

Charting the Charter

Equality bodies and fundamental rights in the EU

Equinet Seminar Brussels, 16-17 June 2015

Evelyn Collins – Opening

On behalf of Equinet, the European Network of Equality Bodies, I would like to warmly welcome all participants to this Seminar and thank Chiara Adamo for her opening address and insights about the European Commission's work on the Charter of Fundamental Rights. We know that Chiara has to leave us due to other important engagements but some of her colleagues will stay with us throughout the Seminar.

I would also like to thank the European Commission in particular for encouraging Equinet to focus on the Charter and to organise this capacity-building seminar to discuss and learn about the Charter's potential and added value to the work of national equality bodies.

Why dedicate an Equinet seminar to the Charter?

At a political level, the fact that President Juncker delegated responsibility to his First Vice-President, Frans Timmermans for the correct implementation of the Charter is a strong message about the importance of the Charter and the commitment of the new European Commission to fundamental rights. Mr. Timmermans committed to organise an annual colloquium on the state of play of fundamental rights in the EU and we look forward to the first such Colloquium taking place on 1-2 October this year, focusing on promoting tolerance and respect, in particular to prevent and combat anti-Semitic and anti-Muslim hatred.

As national equality bodies we have a central role in promoting equality and combatting discrimination and we are working hard to make rights live and breathe for everyone across our respective jurisdictions. The Charter can be a valuable tool to use to assist in this endeavour.

We know that the Charter has been legally binding and has the same legal value as the EU Treaties since December 2009. In all their actions, EU institutions are obliged to comply with the Charter and it also binds Member States when they act within the scope of EU law. As a relatively new source of law, the Charter has steadily gained

legal importance in the past five and a half years. The Commission's most recent report on the application of the Charter tells us that last year 210 decisions in EU Courts quoted the Charter, compared with 114 in 2013, 87 in 2012 and 43 in 2011.

Some of the most prominent Court of Justice cases on the Charter illustrate the need for systematic and thorough fundamental rights checks of all draft legislations. Last year we saw the Court using the Charter to rule the Data Retention Directive invalid. We also know very well the famous Test-Achats case where the Court invalidated an exception relating to insurance and related financial services in the Directive ensuring Gender Equality in Goods and Services.

The Charter is extensively used and referred also by the European Commission in infringement procedures. In September 2014, the Commission opened infringement proceedings against a Member State in respect of discrimination against Roma children in education, a violation of the Race Directive. The Commission, in its letter of formal notice, specifically referred to Article 21 of the Charter prohibiting discrimination based on race and ethnic origin.

The use of the Charter by national judges is less widespread, especially at lower courts. However, research by the Fundamental Rights Agency confirms that Member State high courts increasingly refer to the Charter for guidance and inspiration, even in cases which fall outside the scope of EU law.

Last, but not least, the Charter is highly relevant also in the management of EU funds as this is clearly underlined by the European Ombudsman's investigation into and findings about the respect for fundamental rights in the use of European Structural and Investment Funds.

Equal treatment is an important general principle of the EU legal order, spelled out in the Treaties and in Chapter III of the Charter of Fundamental Rights and confirmed by the case law of the Court of Justice (e.g. Küçükdeveci; Test-Achats). Equality bodies, due to their mandate, focus primarily on cases of discrimination and thus cases that fall in the remit of Chapter III of the Charter.

However, it is important to say, that equality and non-discrimination issues can arise across many articles of the Charter. Equality is a horizontal right ensuring the full, fair and equal enjoyment of all other fundamental rights protected by the Charter. Therefore, all rights stipulated in the Charter can have a strong relevance in

discrimination cases as this is illustrated for instance by the Fuchs case (C-159/10) on age discrimination, where the Court of Justice took into account the right to work stipulated in Article 15 of the Charter.

The wide-ranging catalogue of rights protected by the Charter and the horizontal relevance of equality also underline the need for closer cooperation between equality bodies and other public bodies and civil society actors ensuring the effective protection of all human rights.

The constantly growing importance of the Charter stands in stark contrast with the awareness and use of the Charter by the wider society and even by legal practitioners.

Based on the information collected by Equinet, equality bodies already refer to and use the Charter in their case work, in trainings and in their recommendations to policy-makers and legislators.

In case work we need to ensure that equality body staff are expert not just on national legislation, EU Directives and case law but also on developments regarding consideration of the Charter by the Court. Strategic cases might arise where the interpretation of the Directives and national legislation is unclear and equality bodies and courts may need to turn to the Charter for guidance and interpretation of those provisions.

Equality bodies also refer to and use the Charter in their recommendations to policy-makers and legislators. Recent examples include equality bodies making reference to the Charter in their comments on national Roma integration strategies.

Notwithstanding these examples, reference to and use of the Charter by equality bodies often remains at a rather general level, the Charter being pointed to as a foundation of more specific national laws or EU secondary law such as the Equal Treatment Directives. Some equality bodies might think that the relevance of the Charter for their daily activities is limited given that national legislation and the constitution provides for sufficient or an even more ambitious legal basis.

This Equinet Seminar on Charting the Charter was designed exactly to change this way of looking at the Charter and to help equality bodies discover and better understand its potential and its relevance for their work.

In Session 1, we will focus on the legal nature and scope of application of the Charter and its place in the human rights protection system of the EU and the relevance of the Charter for equality bodies.

Session 3 will involve presentation and analysis of the content and detailed provisions of the Charter, in particular those that are most relevant for equality bodies.

In session 4 we will have presentations based on the experience of NHRIs and NGOs with using the Charter in their work.

Session 5 will concentrate on the links of the Charter with other human rights instruments such as the European Convention on Human Rights and national law.

The last session tomorrow will take a wider look at the different ways the Charter can be used beyond case work and litigation, including on influencing public policy making.

However, it is not only the expert speakers that will make the conference a successful event but also you, as participants. We have included three workshop sessions in the programme to allow for brainstorming, discussions and exchange of ideas and good practices in what is a relatively new field for most of us. I would encourage all of you to use these opportunities for discussion and interaction.

This Seminar is far from being the end of our engagement with the Charter. Equinet has many other plans for 2015 that are relevant for the Charter beyond this 'flagship' event, including:

- a report on equality bodies' work and experience in the field of economic and social rights,
- a seminar on work-life balance coming up in just two weeks,
- another seminar on religion and belief, and
- a high-level conference on freedom of movement and nationality-based discrimination in the context of the new EU Directive.

With this, I would like to wish you all a successful and thought-provoking seminar.