

Equinet High-Level Legal Seminar

Brussels, 28 March 2012

Summary

On 28 March 2012 Equinet organised its annual high-level legal seminar in Brussels, focusing this year on discrimination cases in front of the European Courts (Court of Justice of the European Union – CJEU; and European Court of Human Rights – ECtHR) and the role of national equality bodies. The aim of the seminar was to give senior legal experts representing national equality bodies or other entities working with the European anti-discrimination legislation insights into current case law of the European courts in the field of equality, with a focus on the role that national equality bodies could play before these courts. The three sessions focused on: Litigating discrimination cases in front of the CJEU; Involvement of national equality bodies in CJEU proceedings and Key discrimination cases at national and European level.

The seminar provided participants and speakers with an interesting opportunity to exchange views and experiences on ways for national equality bodies to influence the law through litigation, be it on a national or a European level. The relevance and proficiency of the speakers' presentations as well as the active involvement in the seminar of its participants created a forum for fruitful exchange and inspirational debate, focusing on practical aspects of the work of national equality bodies.

In his opening address Mr. Aurel Ciobanu-Dordea, Director for equality of DG Justice of the European Commission, underlined the importance of the role of national equality bodies, which in his view *"have proven essential in moving from the law on paper to the law in practice"*. This role is increasingly necessary in this time of economic crisis, when victims of discrimination have even greater needs than usual for effective assistance. However, largely owing to the very same economic crisis equality bodies often face restrictions in their financial as well as human resources.

The seminar examined the role of national equality bodies before the European courts, mainly the Court of Justice of the European Union (CJEU) but also the European Court of Human Rights (ECtHR). The possible ways for equality bodies to influence the law through litigation before these Courts differ greatly depending on diverging legal frameworks in the Member States. However, many potential ways for equality bodies to use the powers they have been given to the fullest and to test the limits of these powers were discussed during the seminar.

Most importantly, several speakers insisted on ways for national equality bodies, which ever may be their statutory role or powers, to use the preliminary ruling procedure before the CJEU (article 267 TFEU). This procedure is directly accessible only to national *"courts or tribunals"*, which does not include the majority of national equality bodies. They therefore lack the possibility of referring questions in their own name to the CJEU. However, national equality bodies dispose of different ways to indirectly influence the CJEU case law through the preliminary ruling procedure. One of the expert speakers, Nanna Margrethe Krusaa used the Equinet publication [*"Influencing the law through legal proceedings: Powers and practices of national equality bodies"*](#) to summarise and explain these different possible methods for national equality bodies. Thus, an equality body could play a role either by

being a party to the national proceedings, thereby gaining the right to intervene before the CJEU in the case of a referral by the national courts; by making submissions to the European Commission or a national government and hoping that these will be taken into account and their views presented before the Court; or by cooperating with another national equality body who is participating in proceedings before the CJEU in one way or another. For this kind of cooperation the importance of Equinet as a forum for exchange between equality bodies was underlined and highlighted.

Lawyers with extensive experience in using this procedure such as Robin Allen QC and Clare Collier of the Equality and Human Rights Commission (EHRC), UK, presented key aspects which need to be taken into account by the national equality body as regards proceedings before the CJEU. They underlined for instance the importance of intervening already during the proceedings before the national courts, as to be ensured the right to intervene before the CJEU subsequently if a question should be referred for interpretation or application of the EU non-discrimination legislation. Andreas Stein, representing the European Commission, said that a change in the CJEU's statutes authorising direct intervention by national equality bodies before the Court in cases where they have not been a party to the national proceedings is not likely to happen any time soon, but underlined the different levels of intervention which national equality bodies can use. He encouraged them for instance to draw the attention of the European Commission to any potential breach by a Member State of the European anti-discrimination legislation, enabling the Commission to undertake infringement proceedings before the CJEU.

A majority of national equality bodies in Europe could not fall within the jurisprudential definition of a "national court or tribunal" and lack therefore the possibility of referring questions in their own names to the CJEU. However, Ms Esen Fikri of the Bulgarian Commission for Protection against Discrimination (CPD) presented during the Seminar the *Belov* case (C-394/11) which is now pending before the CJEU, where a question was referred by the CPD itself in its role of quasi-judicial equality body. As such, it will be the first occasion given to the CJEU to pronounce itself on the potential qualification of an equality body as a "court or tribunal".

During the discussions many interesting and inspirational experiences were shared, and practical illustrations of best practices were appreciated. Clare Collier of the EHRC (UK) explained for instance how they had tried to participate in a case even when it was too late for procedural reasons to intervene in the procedure before the CJEU, by writing a letter containing a presentation of their views on the case, which was included in the applicant's written submission (*Heyday*, C-388/07).

The participants of the seminar also had the opportunity of exchanging ideas and suggestions concerning ways of interpreting and applying the European anti-discrimination legislations as to best use their powers in relation to European litigation. Practical issues encountered by national equality bodies through litigation were also discussed, such as ways to convince a complainant, victim of discrimination, to not only try to win their own case but also influence the law for the future by going through longer and more challenging proceedings before the CJEU or the ECtHR. The importance of regrouping key issues from different similar cases to ensure that there is always at least one applicant remaining to bring the case before the European court was underlined.

During the final session of the seminar important current cases on national and European level were presented and discussed. Felipe Temming presented the case law of the CJEU on age discrimination in cases of compulsory retirement age and maximum employment age, where the level of scrutiny applied by the Court has been oscillating through recent cases. Lilla Farkas presented the *Galina Meister* case¹ at the time pending before the CJEU but where the Opinion delivered by Advocate General Mengozzi has been criticised. Peter Reading of the EHRC presented four recent cases concerning conflicts between the freedom of religion and the right to equal treatment which are pending before the ECtHR and where the EHRC (UK) has made submissions with the important input and feedback from other national equality bodies through the work of Equinet. As moderator for the Equinet Equality Law in Practice working group, he also presented the soon-to-be-published report by the WG, "[*A question of faith: Religion and belief in Europe*](#)".

If you wish to know more about this Equinet seminar, please check our website where you will find the detailed seminar programme, all presentations, recommended reading and other useful material.

¹ C-415/10.