Recent activities at European level in the area of non-discrimination

Current Reflections on EU Anti-discrimination Law
ERA Seminar, Trier, 3 June 2019

- Importance of non-discrimination in election campaigns (see Equinet Recommendation)
- Interim period, slowdown of policymaking and legislation
- Possible new directions and new policy strategies

European elections
New directions?

- Importance of non-discrimination in election campaigns (see Equinet Recommendation)
- Interim period, slowdown of policymaking and legislation
- Possible new directions and new policy strategies
The current EU equality law framework, if properly implemented, is strong – but incomplete.

<table>
<thead>
<tr>
<th>Fields/Grounds</th>
<th>Race</th>
<th>Gender</th>
<th>Sex orientation</th>
<th>Age</th>
<th>Disability</th>
<th>Religion</th>
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<tbody>
<tr>
<td>Employment</td>
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<td>Education</td>
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<td>G &amp; S, housing</td>
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<tr>
<td>Soc. Protection (Healthcare)</td>
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<td>Soc. advantages</td>
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</tbody>
</table>

Equality and non-discrimination

- Equality and non-discrimination are fundamental values of the EU and in the constitutional traditions of all MS.
- International obligations (ECHR, CRPD, SDGs, etc.)
- Equality bodies in 26 EU Member States already cover some or all areas not covered by EU law.
Passerelle clause?

- Earlier idea: enhanced cooperation procedure (a group of nine or more MS moving ahead with a proposed initiative)
- April 2019: European Commission Communication proposing to consider the use of the passerelle clause for the area of non-discrimination, moving from unanimity to QMV

Meanwhile: a developing text?

What do you think of this definition?

*Article 2 (3-a): “Discrimination on multiple grounds occurs when discrimination is based on any combination of the grounds set out in Article 1 of this Directive. Discrimination on multiple grounds may occur on the basis of any such combination also where discrimination would not occur on one or more of the grounds when taken separately.”*

*Consolidated text of the Horizontal Directive, November 2018 (latest published version)*
The case work of equality bodies I

- Free preventive annual breast cancer screening only available to women aged 40-69
- The equality body recommended the extension of the eligible age group in particular due to the risk of breast cancer being highest among women aged 75-79

The case work of equality bodies II

- A municipality denied transport for an 8-year old wheelchair user to her new school – even though the length of the drive was almost unchanged
- Reference to municipal rules that taxi rides are not organised to special music schools
- The equality body successfully invoked reasonable accommodation rules and negotiated a settlement
The case work of equality bodies III

- A woman wearing a Muslim headscarf was harassed by her doctor
- Aspersions about the Muslim religion, her position as a woman in society, her willingness to be oppressed...
- The doctor went as far as calling the woman’s employer
- The equality body dealt with the case as intersectional discrimination (gender-religion): a necessity given that the religion ground is not covered outside employment

The case work of equality bodies IV

- Refusal by a company to print a roll-up stand with the name and logo of the ‘LGBT Business Forum’
- The equality body took up the case that ultimately went up to the Supreme Court
- Christian convictions of the employee of the printing company were found not to be justified reasons for the refusal of the service
Work-Life Balance

- Initiative under the European Pillar of Social Rights (legislative and non-legislative)
- Paternity leave: 10 days, sick pay
- Parental leave: 4 months, two of which non-transferable and remunerated (level set by MS)
- Carer’s leave: 5 days per year
- Right to request flexible working arrangements

Hate speech online

- May 2016: Code of conduct on countering illegal hate speech online – European Commission and social platforms
- February 2019: results of the 4th monitoring cycle
- 89% of notifications reviewed within 24 hours
- 72% of illegal hate speech notified is removed

Countering illegal hate speech online
#Noplace4hate
Roma equality

- EU Framework for National Roma Integration Strategies (2011)
- Focus: employment, health, education, housing (latest evaluation proposing an increased focus on fighting discrimination and antigypsyism, as a separate priority area)
- Mid-term evaluation suggests
  - Improvement in education (except segregation), health, poverty, discrimination
  - No change or even deterioration in employment, housing, antigypsyism

European Accessibility Act

- Proposed in 2015, Adopted in April 2019
- Objective & legal basis: improve the functioning of the internal market for accessible products and services (Art. 114 TFEU)
- Scope: PCs, ATMs, ticketing machines, TV equipment, AV media services, banking, e-commerce, e-books, etc.
- The EAA doesn’t cover e.g. transport and the built environment
LGBTI List of Actions

- Adopted in 2015, annual reports since 2017
- #EU4LGBTI toolkit
- Financial support to organisations and projects
- CJEU case law (MB v Secretary of State for Work and Pensions; Coman)
- Audiovisual Media Services Directive

Many actors in the field

- **European Union Agency for Fundamental Rights (FRA):** Fundamental Rights Report 2018 (focus chapter on ageing); Report on Roma women; Antisemitism survey; guide on preventing unlawful profiling; Being Black in the EU; 10 keys to effectively communicating human rights
- **European Institute for Gender Equality (EIGE):** Gender Equality Index; Toolkit on gender sensitive communication
- **European network of legal experts in gender equality and non-discrimination:** recent reports on equality bodies; family leave; Trans and Intersex rights; UN CRPD
Creating the conditions for equality bodies to contribute

The work of equality bodies
Hard and soft powers

Functions laid down in EU Directives:
- Independent assistance to victims of discrimination
- Independent surveys and reports concerning discrimination
- Recommendations on discrimination issues
- Exchange of information with European bodies

Wider functions accorded to Equality Bodies:
- Awareness-raising and promotion of values
- Promotion of good practices
- Work with stakeholders
- Monitoring and supervision
The potential of equality bodies

- Social – organisational – individual change
- Effective monitoring and enforcement of equality law and duties
- Prevention of discrimination
- Developing national and European jurisprudence
- Promotion of good equality practices
- Awareness-raising
- Research and knowledge creation
- Policy advice

International and European standards

- EU Directives
- UN Paris Principles (for NHRIs)
- ECRI GPR No. 2
- CoE Commissioner for Human Rights Opinion
- By analogy: Standards for Data Protection Authorities
- European Commission Recommendation
The added value of standards

- Expressing commitment to promoting and defending the fundamental value of equality
- Ensuring that equality bodies in each Member State have a wide mandate, a minimum set of powers and a minimum level of independence and resources;
- Enabling a more effective contribution to implementing equality legislation and creating equal societies
- Acknowledging the potential and contribution of equality bodies as specialist institutions and ‘European good practice’

Implementing standards for equality bodies

- Discussions and good practice sharing among Member States
- Develop indicators for the Recommendation
- Use standards for monitoring work by the European Commission
- Discussions among equality bodies – Equinet project in 2019
- Acknowledge equality bodies as a European good practice
- Academic analysis of the situation and the needs
THANKS FOR YOUR ATTENTION!

ANY QUESTIONS?

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