

Equinet submission to FREMP meeting on Fundamental Rights Challenges in 2020 and beyond

Brussels, 06.11.2019

Equinet welcomes the opportunity to share with Member States the key fundamental rights challenges in 2020 and beyond from the viewpoint of equality bodies. The length of this submission does not allow for going into details of the issues by discriminated groups. Therefore, while noting the different impacts on and experiences of certain groups and individuals, our submission takes a horizontal and intersectional approach, looking at the key overarching challenges that impact the whole of society.

Comprehensive legal framework allowing for an intersectional approach

Equinet continues to call for strengthening and extending the current EU legal framework against discrimination to ensure a comprehensive coverage of all grounds and fields of discrimination. This is particularly important for discrimination on the grounds of age, disability, religion or belief and sexual orientation that is only prohibited in the field of employment.

We welcome the Council conclusions of 7 October 2019 on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work whereby the Council reiterated its commitment to measures to combat discrimination on any ground listed in Article 21(1) of the Charter. This commitment is an excellent starting point as it goes beyond current and proposed legislation and is in line with equality and non-discrimination being key founding values of the Union.

It is important that the legal framework allows for an intersectional approach on equality and non-discrimination and relevant stakeholders make use of such an approach in legal, promotional and policy work¹. An intersectional approach is crucial to recognise and respond to the fact that all humans hold multiple identities and some combinations of these identities (for instance being a Roma woman with a disability or a young Muslim person of North African origin) put people at a particularly high risk of discrimination. Legislation and policies should take this into account by, for instance, adopting specific solutions for such groups and by adapting the burden of proof and the levels of sanctions accordingly.

Communicating and valuing equality and fundamental rights

Equinet finds it crucially important that all relevant stakeholders become better at communicating equality and fundamental rights. This is one effective and necessary tool to challenge the current advance of populist rhetoric that intends to frame equality and fundamental rights as important only for the “ruling elite” and proposes to divide societies into ‘us’ and ‘them’. Such divisions, coupled with the potential of new technologies, have led to particular concerns about the increase of online hate speech in our societies. Hate speech and the normalization of discrimination undermine our core European values and have to be tackled effectively.

Work conducted by Equinet² and others shows that messages that are based on the positive values of solidarity, compassion and dignity are more effective than those that are based on authority or legal arguments. The effectiveness of this tool will depend on consistent hope-based messaging, a political

¹ See Equinet’s report on Intersectionality: <http://www.archive.equineteurope.org/Equinet-Perspective-Innovating-at-the-Intersections-Equality-Bodies-tackling>

² <http://equineteurope.org/2018/10/18/framing-equality-communication-handbook-for-equality-bodies/>

consensus on the value of equality and fundamental rights, and political support to the work of equality bodies and other bodies working in the field.

Economic and social rights and discrimination based on socio-economic disadvantage

Inequality is growing in European societies and this leads to particular concerns about a growing population losing access to basic economic and social rights such as education, employment or social protection. This calls for reinforcing the efforts to implement the European Pillar of Social Rights. The experience of equality bodies shows the intersectional nature of violations of economic and social rights in that people belonging to particular vulnerable groups defined by, for instance, race or ethnic origin, disability or age are much more likely to suffer from a limitation of their economic and social rights. Women are often in a particularly vulnerable situation with regard to these rights. Equal treatment legislation offers a useful avenue to tackle these issues given that a limitation of someone's economic and social rights based on belonging to a group defined by a discrimination ground is directly justiciable. This is often in contrast with the limitation of the substantive right, where Member States have a certain margin of appreciation and an obligation for progressive implementation.

The experience of equality bodies also shows that socio-economic disadvantage in itself can be a ground for discrimination. This is the case when for example someone is discriminated due to their address, financial situation or wealth, or the type of education they receive. The experience of equality bodies from Member States where socio-economic disadvantage is stipulated in legislation as a discrimination ground points to the use and necessity of this additional ground³.

New Information Technologies, including Artificial Intelligence (AI)

New information technologies have a significant potential to exacerbate or lead to discrimination and inequalities on several grounds. These impacts may be involuntary or they may be consciously sought for. It is important to note that machines do not discriminate of their own accord. People creating and using new information technologies and in particular AI hold the same biases and stereotypes that lead to the 'traditional' acts of discrimination in society and they reproduce discrimination. At the same time new information technologies also hold an important potential for tackling discrimination and inequalities. It is important that these potential advantages are publicly discussed, noted and used to the best possible extent. The specificities of these technologies and the large number of potential victims of discrimination call for a rethinking and adjustment of the current legal and institutional framework, including the type and level of sanctions. At the same time we have to be mindful that these frameworks remain relevant and effective to tackle the majority of the new issues as well. It is crucial that we ensure transparency in the development and use of AI in order to avoid any outcomes that have the potential to discriminate.

Strong, independent and effective institutions

Noting that the Working Party will have the chance to discuss this issue more in detail on 5 November, Equinet would like to point to the crucial importance of ensuring the legal, financial and political conditions for equality bodies and other public bodies, as well as civil society working on fundamental rights, to fulfill their mandate in an independent and effective manner. The current shrinking space for all stakeholders working on equality and fundamental rights undermines the promotion of equality and the fight against discrimination and other fundamental rights violations, and risks increasing the divisions in society.

³ <http://www.archive.equineteurope.org/Equality-Bodies-contributing-to>