

2014 Equinet High Level Legal Seminar on Equality Law = SUMMARY =

Equinet organised its [2014 High-Level Legal Seminar](#) on 19 February in Brussels, focusing on legislative developments, jurisprudence and case law relating to European equal treatment legislation. One of the sessions focused specifically on freedom of movement and nationality-based discrimination. Close to 100 legal experts and practitioners working with anti-discrimination law participated at the seminar, including senior legal staff from national equality bodies, the European institutions, agencies and other international organisations, from national and European NGOs, the academic world and social partners active in the field of non-discrimination and equal treatment law. The seminar offered participants a platform for information exchange, networking and learning about relevant developments in equality law.

In her opening address **Ms. Evelyn Collins**, Chair of Equinet, welcomed participants and speakers to the seminar. Introducing the topics of the Seminar, she pointed to the importance of the [Joint Report on the Application of the Race Directive and the General Framework Directive](#) published by the European Commission in January 2014. The report concludes that *'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. Enhancing the effectiveness of equality bodies and allowing them to reach their full potential could go a long way towards promoting equal treatment in a way that is easily accessible to everyone in the EU and faster as well as less costly than enforcement through courts for all the parties concerned (including Member States)'*.

In his opening, **Mr. Andreas Stein**, Head of Unit for Equal Treatment Legislation in the European Commission's DG Justice, gave an insight into relevant legislative developments and proposals at EU level. He underlined the importance of the role of national equality bodies (NEBs) and their contribution to effectively implementing equality legislation. Mr. Stein also provided an overview of important legislative developments in the field of equality law, specifically mentioning the adoption of the [Council Recommendation on effective Roma Integration measures in the Member States](#) (the first legislative instrument specifically relating to Roma persons); negotiations in the Council on the proposed [Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures](#) and on the proposed [Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation](#). He also mentioned the European Commission's Joint Report on the Application of the Race Directive (2000/43/EC) and the General Framework Directive (2000/78/EC) and the [Report on the Application of the Gender Recast Directive](#) (2006/54/EC).

Mr. Stein also pointed to the importance of the upcoming European Parliament elections and the appointment of a new College of Commissioners. He noted that these changes will lead to a temporary slowdown of the legislative processes and that consequently during this time the European Commission might dedicate more resources and attention to the monitoring and enforcement of implementation of the existing legislation. He underlined that in the context of these changes it will be important to ensure that equality issues and the situation of equality bodies remains a priority on the agenda of the new Commission and Parliament.

The **FIRST SESSION** of the legal seminar was dedicated to the developing jurisprudence on discrimination in Europe.

Mr. Colm O’Cinneide, Member of the European Committee of Social Rights and Reader in Law at the University College London, delivered a keynote speech analysing the evolving case law of the CJEU and its interplay with the ECtHR and the European Committee of Social Rights. His presentation illustrated with key CJEU decisions how the Court (and later the Charter of Fundamental Rights of the EU) established that equal treatment is a general principle of EU law and that, consequently, the equal treatment directives may not be read in a narrow or excessively formalistic manner. Mr. O’Cinneide pointed out also the important influence of gender equality case-law on cases on other grounds and the cross-ground consistency of application that characterises CJEU jurisprudence. His presentation also analysed key questions relating to the scope of the directives, the distinction between direct and indirect discrimination, the burden of proof, the sanctions regime, the predominance of age discrimination cases and the lack of cases on some grounds, notably on religion and belief. In his concluding observations Mr. O’Cinneide underlined that despite the evolving case law the relationship between EU equality law, and equality provisions of the European Convention on Human Rights and the European Social Charter remains uncertain and that the role of equality bodies will be key in further developing non-discrimination case law.

Ms. Pia Lindholm and Mr. Alvaro Oliveira presented the European Commission’s joint report on the application of the Race Directive (2000/43/EC) and the General Framework Directive (2000/78/EC). The report benefited from important contributions from [Equinet](#) and from individual equality bodies. Ms. Lindholm and Mr. Oliveira pointed out that the previous report on the directives published by the Commission in 2006 focused mainly on transposition of the directives into national laws, while this joint report aimed at going further and analysing the functioning and the effects of the directives. The report found that all Member States have transposed the Directives, but further efforts will be needed to ensure their correct application. In particular, the Commission noticed important challenges relating to the awareness of rights, under-reporting, access to justice, the efficiency of sanctions and remedies and the lack of equality data. The Commission concluded that equality bodies play a key role in the proper implementation of the directives and further support to them is needed to enable this important role.

The Commission also published a staff working document with annexes to the joint report, including an annex with guidance to victims of discrimination, a summary of case law, and an annex on provisions relating to age discrimination in the Member States.

The **SECOND SESSION** of the seminar focused on case-law relating to specific forms and types of discrimination.

Mr. Dezideriu Gergely, Executive Director of the European Roma Rights Centre, presented an overview of the problem of segregation of Roma children in education. He underlined that currently there is only one international convention defining the concept of segregation, the UNESCO Convention against Discrimination in Education (establishing or maintaining separate educational systems or institutions for persons or groups of persons). There are three distinct patterns of school segregation: segregation between schools; segregation within schools; segregation into special schools, including schools for children with mild intellectual disabilities. Mr. Gergely's presentation discussed the necessity of applying positive action measures, the issues of using statistics and situation testing to shift the burden of proof and analysed the key segregation cases dealt with by the European Court of Human Rights (Lavida and Others v. Greece - 7973/10; Horváth and Kiss v. Hungary - 11146/11; Sampani and Others v. Greece - 59608/09; Oršuš and Others v. Croatia - 15766/03; Sampanis and Others v. Greece - 32526/05; D.H. and Others v. the Czech Republic - 57325/00).

Ms. Iustina Ionescu, from the Euroregional Center for Public Initiatives in Romania, presented the Asociația Accept decision of the Court of Justice of the EU (C-81/12) and the lessons learnt from it. Ms. Ionescu represented Asociația Accept (Accept), a Romanian NGO advocating LGBT rights, in this case that involved a statement by the patron of a football club, stating that he would never hire a homosexual football player. Accept filed a complaint against both the patron and the football club and, following a decision by the Romanian equality body, the National Council for Combatting Discrimination, the case was referred to the CJEU by the Romanian court. The CJEU's decision clarified that Accept had a legal standing in the case, that the General Framework Directive (2000/78/EC) applies in the case, and that the statements of the football club's patron are sufficient to shift the burden of proof both against the patron and the football club even without any identifiable victim and even if the patron had no formal legal capacity to represent or bind the club (but is known to have a strong influence over the management of the club). Importantly, the CJEU also clarified that sanctions for discrimination need to have a genuinely dissuasive effect and purely symbolic sanctions will not suffice.

The **THIRD SESSION** of the Seminar focused on ensuring freedom of movement and combating nationality-based discrimination, a topic of growing importance for equality bodies. Speakers also discussed the EU's proposed [Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers](#). The Directive was ultimately adopted by the Parliament and the Council on 14 April 2014.

Ms. Edit Bauer, Member of the European Parliament and the Parliament's rapporteur on the new Directive, informed participants about the aims and the content of the directive and the current stage of the legislative process. Ms. Bauer explained that the Directive was proposed by the European Commission to support the proper implementation and functioning of the EU's freedom of movement regulation already in place. The new Directive foresees the setting up of specific bodies in each Member State for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality. Ms. Bauer argued that appointing equality bodies for this role could bring added value to the legal framework and move the issue of free movement of workers forward.

Ms. Gillian More from the European Commission DG Employment, Social Affairs and Inclusion gave an insight into the Commission's aims with proposing the Directive. She explained that the Directive regulates an area effectively on the border between non-discrimination and free

movement and that poor enforcement of the current legislative framework on freedom of movement and lack of information reaching citizens about their rights triggered this Commission action. She underlined that a significant part of the Directive was modelled on the EU's Race Directive. Speaking about the specific bodies to be set up in each Member State, she pointed to the importance of independence of such bodies to ensure they can fulfill their important functions.

Mr. Paul Minderhoud, from the Dutch Radboud University Nijmegen, was the Coordinator of the European Network on Free Movement of Workers until the end of 2013. The successor of this network from 2014 is the European Network on Free Movement of Workers and Social Security Coordination. Mr. Minderhoud explained the current legal framework on freedom of movement for workers, including Article 45 of the Treaty on the Functioning of the EU and Regulation 492/2011 on freedom of movement for workers within the Union. Echoing Ms. More's presentation, he pointed out the discrepancy between the legal framework and reality on the ground. His presentation also listed key obstacles in the field of freedom of movement for workers as well as three important challenges relating to the proposed Directive, including that it is not applicable to posted workers, that its implementation will depend on the good will of Member States and that it has similar weaknesses to the equal treatment directives. Importantly, the Directive does not regulate the question of the burden of proof and sanctions.

Ms. Calliope Spanou, the Greek Ombudsman and **Mr. Patrick Charlier**, Deputy Director of the Belgian Centre for Equal Opportunities and Opposition to Racism (both Equinet member organisations, already holding a mandate covering nationality-based discrimination) gave short presentations illustrating the experiences of national equality bodies in combating nationality-based discrimination. Both speakers reported a lack of awareness and knowledge of rights in a setting where legislation is still all too often constructed with nation states in mind, potentially creating problems for cross-border workers. Examples of cases from the Greek and Belgian equality bodies included employment in public service, the opening of bank accounts, the recognition of professional qualifications and city tax for non-citizens.

In her **CLOSING** remarks, **Ms. Anne Gaspard**, the Executive Director of Equinet, expressed her hope that the seminar provided participants and speakers with an interesting and useful opportunity to network and to exchange views and experiences.

If you wish to know more about the event please check its [dedicated webpage](#) where you will find the detailed training program, the presentations of speakers and other useful material.

To keep up to date with the latest developments from equality bodies and Equinet, we encourage you to subscribe to our newsletter (on the homepage of the Equinet website www.equineteurope.org) and follow us on Facebook (facebook.com/EquinetEurope) and Twitter ([@equineteurope](https://twitter.com/equineteurope)).