52.

flexibility could be perceived as the reflection of the diverse legal systems across the EU, however, it also indicates different levels of protection, with some equality bodies lacking the authority to ensure compliance. Positively, the Article includes a provision for follow-up mechanisms, to guarantee enhanced enforcement.⁵¹

Nevertheless, different procedures apply depending on the nature of equality body's powers. In cases when an equality body has the authority to issue binding decisions, states must establish appropriate mechanisms to ensure effective enforcement. Consequently, equality bodies must be entitled to have right to participate in enforcement proceedings and have the authority to obtain information regarding the implementation of their decisions. Moreover, if equality body issues non-binding opinions, specific mechanisms should be introduced to ensure their recommendations are actively considered and followed up on, entailing feedback obligations which requires relevant entities to respond to and engage with these recommendations. Additionally, Article 9 seeks to reinforce the connection between the decision-making function and the promotion and prevention aspects of an equality body's mandate. It requires that equality bodies publish summaries of key decisions or opinions that they deem particularly significant, further contributing to legal awareness and policy development.⁵²

It is worth highlighting that, the adjudicatory functions of equality mandate differ from Ombudsman mandate. The equality bodies usually hold hearings and shift the burden of proof once a *prima facie* case has been established. Some equality bodies with decision-making authority can issue legally binding rulings and impose sanctions when discrimination is found, such is Italy's National Office Against Racial Discrimination operating as single-mandate national equality body. In contrast, Ombudspersons usually rely on institutional reputation and the standing of the

⁵¹ Ibid.

⁵² Equal Rights Trust, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (Equinet 2024) 88.

officeholder to ensure compliance with their findings. Therefore, instead of holding hearings or applying the shift in burden of proof, they issue non-binding recommendations, which lack enforcement mechanisms. Consequently, despite some exceptions in practice which will be analyzed in the later part of this study, in academic materials it is noted that, as a rule, Ombudsman institutions do not impose sanctions, contrary to equality bodies, which risks the deterrence of future discrimination cases.⁵³

The distinction between tribunal-type and promotion-type models highlights how equality bodies function, with some having strong adjudicatory powers, while others focus on awareness-raising and policy advocacy. Similarly, the classification into single-mandate and multi-mandate institutions has practical implications for visibility, enforcement, and effectiveness. It is further outlined that the preference for multi-mandate bodies in some states, particularly through their integration into Ombudsman institutions, has raised concerns regarding institutional aims and enforcement capacity.

Thus, significant gaps remain regarding effectiveness despite the legal framework established by the EU directives. In particular, the lack of binding enforcement mechanisms and poor litigation powers pose major challenges to their ability to combat discrimination effectively. While some equality bodies are granted decision-making authority and sanctioning powers, others are only entitled to issue non-binding recommendations, leaving compliance to the discretion of public and private entities. Similarly, the legal standing of equality bodies in litigation also remains inconsistent, with some institutions having the authority to initiate court proceedings such as Austrian Disability Ombudsperson and Netherlands Institute for Human Rights, while others are

⁵³ Niall Crowley, *Enhancing the Impact of Equality Bodies and Ombudsperson Offices: Making Links* (Equinet – European Network of Equality Bodies 2017) 12.

restricted to providing support to victims such as Slovenia's Advocate of the Principle of Equality or acting as *amicus curiae* like Czechia's Public Defender of Rights.

Therefore, this analysis of equality body models, functions, and powers clearly depicts that even though EU Directives and recommendations establish core standards, the actual implementation of these bodies varies significantly. Drawing on this, Kadar and Polak has emphasized on the contrast in enforcement mechanisms across the EU by examining two incidents of ethnic discrimination at airports in Prague and Stockholm. Namely, in the Czech case, the equality body's lack of investigatory authority prevented meaningful intervention, while in Sweden, legal proceedings resulted in a finding of discrimination and awarded compensation. These cases shed light to the significant variations in how member states address and enforce anti-discrimination standards.⁵⁴

To support the comparative overview presented above, the following Table 1 outlines key characteristics of equality bodies in EU member states. It provides a brief overview of their institutional structure, mandate type and powers related to the enforcement and litigation. This summary highlights the diversity of national approaches and offers a useful reference point for evaluating Georgia's own framework in the subsequent chapters.

Table 1: Core Functions of Equality Bodies.⁵⁵

Country	Equality Body	Support and Litigate Function	Decision-making Function	Competences
Austria	Ombud for Equal Treatment	Yes		Surveys, reports, recommendations, and assistance to victims.

⁵⁴ Tamas Kádár and Petr Polak, 'Quo vaditis Equality Bodies? Critical Reflections on the Future of EU Anti-Discrimination Law Enforcement' (EU Law Live, Weekend Edition No 159, 21 October 2023) 2.

⁵⁵ Adapted from Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 73-77.

				Raise awareness, conduct inquiries, assess draft legislation, and promote good practice.
	Equal Treatment Commission		Yes	Investigate complaints and make recommendations.
Belgium	Institute for Equality of Women and men	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, legal standing to take cases to court, support implementation of requirements on gender mainstreaming. The IEWM has the further role to implement the Federal Government's gender equality policy.
	Inter-federal Centre for Equal Opportunities (UNIA)	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, legal standing to take cases and as amicus curiae and mediate settlements.
Bulgaria	Protection Against Discrimination Commission	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Decide cases and impose sanctions, legal standing to take cases and as amicus curiae and mediate settlements.
Croatia	Ombudsperson for Gender Equality	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate complaints and make recommendations, seek judicial review on constitutionality of a law, raise awareness, assess draft legislation, mediate settlements, follow-up decisions, and monitor implementation of positive duties for gender equality.
	People's Ombudsman	Yes	Yes	Surveys, reports, recommendations, and assistance to victims.

				Investigate complaints and make recommendations, raise awareness, legal standing to take cases and as amicus curiae, mediate settlements and follow-up decisions.
Cyprus	Commissioner for Administration and Human Rights		Yes	Surveys, reports, and Recommendations. Decide cases and impose sanctions, carry out ex-officio investigations, follow-up decisions, raise awareness and promote good practice (codes of good practice).
Czech Republic	Public Defender of Rights	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate complaints, make recommendations, and raise awareness.
Denmark	Danish Institute for Human Rights	Yes		Surveys, reports, recommendations, and assistance to victims. Promote good practice, raise awareness, legal standing as amicus curiae.
	Board of Equal Treatment		Yes	Decide cases and impose sanctions, follow-up on request by bringing case to court.
Estonia	Commissioner for Gender Equality and Equal Treatment	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate complaints and issue opinions, raise awareness and propose amendments to legislation.
	Chancellor of Justice		Yes	Make recommendations, and assistance to victims. Investigate complaints, make recommendations, mediate settlements, raise awareness and propose amendments to legislation.
Finland	Equality Ombudsman	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate cases and make recommendations and assist and

				monitor equality duties. Courts can seek opinions.
	Non-Discrimination Ombudsman	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate cases and make recommendations, bring cases to Tribunal, mediate settlements, and assist and monitor positive duties for equality plans. Courts can seek opinions.
France	Defender of Rights	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, investigate complaints, issue sworn statements and adopt decisions with general and individual recommendations, request sanctions, mediate settlement, follow-up cases and legal standing to provide observations to courts.
Germany	Federal Anti-Discrimination Agency	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, legal standing as amicus curiae and mediate settlement
Greece	Office of the Greek Ombudsman		Yes	Surveys, reports, recommendations, and assistance to victims. Investigate cases and make recommendations, mediate settlement, raise awareness, promote good practice and provide policy advice.
Hungary	Equal Treatment Authority	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Decide cases and impose sanctions, raise awareness, legal standing to take cases.
Iceland	Centre for Gender Equality	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good

				practice, secure enforcement of Gender Equality Committee decisions and monitor required gender equality programmes.
Ireland	Irish Human Rights and Equality Commission	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, assist and monitor public sector duty, legal standing to take cases and amicus curiae.
Italy	National Office for Racial Anti-Discrimination (UNAR)	Yes		Surveys, reports, recommendations, and assistance to victims. Conduct inquiries, mediate settlement, legal standing as amicus curiae.
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, mediate settlement, and legal standing to take cases and as amicus curiae.
Latvia	Ombudsman	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Raise awareness, investigate case and make recommendation, mediate settlement, and legal standing to take case to court and as amicus curiae.
Liechtenstein	Association for Human Rights	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, review laws and regulations, carry out investigations, and legal standing to take cases.
	Office for Equality of People with Disabilities			Make recommendations. Raise awareness and promote good practice.
Lithuania	Office of the Equal Opportunities Ombudsperson	Yes	Yes	Surveys, reports, recommendations, and assistance to victims.

				Raise awareness, provide training, investigate complaints, make recommendations, impose administrative sanctions and follow-up.
Luxembourg	Centre for Equal Treatment	Yes		Surveys, reports, recommendations, and assistance to victims.
Malta	National Commission for the Promotion of Equality	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate complaints and make recommendations, raise awareness, conduct investigations, legal standing to take cases and as amicus curiae
Netherlands	Netherlands Institute for Human Rights		Yes	Surveys, reports, recommendations, and assistance to victims. Raise awareness and investigate complaints, make non-binding decisions and follow-up.
Norway	Equality and Anti-Discrimination Ombud	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice and enforce positive duties.
	Equality and Anti-Discrimination Tribunal		Yes	Decide case and award sanctions, follow-up and enforce positive duties.
Poland	Commissioner for Human Rights	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate cases and issue general statements, raise awareness, appoint expert committees on issues and legal standing to take cases and as amicus curiae.
Portugal	Commission for Equality and Against Racial Discrimination	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Decide case and impose sanctions.

	Commission for Citizenship and Gender Equality (CIG)	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, advise on policy and legal standing as amicus curiae.
	Commission for Equality in Labour and Employment (CITE)	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, give opinions including binding guidance to employers, monitor collective agreements, and legal standing as amicus curiae.
Romania	National Council for Combating Discrimination	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Decide cases and impose sanctions, mediate settlement, legal standing as amicus curiae, raise awareness and develop national plans on antidiscrimination.
Slovakia	Slovak National Centre for Human Rights	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate cases and make recommendations, legal standing to take cases and as amicus curiae, provide expert opinions and raise awareness.
Slovenia	Advocate of the Principle of Equality	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Decide on cases and issue orders, legal standing to take cases and as amicus curiae.
Spain	Council for the Elimination of Racial and Ethnic Discrimination	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness and promote good practice.
Sweden	Equality Ombudsman	Yes	Yes	Surveys, reports, recommendations, and assistance to victims. Investigate and settle complaints, legal standing to

				take cases, raise awareness and supervise compliance with positive duties.
United Kingdom	Equality and Human Rights Commission	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, conduct investigations, intervene in cases, support and enforce public sector duty.
	Equality Commission for Northern Ireland	Yes		Surveys, reports, recommendations, and assistance to victims. Raise awareness, promote good practice, conduct investigations, intervene in cases, and support and enforce public sector duty.

The Georgian Framework for Equality Bodies

The 2014 Law on the Elimination of All Forms of Discrimination established the foundation for the Georgia's anti-discrimination legal framework. The Anti-Discrimination Law was introduced as part of Georgia's commitments under the EU-Georgia association agreement and incorporated all essential definitions and mechanisms related to discrimination. While Georgia had previously addressed anti-discrimination issues through legislation such as the Criminal Code and Labor Code, this law provided a comprehensive and unified framework.

The law has been assessed positively due to several advancements in Georgia's anti-discrimination framework. Notably, its broad and inclusive approach by recognizing of grounds of discrimination beyond those explicitly listed.⁵⁶ Also, the law provides clear definitions of direct and indirect discrimination⁵⁷ and outlines the exceptions to the prohibition of discrimination clarifying that different treatment may be considered lawful in cases where it serves a legitimate state interest, provided that such measures are proportionate and necessary in a democratic society.⁵⁸

In the further provisions, the law establishes Georgian Public Defender (Ombudsman) as the national equality body, tasked with overseeing discrimination cases, issuing recommendations and raising awareness.⁵⁹ The Ombudsman functions as multi-mandate body as it combines its equality mandate with other broader human rights mandates. As mentioned above, this multi-mandate structure of Ombudsman Office raises institutional challenges, since unlike specialized equality bodies that focus exclusively on anti-discrimination enforcement, the Public Defender must balance its broader human rights obligations, which may limit the visibility, prioritization and resource allocation for equality-related cases. Notably, in the most recent Annual Report of the

⁵⁶ Law of Georgia on the Elimination of All Forms of Discrimination 2014, art 1.

⁵⁷ Ibid, art 2(2), (3).

⁵⁸ Ibid, art 2(9).

⁵⁹ Ibid, art 6.

National Preventive Mechanism, the Public Defender's Office published data illustrating that, 74% of the issued recommendations were disregarded, while 15% of the recommendations were partially fulfilled and merely 11% fully complied.⁶⁰ These statistics outline the significant challenges regarding the enforcement mechanisms and consequently, the effectiveness of deterring discrimination. The low compliance could reflect the structural weaknesses of the equality body derived from the restricted mandate and functions.

Under the Anti-Discrimination Law, the Ombudsman mandate authorizes to issue two types of documents, namely: recommendations⁶¹ and general suggestions.⁶² However, law does not clearly distinguish between them in terms of legal effect or intended purpose. Despite this lack of clarity, according to the established case law, general suggestions are usually issued when Ombudsman determines that the alleged violation contributes to the reinforcement of discriminatory stereotypes and therefore encouraging broader discriminatory environment.⁶³ Moreover, general suggestions also refer to the private entities, not only requiring elimination of the causes of discrimination but also obliging them to take proactive measures to create tolerance and inclusiveness.⁶⁴ Particularly, in its general suggestions to the National Bank of Georgia, the Ombudsman elaborated on the violations of pensioner's rights by "Liberty Bank", noting that due to the application of government-mandated concessionary term period, the loans got extended, which resulted in higher interest rates for elderly. The Public Defender, seeking to restructure pensioners financial obligations, referred to the National Bank of Georgia, requesting the issuance of relevant

⁶⁰ Public Defender of Georgia, 'Annual Report of the National Preventive Mechanism 2023' (in Georgian, 2024) 13.

⁶¹ Law of Georgia on the Elimination of All Forms of Discrimination 2014, art 6(2)(b).

⁶² Ibid, art 6(2)(c).

⁶³ Giorgi Mshvenieradze and Marine Kapanadze, 'The National Mechanism for Combating Discrimination: Analysis of Legislation and Practice' (Georgian Democracy Initiative, July 2016) 55 (in Georgian).

⁶⁴ Ibid, 58.

regulations to ensure the protection of the consumer rights.⁶⁵ Despite that, these tools could be assessed as positive instruments for combating discrimination, the absence of a follow-up mechanism restricts their enforcement, particularly against private entities. However, a more positive trend has emerged in practice concerning public entities, as the Public Defender's recommendations have prompted changes, such as the Ministry of Justice of Georgia revising its administrative practices regarding penitentiary institutions, specifically addressing the previously restricted right to appeal decisions regarding early release.⁶⁶

Moreover, according to the Anti-Discrimination Law, the obligation to submit case-related materials to the Public Defender applies only to administrative, state and local self-government bodies. Therefore, private individuals and entities are not legally obliged to cooperate, which makes their compliance voluntary and restricts the Ombudsman's fact-finding function involving alleged violations committed by private actors. Furthermore, the law entitles the Public Defender with litigation authorities in cases when a public authority fails to respond to or implement its recommendations. Still, this provision does not extend to private entities, meaning the Ombudsman has no legal authority to require compliance from private actors with recommendations or initiate legal proceedings against them. Consequently, private entities frequently overlook both recommendations and general provision, eroding the enforcement of anti-discrimination measures, which presents a significant legal gap restricting effective combat against discrimination.⁶⁷

⁶⁵ Public Defender of Georgia, 'Proposal to the National Bank of Georgia on the Protection of Pensioner's Rights' (9 January 2024) (in Georgian) < <https://ombudsman.ge/geo/tsinadadebebi/sakhalkho-damtsvelis-tsinadadeba-liberti-banks-pensionerta-uflebebis-datsvis-shesakheb> > accessed 16 April 2025.

⁶⁶ Public Defender of Georgia, 'As a Result of the Public Defender's Recommendation, Prisoners Will No Longer Face Obstacles in Appealing Negative Decisions on Early Conditional Release' (2 February 2022) (in Georgian) < <https://ombudsman.ge/geo/rekomendatsiebi/sakhalkho-damtsvelis-rekomendatsiis-shedegad-patimrebs-pirobit-vadamde-gatavisuflebase-uarqofiti-gadatsqvilebis-gasachivrebis-protsesshi-sheferkheba-aghar-sheekmnebat> > accessed 20 April 2025.

⁶⁷ Giorgi Mshvenieradze and Marine Kapanadze, 'The National Mechanism for Combating Discrimination: Analysis of Legislation and Practice' (Georgian Democracy Initiative, July 2016) 60 (in Georgian).

In the general suggestion regarding online job-seeking platform "jobs.ge", the Ombudsman outlined the importance of creating relevant regulations and filters to restrict discriminatory vacancies from publishing.⁶⁸ However, the company abstained from any cooperation on the examination stage. As it is stipulated in the Public Defender's Annual Report, the platform also did not elaborate after the issuance of the general suggestion.⁶⁹ The exclusion of private entities from compliance obligations is a gray area in the anti-discrimination enforcement framework, particularly in employment and services where discrimination often occurs in practice. This lack of enforceability leaves victims without effective remedies against private-sector discrimination. Consequently, unlike public authorities, which are subject to institutional oversight, private actors can easily disregard anti-discrimination measures without consequence, undermining the framework's effectiveness.

Furthermore, the law outlines the grounds for accepting or rejecting cases submitted to the Ombudsman. Under these provisions, a case may be dismissed or discontinued if it is already pending before a court or if a court ruling has already been issued on the matter. This approach is problematic as it creates unnecessary procedural barriers, that risks access to non-judicial remedies. Therefore, judicial proceedings are subject to statutory time limits, meaning that procedural restrictions on case submissions to the Public Defender may further reduce available avenues for redress. A more effective anti-discrimination framework would ensure that the mechanisms of the Ombudsman and the judiciary complement rather than exclude one another. In this regard, it is also relevant to recognize that competences of the Ombudsman and the judiciary in discrimination cases differ significantly. While Public Defender can investigate complaints and issue

⁶⁸ Public Defender of Georgia, 'General Proposal to "Jobs.ge" on the Issue of Preventing and Combating Discrimination' (15 April 2015) (in Georgian) < <https://www.ombudsman.ge/geo/skesi-genderi/zogadi-winadadeba-djobsges-diskriminaciis-tavidan-acilebisa-da-mis-winaagmddeg-brdzolis-sakitxze> > accessed 20 April 2025.

⁶⁹ Giorgi Mshvenieradze and Marine Kapanadze, 'The National Mechanism for Combating Discrimination: Analysis of Legislation and Practice' (Georgian Democracy Initiative, July 2016) 61 (in Georgian).

recommendations, it lacks sanctioning powers, meaning it is not able to impose fines, order remedial action or grant compensation for damages. By contrast, judicial mechanisms provide legally binding remedies, but courts are subject to stricter procedural formalities, limiting flexibility in case review. The Public Defender, on the other hand, has the authority to request information from public institutions, that reflects its broader investigatory role in addressing discrimination complaints. The existence of differentiated competences between these institutions reaffirms that they should function as parallel, rather than alternative, mechanisms in the fight against discrimination. However, a root of this gap must be searched within the law itself, since while it recognizes the Public Defender as the primary enforcement body for non-discrimination, it simultaneously imposes procedural restrictions that limit its ability to fulfill this mandate effectively. This legal inconsistency limits the statutory provisions, weakening the institutional framework intended to prevent and address discrimination.⁷⁰

To conclude the analysis, it must be noted that, while Ombudsman plays vital role in monitoring, investigating and addressing discrimination cases, its institutional framework and legal mandate impose significant structural and procedural limitations that might reduce its effectiveness in combating discrimination. Namely, the lack of enforcement powers, particularly depending on non-binding recommendations and general provisions, not being able to impose sanctions, might pose a threat to accountability. Furthermore, the exclusion of private actors from compliance obligations, alongside with the absence of follow-up mechanisms, could contribute to undermining effectiveness and enforcement.

⁷⁰ Ibid, 59.

Assessing Ombudsman's Equality Mandate

As set out in the previous chapters, to ensure solid application of the principle of equal treatment, member states must properly empower equality bodies. In addition to the autonomy and resources, full empowerment also covers the wide range of functions and powers. Furthermore, equality bodies must be able to use all their functions and powers, within their legal mandate, to achieve an impact and realize their full potential.⁷¹ Therefore, merely granting competences, without mechanisms for enforceability and practical application risks restricting equality bodies in effective combat against discrimination.

Initially, it must be noted that Public Defender's Office is clearly a multi-mandate equality body, which as mentioned above, is typically assessed as problematic in the academic field. Despite these issues, in about half the member states and Georgia, equality mandate was given to a pre-existing body. However, issues associated with multi-mandate bodies can be overcome with clear organizational structure with sufficient focus and resources dedicated to both human rights and equality mandate.⁷²

After the examination of Anti-Discrimination Law, which establishes the core functions of national equality body, it is evident that the Ombudsman fits the predominantly promotion-type equality body model as it mainly focuses on raising public awareness of equality and non-discrimination, monitoring and reporting, advising policymakers and supporting victims of discrimination through settlements and recommendations. Therefore, rather than acting as a tribunal with decision-making

⁷¹ European Network of Equality Bodies, *Developing Standards for Equality Bodies* (Equinet 2016) 4.

⁷² European Commission, *Commission Staff Working Document: Equality Bodies and the Implementation of the Commission Recommendation on Standards for Equality Bodies, Accompanying the Document: Report from the Commission to the European Parliament and Council on the Application of Council Directive 2000/43/EC and Council Directive 2000/78/EC* COM (2021) 139 final, 6.

powers, the Public Defender prioritizes policy-oriented strategies and promotes equality through recommendations and mediation.

Support and Litigation

Providing assistance to individuals is one of the core functions of national equality bodies established under the EU Directives. Although every equality body is required to carry out this role, the Directives do not offer specific guidance on the forms or methods of support to be provided. As a result, each member state has developed its own interpretation of what this responsibility entails.⁷³ The methods deployed by equality bodies to support victims often are interconnected and overlapping. Victim assistance is deeply linked to other key functions of these bodies and should not be viewed in isolation.⁷⁴

Under Article 6(1) of the EU Equality Directives, member states are obligated to ensure that equality bodies can effectively assist victims of discrimination. This assistance covers various forms, as detailed in Article 6(3), including providing information on the legal framework, available remedies, confidentiality and data protection rules and access to services such as psychological and other support. These provisions stipulate the importance for equality bodies to offer comprehensive support to victims, facilitating their understanding of rights and access to justice mechanisms. Under the Georgian Anti-Discrimination Law, Article 6 establishes that, Ombudsman is entitled to investigate cases on the basis of complaint or *ex officio*, facilitate amicable settlements and address the court as an interested party if no response to the recommendation has been given or the recommendation has not been taken into consideration by the administrative body.

⁷³ European Network of Equality Bodies, *Providing Independent Assistance to Victims of Discrimination* (Equinet – European Network of Equality Bodies, December 2011) 7.

⁷⁴ *Ibid.*

The earlier reports outlined that only limited number of equality bodies possess the authority to initiate court proceeding, act as *amicus curiae* or bring *actio popularis* claims and when available, these tools are rarely exercised in practice,⁷⁵ therefore, one could assess the existence of Ombudsman's function to aid victims as formally satisfactory, however, Equinet has observed that limitations in the competence of equality bodies to pursue casework against both public and private sector actors have significantly weakened their litigation strategies.⁷⁶ Therefore, the restriction of Ombudsman's competence to initiate cases against private actors, as well as public entities, presents a limitation for effectively assisting victims.

Generally, strategic litigation refers to the practice of choosing specific cases to bring before a court with the aim of achieving results that often go beyond the individual situation. The purpose is to influence the development of law and policy and to set legal precedents that can guide similar cases in the future. Therefore, the goal of these cases is two-fold, namely it focuses on how the law is applied or interpreted as well as aims to raise public awareness or encourage institutions and authorities to take steps to prevent discrimination.⁷⁷ However, in Georgian context, the potential of strategic litigation remains largely untapped. Although, Public Defender has the mandate to assist victims and intervene in proceedings under the Law, it lacks the authority to independently initiate discrimination cases or to actively select cases capable of causing broader legal shifts. Therefore, strengthening Ombudsman's litigation powers could help provide individual remedies and advance structural equality in Georgia.

⁷⁵ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 10.

⁷⁶ Niall Crowley, *Taking Stock: A Perspective from the Work of Equality Bodies on European Equality Policy Strategies, Equal Treatment Directives, and Standards for Equality Bodies* (Equinet, Brussels 2020) 23–24.

⁷⁷ Francine Morris, 'What Is Strategic Litigation?' in *The Equinet Handbook on Strategic Litigation* (Equinet – European Network of Equality Bodies 2017) 9.

The practice established by the EU member equality bodies presents promotion-type equality bodies, which possess stronger tools to enforce anti-discrimination protections through judicial means, bringing cases forward to either tribunal-type bodies or courts, such as equality bodies in Belgium, Slovakia and the United Kingdom, which are empowered to bring cases directly before courts. Additionally, only a select number of equality bodies are authorized to represent victims directly in court proceedings, including Ireland, Slovakia, Sweden, and the United Kingdom. When doing so, these institutions move from a neutral role to one of legal representation, often requiring an internal transfer of the case to a dedicated unit. This dual function allows equality bodies to combine legal action with direct support for victims, resulting in a more effective approach to victim assistance.⁷⁸ Consequently, the Public Defender's capacity to support victims remains comparatively restricted, as while Ombudsman investigates complaints and refers cases to administrative courts under relevant conditions, it lacks the authority to represent victims, initiate proceedings against the private sector entities or engage with strategic litigation. Therefore, while Ombudsman's mandate satisfies the formal obligation to assist victims, it lacks proactive approach envisioned under Article 6 of the Directives.

Nevertheless, Equinet has outlined various other legal approaches that equality bodies may deploy to pursue strategic legal or policy objectives. Concretely, one of these strategies include alternative dispute resolution, which could be more effective tool to fight systemic discrimination than court decision in the cases where the settlement includes taking proactive measures to promote equality and avoid discrimination and prevent future cases of discrimination. Moreover, dispute resolution could result in the outcome where both parties perceive the solution as fair and constructive. However, equality bodies must assess whether the alleged discriminator is willing to acknowledge

⁷⁸ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 82.

the discriminatory act, which is a criterium to decide whether to apply this approach to the case, since if no such admission is made, there is a risk that the settlement could be perceived as a means of silencing the victim rather than delivering genuine accountability.⁷⁹ This concern reflects a broader critique of alternative dispute resolution, stating that that informal processes may open the door to abuse especially when one party holds significantly more power than the other and there is no real 'equality of arms' between the parties.⁸⁰

The Public Defender has the authority to resolve cases through amicable settlements under Article 6 of the Anti-Discrimination Law. While this mechanism, as mentioned above, holds potential to achieve meaningful outcomes, including non-repetitive behavior and awareness raising, its effectiveness in practice remains unclear, as there is no formal obligation for the perpetrator to admit wrongdoing, nor any legal framework requiring follow-up on the implementation of agreed measures. Could this pose the risk on settlements to promote genuine resolution and instead be used to avoid accountability? For instance, in practice a follow-up conducted by The Equality Commission for Northern Ireland on 52 settlements revealed that 49 cases led to improved equality practices. Moreover, in France, the Equal Opportunities and Anti-Discrimination Commission requires parties to report on the actions they have taken to implement the Commission's recommendations.⁸¹ Therefore, incorporating similar mechanism into the Ombudsman's mandate would have contributed to the strengthening Office's authority.

⁷⁹ Robin Harms, 'Methods' in *The Equinet Handbook on Strategic Litigation* (Equinet – European Network of Equality Bodies 2017) 23–24.

⁸⁰ Mauro Cappelletti, 'Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement' (1993) 56 *Modern Law Review* 282, 290.

⁸¹ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 96.

Decision-making in Discrimination Cases

EU Directives, under the Article 9, grant equality bodies the authority to issue opinions or rulings in cases of discrimination. Although member states have flexibility deciding whether these tools have binding power, they are nonetheless obliged to establish concrete procedural frameworks to guarantee proper follow-up and enforcement.⁸²

While few national equality bodies are granted the authority to issue binding decisions, those with quasi-judicial functions can offer an accessible and cost-effective alternative to litigation, particularly when they are authorized to rule on compensation claims. Even when such bodies lack the power to award damages, they can still reduce backlog on courts by resolving lower-level cases or acting as a preliminary step before judicial proceedings. bodies limited to issuing non-binding recommendations rely primarily on the cooperation of the parties and the influence of their findings. However, some retain the right to bring unresolved cases to court if recommendations are ignored. Therefore, capacity to investigate and issue findings, even without binding force, enables equality bodies to provide personalized remedies and to surface hidden patterns of discrimination.⁸³

Several tribunal-type equality bodies are only authorized to issue recommendations or opinions that are not legally binding. Nevertheless, some have developed mechanisms to encourage compliance, for instance in Greece, the two Ombudsman Offices can report non-compliance by public authorities to their respective supervisory bodies, Slovenia's Advocate for the Principle of Equality may forward cases to inspection bodies when its recommendations are disregarded. Despite this practice, generally, equality bodies are reluctant to fully exercise their enforcement

⁸² Equal Rights Trust, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (Equinet 2024) 85.

⁸³ European Network for Equality Bodies, *Providing Independent Assistance to Victims of Discrimination* (Equinet – European Network of Equality Bodies, December 2011) 31.

powers, including requests for information or decisions. The mandate to issue binding recommendation strengthens the effectiveness and impact of equality bodies on policies and practices of the respondent. However, even when decisions are not binding, the reputation, institutional authority and follow-up mechanisms of equality body can help ensure a degree of compliance.⁸⁴

Consequently, to apply the latter to Georgia's context, it must be noted that the Ombudsman operates under a model that permits issuance of non-binding recommendations in discrimination cases which aligns with the practice of many promotion-type bodies in the EU. However, the Georgian framework lacks the secondary enforcement mechanisms observed in other states since Public Defender does not have the authority to refer cases to other institutions, tribunal-type body or court, nor can it compel follow-up action when recommendations are being neglected. Therefore, legal standing of Ombudsman's Office and the absence of follow-up mechanisms limits the influence of its findings and may encourage voluntary compliance.

⁸⁴ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 93-95.

Comparative Practices and Strategic Solutions for Strengthening Ombudsman's Equality Mandate

As previously mentioned, the wording of the EU Equality Directives regarding the requirements for equality bodies has been the object of critique for its vagueness, mainly since this lack of precision has allowed member states considerable flexibility in implementation. This, in turn, raises concerns about compliance and enforceability. Notably, the Directives provide no clear standards on what constitutes “independent assistance to victims” nor is there detailed guidance on the scale or impact of “independent surveys”. Technically, a member state could easily meet the basic requirements of the Directives with minimal effort, without setting up a fully functional or impactful equality body. While this might satisfy the formal requirements of the Equality Directives, it completely neglects its intended purpose.⁸⁵

At the same time, some scholars argue that the vagueness of the Directives served a strategic purpose as the flexibility of its provisions allowed member states, particularly those lacking prior experience with equality bodies, to either adapt familiar institutions, such as Ombuds Offices or national human rights bodies, or to establish new bodies relevant to their legal and administrative contexts. This encouraged broader acceptance of the equality mandate across diverse systems, offering a pragmatic entry point for institutional development.⁸⁶

Still, equality bodies are expected to perform a broader role and go beyond simply addressing individual acts of discrimination to promote structural change by promoting the principle of substantive equality. This dual expectation, though not always clearly mandated, highlights the broader aims of EU equality law, even if not fully realized in practice. As mentioned, the Directives

⁸⁵ Dagmar Schiek, Lisa Waddington and Mark Bell, *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Hart Publishing 2007) 890.

⁸⁶ Sara Benedí Lahuerta, ‘Equality Bodies in the EU: Origins, Challenges and Future Prospects’ (Edward Elgar 2022) 17.

set out core set of tasks for equality bodies, such as helping victims, carrying out surveys and making reports and recommendations, without clarifying how much emphasis should be placed on each of the functions. Consequently, equality bodies often develop their own internal priorities, leading to considerable variations in how their mandates are implemented across member states.⁸⁷

The previous chapter outlined the main structural limitations in the mandate and powers of the Georgian Ombudsman. Considering the critically low compliance rate to the Ombudsman's recommendations presented above, one could argue that these limitations, particularly in enforcement and litigation, significantly erode the capacity of the Public Defender to provide solid safeguards against discrimination. This chapter seeks to examine how selected EU member states have navigated above-mentioned ambiguity, choosing instead to implement more proactive institutional models that provide strategic litigation powers, binding decisions and structured follow-up mechanisms. By analyzing these comparative practices, the chapter aims to identify realistic and legally grounded enhancement opportunities for Ombudsman's mandate to move beyond formal compliance and toward substantive effectiveness.

Strategic Litigation and Legal Standing

Strategic litigation involves using legal proceedings to achieve a particular outcome through judicial system. What defines it as strategic is the intention to bring about change that goes beyond the immediate case or individual interest. While strategic litigation is frequently considered as part of human rights advocacy, it is not limited to that field alone.⁸⁸ This broader change may be legal, political or social, though none of these outcomes are strictly required for a case to qualify as

⁸⁷ Bruno de Witte, 'National Equality Institutions and the Domestication of EU Non-Discrimination Law' (2011) 18 *Maastricht Journal of European and Comparative Law* 157, 172.

⁸⁸ Michael Ramsden and Kris Gledhill, 'Defining Strategic Litigation' (2019) 38(4) *Civil Justice Quarterly* 407, 409.

strategic. What is essential, however, is that deliberate choices are made during the litigation process to influence outcomes that extend beyond the individual dispute.⁸⁹

Strategic litigation has also played a significant role in shaping and advancing anti-discrimination jurisprudence. A prime example is *D.H. v. Czech Republic*,⁹⁰ where the Grand Chamber of the European Court of Human Rights (ECHR) found systemic discrimination in the placement of Roma children in special schools. This case played a key role in clarifying indirect discrimination, namely, outlining that neutral policy which has a disproportionately negative impact on a specific group, may amount to a violation of the Convention. This highlights how strategic litigation can contribute to the development of anti-discrimination law and enhance safeguards against systemic inequality.⁹¹

Moreover, strategic litigation can play a significant role in clarifying the scope and application of legal obligations. It ensures that discriminatory practices are subject to independent judicial scrutiny and since respondents often face financial penalties and reputational damage it can also serve as a deterrent, preventing future violations. When equality bodies align their legal and policy efforts with strategic litigation, the resulting impact can extend well beyond the individual case, promoting broader structural change. For example, in Great Britain, litigation that uncovered discriminatory employment practices prompted wider investigations by equality bodies into the relevant sectors or employers. However, it is not surprising that some equality bodies, attempting to support all incoming discrimination complaints, have become overwhelmed. This has often resulted in significant delays, which critics may use to question the institution's effectiveness. A notable example is the U.S. Equal Employment Opportunity Commission (EEOC), which in 1995

⁸⁹ Kris van der Pas, 'Conceptualising Strategic Litigation' (2021) 11(6S) *Oñati Socio-Legal Series* S116, S130.

⁹⁰ *D.H. and Others v Czech Republic* App no 57325/00 (ECtHR, 13 November 2007) 47 EHRR 3.

⁹¹ Aidan O'Neill, 'Strategic litigation before the European Courts' (2015) 16 *ERA Forum* 495, 507.

faced a backlog of over 111,000 unresolved complaints.⁹² In response, the EEOC shifted toward a more focused approach, prioritizing strategic litigation aimed at establishing legal precedents across various areas of discrimination. On the other hand, equality bodies that take on too few cases also risk losing credibility. The Commission for Racial Equality in Great Britain, for instance, has been criticized for its limited litigation activity, despite once leading in high-impact test cases.⁹³ However, reliance on strategic litigation also carries risks, since controversial court decisions can set regressive precedents and politically sensitive cases may attract backlash that undermines institutional legitimacy or funding of the national body.

Several EU member states offer examples of how strategic legal authority can significantly enhance the effectiveness of equality bodies. In Belgium, both the Center for Equal Opportunities and Opposition to Racism and the Institute for the Equality of Women and Men have legal competence to initiate court proceedings independently, without requiring an individual complaint. This *ex officio* standing enables bodies to act proactively in response to discriminatory practices that impact public interest.⁹⁴

The impact of strategic litigation was greatly highlighted in the case of *The Marshall v Southampton and South West Hampshire Area Health Authority*.⁹⁵ It involved a challenge to the UK's Sex Discrimination Act 1975, specifically its provision allowing different retirement ages for men and women. The Court found this to be incompatible with the EU law. In a later stage of

⁹² U.S. Equal Employment Opportunity Commission, *Priority Charge Handling Task Force Litigation Task Force Report* (March 1998) 11.

⁹³ Dagmar Schiek, Lisa Waddington and Mark Bell, *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Hart Publishing 2007) 892–893.

⁹⁴ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 155.

⁹⁵ Case C-271/91 *M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority* ECLI:EU:C:1993:335, [1993] ECR I-4367.

the same litigation, the Court also ruled against the statutory cap on compensation for sex discrimination, leading to a change in practice.

Some equality bodies are granted clear legal authority to initiate cases even when no individual victim comes forward. This enables them to respond to repeated complaints or patterns of discrimination, particularly when those affected are unwilling or unable to take legal action themselves. In the case of *Equality Authority v. Ryanair*,⁹⁶ the Irish Equality Authority brought a case against Ryanair for publishing a discriminatory advertisement, despite the absence of an individual complainant. The court awarded damages and required the company to implement equality training and adopt internal policies. Similarly, in the UK, although the Equal Opportunities Commission lacked an explicit statutory right to initiate proceedings, it relied on its general duty to promote equality and eliminate discrimination to bring a case against the state.

Another prominent example would be the *Feryn* case,⁹⁷ brought forward by the Belgian equality body, led to a landmark ruling. The case arose due to the public statement of the director of a Belgian company Feryn claiming he would not hire "immigrants" because customers did not want such individuals entering their homes. Despite the absence of a specific victim, the equality body initiated proceedings before the Belgian labor court. The case was referred to the Court of Justice of the European Union (CJEU), which ruled that such a public statement constitutes direct discrimination in recruitment under the Racial Equality Directive (Directive 2000/43/EC). The Court emphasized that the lack of an identifiable complainant does not preclude a finding of discrimination, since the objective of EU anti-discrimination law is to foster a socially inclusive labor market. *Feryn* judgment thus illustrates how litigation authority, when exercised strategically

⁹⁶ Equality Authority, 'Equality Authority Wins Age Discrimination Advertisement Case against Ryanair' (9 February 2001) < <https://www.ihrec.ie/equality-authority-wins-age-discrimination-advertisement-case-against-ryanair/> > accessed 1 June 2025.

⁹⁷ Case C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* ECLI:EU:C:2008:397, [2008] ECR I-5187.

by equality bodies, can lead not only to redress but also to the development of legal standards, even in the absence of an individual's complaint.

Moreover, in *R v Secretary of State for Employment*,⁹⁸ ex parte Equal Opportunities Commission, the House of Lords confirmed that these duties gave the Commission sufficient standing to challenge legislation that disproportionately disadvantaged part-time workers, most of whom were women. These cases demonstrate how equality bodies, even in the absence of specific legal standing provisions, can play a crucial role in challenging systemic discrimination and advancing broader legal and policy reforms.

The analysis of EU member state practice reveals that equality bodies have adopted strategic case handling mechanisms to enhance their impact. It must be further noted that, litigation require vast resources and since the Directives do not require equality bodies to support all potential cases, they usually resort to the selection criteriums to identify strategic cases. The Irish Human Rights and Equality Commission (IHREC), for instance, has developed 35 criteria model for assessing whether to intervene in a case. As a result, this approach assesses not only legal merit, but also public interest, potential for precedent as well as vulnerability of the claimant, therefore ensuring transparency, coherence and targeted impact.⁹⁹

Institutional Design and Functional Clarity

Some of the member states, including Austria, Denmark and Norway have adopted a dual-body structure where one equality body handles decision-making in discrimination cases, while a separate body is responsible for promotion, prevention and victim support. This approach enables the development of specialized expertise in adjudicating discrimination claims, while also

⁹⁸ Case C-167/97 *R v Secretary of State for Employment, ex parte Seymour-Smith and Perez* [1999] ECR I-623.

⁹⁹ European Network for Equality Bodies, *Providing Independent Assistance to Victims of Discrimination* (Equinet – European Network of Equality Bodies, December 2011) 23-24.

safeguarding the impartiality of decision-making bodies. At the same time, it preserves the ability of promotional-type bodies to take assertive positions in support of complainants and advocate for broader equality goals.¹⁰⁰

Particularly, in Austria, the Ombud for Equal Treatment is responsible for handling individual cases of discrimination and has the legal authority to request information from the person or institution accused of discrimination and as a soft-law body, the Ombud initially aims to resolve disputes through informal discussions between parties. Then, if no agreement is reached, the case can be referred to the Equal Treatment Commission (ETC), which issues a non-binding opinion. During this process, the Ombud participates as an expert. If the ETC's decision does not align with the Ombud's position, the Ombud can take the matter to court to request a declaratory judgment confirming that the principle of equal treatment was violated. However, this is the only function of the Ombud in court, as a legal remedy against decisions of the ETC.¹⁰¹

Thus, an important strength of the Austrian Ombud for Equal Treatment lies in its flexibility and cooperative approach, namely, a key institutional relationship and collaboration with the ETC, which enables discrimination cases to be addressed through a low-threshold and cost-free procedure. This arrangement removes financial barriers for complainants and encourages greater use of the complaint mechanism.¹⁰² As a result, while the Ombud lacks the power to issue binding decisions or independently bring cases to court on behalf of victims, the ability to initiate informal negotiations, participate in ETC proceedings and challenge decisions through declaratory court actions offers a form of indirect influence. Despite this dual-body structure which offers procedural flexibility, system's reliance on non-binding decisions still has been assessed as a restriction on

¹⁰⁰ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 47.

¹⁰¹ European Network of Equality Bodies, *Strategic Role of Equality Bodies* (Equinet 2009) 10.

¹⁰² *Ibid*, 12.

enforcement.¹⁰³ However, its strength lies in institutional coordination and the possibility of increasing unresolved cases to the judiciary, providing a layered enforcement mechanism that Georgia currently lacks.

This layered approach where the Ombud acts as a first point of contact and the ETC provides quasi-judicial oversight, ensures that cases receive substantive input and a degree of legal recognition, even without formal sanctions. This demonstrates how strategic use of limited powers can still promote accountability and the way equality bodies can maintain a balance between neutrality and advocacy.

Reflecting on this model, the Council of Europe's Commissioner for Human Rights has recommended that states establish an institutional architecture in which the quasi-judicial and promotional functions of equality work are clearly separated, ideally in distinct institutions, to ensure both impartial adjudication and effective advocacy.¹⁰⁴

Ensuring Compliance

It is true that, equality bodies with quasi-judicial functions may offer faster and more accessible alternatives to litigation, especially when their procedures result in financial remedies of structured settlements. On the other hand, other bodies, though lacking the competence to award damages, help resolve less severe cases and function as a preliminary mechanism before formal legal action. Even where only non-binding recommendations are issued, these institutions can promote resolution through the credibility of their findings and the pressure of public disclosure.

¹⁰³ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 107.

¹⁰⁴ Council of Europe Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality* (Council of Europe 2011).

Member state practice has demonstrated that investigative authority and respected mediation practices can result in high compliance rates. The Netherlands, for example, issues non-binding decisions that are widely followed, which is a result of institutional legitimacy and public trust.¹⁰⁵ Furthermore, equality bodies have taken steps to support the implementation of their non-binding decisions and established follow-up procedures to track the application of their opinions and recommendations.¹⁰⁶ While the ability to issue binding decisions or impose fines can significantly strengthen the impact of their recommendations, the credibility and public image of the equality body, along with consistent follow-up, can play an important compensatory role when their findings are not legally binding.¹⁰⁷

Some equality bodies, like in Croatia, France and the Netherlands, actively monitor the outcomes of their decisions in discrimination cases. This consistent follow-up has been the main indicator in achieving strong compliance rates and ensuring that recommendations are acted upon. Such practices help build the authority and credibility of equality bodies, while also promoting a broader culture of compliance, which is important for the prevention future cases of discrimination.¹⁰⁸ Consequently, the experience of other equality bodies suggests that even in the absence of binding authority, institutional credibility can be reinforced through consistency and visibility in enforcement-related practices.

In this context, strategic follow-up combined with effective public communication can significantly strengthen compliance outcomes. A great example for this would be the Dutch Equal

¹⁰⁵ European Network for Equality Bodies, *Providing Independent Assistance to Victims of Discrimination* (Equinet – European Network of Equality Bodies, December 2011) 31.

¹⁰⁶ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 13.

¹⁰⁷ *Ibid*, 93.

¹⁰⁸ Niall Crowley, *Equality Bodies: Making a Difference* (European Commission, Directorate-General for Justice and Consumers, Publications Office of the European Union 2018) 106.

Treatment Commission which has institutionalized follow-up practices. The Commission's main function is to give opinions on individual discrimination cases. After issuing an opinion that calls for action, the Commission stays in contact with the people involved and, when needed, works with other groups like trade unions or industry associations. Since 2001, it's been keeping track of these follow-ups, and according to its second Evaluation Report, the rate at which people comply with its opinions has gone up from 60% in 2001 to 84% in the first half of 2004. Notably, even though these figures mainly relate to individual cases, the actions taken in response often go beyond just resolving that one situation. In many instances, individual complaints have led to broader changes, such as the revision of discriminatory policies. This shows that the Commission's active follow-up approach often brings about wider, structural improvements, not just isolated compliance by the parties involved.¹⁰⁹

Building onto that, in Sweden, where the Equality Ombudsman follows a tiered enforcement model, meaning the Ombudsman first seeks voluntary compliance through dialogue, but is legally authorized to request information and require the participation of duty bearers in structured discussions. If voluntary efforts fail, the Ombudsman can escalate the matter by referring to a specialized Board against Discrimination, which may issue a binding compliance order alongside with financial penalties, even against the state.¹¹⁰ Therefore, Sweden's enforcement model provides non-judicial accountability which is rather pragmatic and illustrates that even without judicial authority, equality bodies can be highly effective when they are entitled with enforceable follow-up tools. This approach demonstrates how follow-up mechanisms, combined with pecuniary sanctions, enhance institutional authority and improve compliance.

¹⁰⁹ Jenny E Goldschmidt, 'Implementation of Equality Law: A Task for Specialists or for Human Rights Experts? Experiences and Developments in the Supervision of Equality Law in the Netherlands' (2006) 13(3) *Maastricht Journal of European and Comparative Law* 323, 327.

¹¹⁰ Sandra Fredman, *Making Equality Effective: The Role of Proactive Measures* (European Network of Legal Experts in the Field of Gender Equality, Legal Research Paper Series No 53/2010, June 2010) 68.

Comparative Lessons for Georgia

The comparative analysis of equality bodies across EU member states highlights that the effectiveness of anti-discrimination frameworks depends not only on the content of their substantive and enforcement provisions, but also on how consistently and coherently these provisions are interpreted and applied in practice. This outlines the importance of having sufficiently broad enforcement powers that can support and reflect the purpose of anti-discrimination provisions. When the legal standards are interpreted in a way that aims to fulfil the broader goals of equality, such as addressing systemic discrimination or promoting substantive equality, enforcement tools must be flexible and wide-ranging enough to match that ambition.¹¹¹

A key finding from comparative practice is the value of strategic litigation, not merely as a legal enforcement tool but as a mechanism for shaping norms, clarifying legal standards and triggering systemic reforms. One of the core issues presented in Georgia's current framework is the absence of strategic litigation mechanisms, which leaves victims, especially in private sector, with limited avenues for redress. This restrictive approach is especially problematic when addressing deeply rooted structural discrimination. As Bell argues, reliance on individual litigation may be inadequate for dealing with group-based or systemic exclusion.¹¹² This raises questions whether the similarly structured Georgian framework, can be a catalyst for systemic change. However, one major issue is that strategic litigation often relies on individuals who are both willing and able to bring a case forward. Many of those most affected by discrimination face significant barriers in accessing justice and may be hesitant or unable to engage in legal proceedings. In addition, the legal process itself presents challenges, proving discrimination typically requires meeting high

¹¹¹ Monika Ambrus, Marjolein Busstra and Kristin Henrard, 'The Racial Equality Directive and Effective Protection against Discrimination: Mismatches between the Substantive Law and Its Application' (2010) 3(3) *Erasmus Law Review* 165, 180.

¹¹² Mark Bell, 'The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model?' (2008) 79(1) *The Political Quarterly* 36, 38.

evidentiary standards. As a result, even promising cases may lose their impact before reaching a decision on the key legal issues involved.¹¹³ Hence, relying on litigation-based enforcement models has notable limitations. This is often intensified due to the fact that judicial process usually includes time delays and financial constraints.¹¹⁴ Consequently, broadening Ombudsman's litigation functions cannot be assumed to have unquestionably positive results.

Nonetheless, Georgia could adopt a targeted case selection framework, such as the model used by Ireland's IHREC, which assesses cases based on legal merit, public interest and systemic impact. Therefore, Public Defender could use strategic case selection as more of a tool of influence, rather than enforcement, to trigger proactivity and systemic change.

The comparative models also reveal the benefits of institutional clarity, as some member states separated the adjudicatory and promotional functions of equality work into distinct bodies. This separation enhances both credibility and effectiveness, allowing one institution to act as a neutral adjudicator while the other serves as an active advocate for victims and reform. In Georgia's context, this separation is currently absent and the consolidation of such diverse responsibilities within a single institution could foster tensions between the need for institutional impartiality in resolving complaints and the obligation to actively advocate for structural reform. These competing roles may weaken the perceived neutrality of the Ombudsman's equality function or conversely, dilute its advocacy efforts due to the constraints of maintaining adjudicative credibility. The dual-body model sheds light on how this structural overlap can help develop clearer roles, more focused expertise in both the decision-making and promotional aspects of equality aims. Similarly, Ammer and others. also suggest that the establishment of both promotion-type and

¹¹³ Dagmar Schiek, Lisa Waddington and Mark Bell, *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Hart Publishing 2007) 897.

¹¹⁴ Virginie Guiraudon, 'Equality in the Making: Implementing European Non-Discrimination Law' (2009) 13(5) *Citizenship Studies* 527, 537.

tribunal-type equality bodies can ensure a functional separation between the supportive role of assisting victims and the adjudicative role of determining discrimination cases. According to the authors, this institutional division enhances the credibility of each body and provides a stronger foundation for effective anti-discrimination enforcement.¹¹⁵

While full institutional separation, may be politically or financially unfeasible in the short term, Georgia could introduce functional separation within the Public Defender's Office, through internal departments or dedicated deputy ombudspersons focused specifically on the equality mandate. This would allow for specialization, reduce role conflict and reinforce professional identity within the equality mandate. That said, functional separation must be complemented by strong internal coordination and adequate human and financial resources to prevent superficial segregation without substantive gains.

As it was emphasized in the previous chapters, Ombudsman's recommendations usually lack legal consequences which erodes its power and legal authority. Namely, the lack of follow-up mechanisms in Georgia's frameworks undermines the development of a compliance culture. Comparative models, particularly from the Netherlands, France, and Sweden, show that even non-binding decisions can carry weight when supported by structured follow-up. Through implementation of follow-up mechanisms, equality bodies can help encourage that recommendations carry normative weight over time. In Georgia, integrating similar procedural provisions could enhance deterrent value of the Public Defender's work and contribute to a stronger preventive function. Thus, while legislative change to introduce binding authority may remain a long-term goal, the implementation of systematic follow-up mechanisms offers a feasible short-term pathway to strengthen the Ombudsman's practical influence and perceived authority.

¹¹⁵ Margit Ammer and others, *Study on Equality Bodies Set Up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights and European Commission, Directorate-General for Justice 2010) 181.

Therefore, introducing a follow-up mechanism, such as mandatory reporting on implementation or a review-process for non-compliance, would significantly strengthen the Public Defender's capacity to promote adherence to anti-discrimination provisions. Most importantly, these tools would not require major reforms or the delegation of judicial powers but would nonetheless provide the Ombudsman with the institutional leverage to ensure that its findings are not consistently ignored.

Finally, through comparative analysis of institutional models and enforcement practices in EU member states, above-mentioned recommendations address specific normative and procedural deficiencies and amongst most notably, the absence of litigation powers, the lack of binding legal effect for the Public Defender's decisions and the nonexistence of statutory follow-up obligations. By identifying and responding to these gaps, the chapter aims to support the development of a more coherent and enforceable legal framework capable of delivering effective remedies and enhancing legal certainty for victims of discrimination. Strengthening these aspects is not only a matter of aligning with international best practices, but a necessary step toward fulfilling the constitutional requirement to provide equal protection under law and ensuring the proper functioning of national anti-discrimination mechanisms.

Conclusion

This thesis has examined the extent to which the Georgian equality framework, particularly the mandate and enforcement capacity of the Public Defender's Office, aligns with the EU's evolving standards on anti-discrimination and equality bodies. Drawing from both doctrinal legal analysis and comparative insights from EU member states, the study aimed to assess not only the normative compatibility of Georgia's legislative provisions with EU Directives, but also the practical effectiveness of the national equality body in fulfilling its core mandate: to prevent, address and remedy discrimination.

The findings reveal a substantial gap between the formal establishment of an equality body and the actual realization of its potential under EU standards. While Georgia's 2014 Anti-Discrimination Law represents a meaningful step toward harmonization with EU norms, the Public Defender's institutional design and legal powers need what is required to ensure the effective enforcement of anti-discrimination guarantees. Namely, the Ombudsman's structural arrangement lacks legally binding authority, follow-up procedures and strategic litigation powers.

The thesis highlighted the importance of "effectiveness" encompassing not only formal independence and accessibility, but also functional competence to investigate complaints, issue decisions, support victims and pursue systemic change through litigation. However, in practice, the Georgian Public Defender remains a promotion-type body with constrained capacity to enforce its findings or compel compliance, particularly regarding the private sector. Victims of discrimination often lack access to binding remedies, while the Ombudsman's recommendations, though frequently well-reasoned, are largely disregarded due to the absence of meaningful enforcement mechanisms. As noted in recent data, more than 70% of the Ombudsman's

recommendations were ignored or only partially implemented, reflecting a systemic failure to translate legal mandates into real accountability.

In contrast, equality bodies in various EU member states offer models that demonstrate how institutional design, functional clarity and legal authority can influence effectiveness. For instance, Ireland's IHREC exercises strategic litigation through carefully developed selection criteria, while Sweden's Equality Ombudsman operates within a tiered enforcement model that incorporates follow-up procedures and potential financial sanctions. Austria's dual-body model, combining an Ombud and a separate Equal Treatment Commission, highlights how structural separation of mandates can reduce the institutional tensions associated with multi-mandate bodies. These diverse examples emphasize that effectiveness is not solely a matter of legal provisions, but of institutional architecture and operational capacity.

Based on these findings, the thesis proposed several practical and legally feasible developments aimed at enhancing the Public Defender's authority and responsiveness. First, introducing strategic litigation powers which would allow the institution to pursue precedent-setting cases and influence broader legal standards. Second, setting up structured follow-up mechanisms, including mandatory feedback from state or private actors, would help establish a culture of compliance and increase the normative weight of the Ombudsman's opinions and recommendations. Third, institutional clarity, whether through internal functional separation or the creation of additional bodies could help balance the impartiality required for adjudication with the proactive advocacy which is crucial for promoting equality. Importantly, these enhancements could be initiated without major legislative reforms, merely requiring administrative adjustments, regulatory changes or internal shifts.

Consequently, this thesis has outlined that Georgia's alignment with EU anti-discrimination standards cannot rely solely on formal legislative compliance. Rather, it must involve a substantive transformation of how equality is protected and promoted in practice. The credibility of Georgia's commitment to human rights and European integration depends on whether individuals can access real, effective remedies for discrimination. Strengthening the Public Defender's mandate, powers and enforcement tools is therefore not only a legal imperative but a democratic one, essential for securing public trust in state institutions and for ensuring that the promise of equality is not merely symbolic.

Therefore, considering above-mentioned analysis, with the vagueness of the EU Equality Directives, the window of opportunity is open for Georgia to revise its institutional framework and finally close the gap between formal legal provisions and practical enforcement. The challenge now is not to highlight alignment, but to deliver genuine protections for individuals from discrimination. More proactive and effective equality body would not only reinforce the institution's authority but restore public trust in the promise that equality is not merely a constitutional objective, but a right that can be claimed, defended and realized in everyday life.

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