

# EQUINET SEMINAR

## Charting the Charter: Equality Bodies and Fundamental Rights in the EU

*16 – 17 June 2015, Crowne Plaza Hotel, Brussels*



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Equinet warmly thanks all the chairs, speakers and participants for having contributed to the success of this event.

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# EQUINET & SEMINAR BACKGROUND

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## Equinet

The **European Network of Equality Bodies** is a membership organisation bringing together [42 equality bodies](#) from 32 European countries including all EU Members States.

Equality bodies are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to do so in relation to one, some or all the grounds of discrimination covered by European Union law – **gender, race and ethnicity, age, sexual orientation, religion or belief, and disability**.

Equinet aims to promote equality in Europe by enhancing the strategic capacity of its members and developing the skills and competences of their staff. Equinet also works to identify and communicate the learning from the work of equality bodies, and enhance their recognition and strategic positioning in relation to all stakeholders at European level.

## The Seminar

The Charter of Fundamental Rights of the EU (the Charter) became binding primary EU legislation with the entering into force of the Lisbon Treaty in 2009. EU institutions in all their actions and Member States, when they are acting within the scope of EU law, have a legal obligation to ensure respect for fundamental rights enshrined in the Charter.

The Court of Justice of the EU as well as national courts in their case law refer increasingly often to the Charter, illustrating its growing importance. However, to date the use of the Charter by equality bodies at the domestic level remains limited.

This Equinet seminar was dedicated to the role and importance of the Charter in safeguarding fundamental rights, ensuring equality and combating discrimination and it focused particularly on the practical use and benefits of the Charter for equality bodies.

The seminar featured presentations by eminent external speakers and experts of equality bodies as well as interactive workshop sessions.

This seminar was designed to enable equality bodies' staff to:

- Discuss the legal nature of the Charter, and its relevance for practitioners and in particular equality bodies,
- Familiarise themselves with the content of the Charter,
- Learn about the Charter's applicability at national level and its links with other human rights instruments such as the European Convention on Human Rights,
- Share their knowledge and experience during the sessions and during the breaks,
- Learn about good practice initiatives and projects by other equality bodies,
- Make better use of the Charter in their work at domestic level,
- Upon their return inform their colleagues about the lessons learned at the training.

This Equinet seminar had an audience of approximately 50 staff members of equality bodies with responsibilities in dealing with case work and legal strategy.

# SEMINAR AGENDA

**Tuesday, 16 June**

**08.30 – 09.00 Registration**

**09.00-09.30 Opening address and presentation of the European Commission's work on the Charter** **Chiara Adamo**  
Head of Unit, European Commission DG Justice, Unit C1 – Fundamental Rights and Rights of the Child

**09.30-09.45 Welcome and opening by Equinet** **Evelyn Collins**  
Chair of Equinet, Chief Executive of the Equality Commission for Northern Ireland

**09.45 – 10.00 Exchange with Audience**

**10.00 – 10.30 Coffee Break**

## **Session 1 – Introducing the Charter**

**Chair: Evelyn Collins, Equality Commission for Northern Ireland**

**10.30-11.15 Introducing the Charter** **Adam Bodnar**  
▪ The legal nature of the Charter  
▪ The Charter's place in the human rights protection system of the EU  
▪ Why and how is the Charter relevant at the national level for equality bodies?  
▪ CJEU case law on the scope of application of the Charter  
University of Warsaw and Helsinki Foundation for Human Rights, Poland

**11.15-11.30 Questions and answers**

## **Session 2 – Workshop**

**11.30-12.15 Discussing situations and cases where the Charter applies or might apply**

**12.15-13.30 Lunch**

## **Session 3 – The content of the Charter**

**Chair: Mattias Falk, Equality Ombudsman, Sweden**

**13.30-14.10 Structure and content of the Charter** **Katrin Wladasch**  
▪ The structure of the Charter  
▪ Chapters relevant for Equality  
Ludwig Boltzmann Institute for Human Rights

Bodies and related case law

- Other provisions relevant for equality bodies and related case law

14.10-15.40 **Case study applying the Charter – in small groups**

15.40-16.00 **Coffee break**

16.00-16.30 **Panel debate with the moderators of the discussion groups**

**Session 4 – The experience of NHRIs and NGOs**

**Chair: Kathalijne Buitenweg, Netherlands Institute for Human Rights**

16.30-16.50 **Presentation of cases and other work using the Charter – the experience of an equality body and NHRI** **Clare Collier**  
Equality and Human Rights Commission, Great Britain

16.50-17.10 **Presentation of cases from national and European level and other work using the Charter – the experience of an NGO** **Nuala Mole**  
AIRE Centre

17.10-17.30 **Questions and answers**

19:30 **Dinner: De Ultieme Hallucinatie** **Rue Royale 316**

**Wednesday, 17 June**

**Session 5 – Links with other human rights instruments and national law**

**Chair: Jayne Hardwick, Equality and Human Rights Commission, Great Britain**

09.00-09.30 **The Charter's links with other human rights instruments such as the European Convention on Human Rights** **Vincent Depaigne**  
European Commission, DG Justice

- Links between the different instruments
- Possible effects of the EU's accession to the ECHR and the impact of the CJEU's opinion rejecting the draft accession agreement

09.30-10.00 **The Charter's links with national human rights law and its application at national level** **Mirosław Wroblewski**  
Human Rights Defender Office, Poland

- Use of the Charter in cases at Member State level

10.00-10.15 **Questions and answers**

10.15-10.45 **Coffee break**

**Session 6 – Awareness raising and other ways of using the Charter**

**Chair: Anne Gaspard, Executive Director, Equinet**

10.45-11.15 **The work and experiences of the FRA** **Gabriel Toggenburg**  
EU Agency for Fundamental Rights (FRA)  
▪ Awareness-raising, including the Charterpedia

11.15-11.45 **Using the Charter as a lever for change** **John Morijn**  
Dutch Permanent Representation to the EU  
▪ Use of the Charter in national policy-making

11.45-12.45 **Discussing the use of the Charter outside case work, including awareness-raising, policy-making and recommendations to policy-makers – in small groups**

12.45-13.00 **Closing – Anne Gaspard, Executive Director, Equinet**

13.00-14.00 **Closing Lunch**

## Opening Address



**Chiara Adamo, European Commission, Head of Unit C1, responsible for fundamental rights and rights of the child** opened the seminar with a keynote address. She referred to the 2014 high-level conference on the Charter organized by the European Commission, which highlighted the key role of National Equality Bodies and National Human Rights Institutions in raising awareness of the Charter. This is all the more important in view of the latest Eurobarometer results demonstrating low levels of knowledge about the Charter. The same conference also laid bare the horizontal relevance of provisions in the Charter for non-discrimination and equality cases. The number of judgments by the Court of Justice of the EU referring to the Charter has steadily grown over the years and there have been some high-profile cases underlining the importance of adequate fundamental rights guarantees<sup>1</sup>.

She noted that for the Charter to be effective, the Commission has accompanied its entry into force with a robust implementation plan, namely the 2010 Strategy for the effective implementation of the Charter<sup>2</sup>. This Strategy calls for the strengthening of the culture of fundamental rights in all EU institutions and touches upon ways in which the European Commission should use the Charter, for instance through fundamental rights impact assessment and targeted training sessions. She further made the link to the Commission's recent adoption of the Better Regulation Package, which reiterates the importance of fundamental rights screening with a clear fundamental rights checklist. Chiara Adamo concluded her opening address by stressing the clear contribution equality bodies could make to many aspects of the implementation of the EU Charter of Fundamental Rights in

<sup>1</sup> See e.g. Digital Rights Ireland case (C-293/12)

<sup>2</sup> [http://ec.europa.eu/justice/news/intro/doc/com\\_2010\\_573\\_en.pdf](http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf)



terms of ensuring effective respect, protection and promotion of fundamental rights.

## Equinet Welcome Address

**Evelyn Collins, Chair of Equinet and Chief Executive of the Equality Commission for Northern Ireland** warmly welcomed the participants to the Seminar on behalf of Equinet. She outlined the objectives and rationale of the Seminar, referring to Equinet's wish to shed light on the practical use and benefits of the Charter for equality bodies.



She noted the strong and important political message that in the new European Commission, First Vice-President Timmermans was delegated responsibility for the correct implementation of the Charter. She also referred to the upcoming Colloquium on Fundamental Rights in October this year, co-organised by Vice-President Timmermans and Commissioner Jourová. She further discussed the central role played by national equality bodies in promoting equality and combatting discrimination, and branded the Charter as a '*valuable tool to use to assist in this endeavour*'. She pointed to the Commission's infringement procedure launched in September 2014 against a Member State in respect of discrimination of Roma children in education, in violation of the Race Directive, in which the Commission specifically used Article 21 of the Charter, prohibiting discrimination.

Moving on to the work of equality bodies, she noted that many national equality bodies already refer to the Charter in their recommendations to policy-makers and legislators and use it in their training activities. However, many of these references are at a rather general level and Evelyn Collins stressed how this seminar was designed to address this: to help equality bodies better discover and understand the potential of the Charter and its relevance for their work.

Following the opening addresses, Tamás Kádár from the Equinet Secretariat facilitated an exchange with the audience, which provided an opportunity for participants to think about and share their personal expectations and learning

goals to be achieved during this seminar. Topics such as ‘gaining a better understanding of the Charter’ and ‘specific guidance on how national equality bodies can use the Charter’, as well as requests concerning knowledge of CJEU case law discussing the Charter featured most prominently.

## SESSION 1 – Introducing the Charter



**Adam Bodnar, legal scholar at the University of Warsaw, Vice-President of the Board and managing the legal department of the Polish Helsinki Foundation for Human Rights** presented a legal overview of the nature, effects and case law of the Charter. Referring to the theory of multi-level constitutionalism, he started off by presenting the Charter as a document akin to a constitution for the EU level. He discussed the different types of rights in the Charter and their differing practical dimensions, and by using case law he addressed the question of what it means that the Charter is binding for Member

States only when they are implementing EU law. In terms of the scope of application of the Charter, and the case law on this topic, Adam Bodnar firstly highlighted Article 51(2) which holds that the Charter should not establish any new competencies for the EU. Article 52(3) links the Charter and the interpretation of the rights contained therein to the European Convention on Human Rights, albeit allowing for EU law to provide more extensive protection, as demonstrated for example in the Google Spain case establishing the ‘right to be forgotten’<sup>3</sup>. The close links between these two key human rights documents have led to a number of cases where the Court of Justice of the EU and the European Court of Human Rights referred to both of them as well as to each other’s case law. Adam Bodnar’s presentation provided participants with a clear, comprehensive picture of case law concerning the Charter, as well as its scope of application. He referred

<sup>3</sup> Case C-131/12

to the potential ways to use the Charter, for example as a control mechanism on legislation; in internal EU policies; in CJEU cases; by the European Commission in its role as guardian of the Treaties; and by the domestic courts.

The presentation also set the scene for future discussions on the Charter's relevance at the national level for equality bodies.

## SESSION 2 – Workshop

Participants were divided into three small groups for Session 2 to discuss situations and practical cases where the Charter applied or might apply. Participants had the opportunity to debate how useful and in what ways the Charter could be in their day-to-day work, as well as the specific challenge of effectively using the Charter in their national legal orders.



A number of potential ways to use the Charter emerged:

- Using the Charter to verify whether EU legislation is correctly transposed.
- Using the Charter to interpret and clarify the meaning of specific articles in secondary EU law or national legislation.
- Using the Charter to enhance argumentation, capitalising on its status as primary EU law

## SESSION 3 – The Content of the Charter

**Katrin Wladasch, Senior Researcher at the Ludwig Boltzmann Institute of Human Rights** gave a presentation regarding the content of the Charter. She outlined its structure and highlighted that besides Chapter 3 on Equality, other provisions were also of high relevance for national equality bodies working with the Charter. Such rights are for example the right to education (Article 14); the freedom to choose an occupation and right to engage in work (Article 15); fair



and just working conditions (Article 31); and the right to an effective remedy and to a fair trial (Article 47).

She distinguished between individually enforceable rights on one hand and principles enshrined in the Charter on the other hand, noting that the CJEU made it clear that even the latter need to be taken into account for the interpretation of the legislation<sup>4</sup>. Furthermore, she discussed the different approaches to rights in the Charter, for instance the holistic approach to inclusion taken up by Article 26 of the Charter, concerning the

rights of persons with disabilities. She further discussed the scope of protection provided by the Charter, and its purely symbolic value when used outside this scope.

Katrin Wladasch concluded her presentation by outlining the structure of a classical fundamental rights check, which can be broken down into several steps. Firstly, she pointed to the scope of protection of the Charter, and the need to determine whether a case falls within the scope of protection of a right guaranteed by the Charter. She also referred to Article 52(3), which ensures that ECtHR case law should be taken into account, if the rights in question correspond to rights in the ECHR. Secondly, in the framework of a proportionality test, it must be analysed whether any limitations of rights are sufficiently determined and predictable and whether they respect the essence of the rights enshrined in the Charter.

Katrin Wladasch's presentation provided an excellent basis for fruitful discussions on two case studies, designed after CJEU case law, but based on fictional details. The case studies gave an opportunity to analyse questions of reasonable accommodation and discrimination on the basis of age and disability. The participants of the seminar were divided into three groups and discussed the two case studies and whether the Charter would apply to them. The two case studies can be found in Annex 1 to this report.



The key conclusions of the discussion groups were shortly presented in plenary by the moderators of the groups.

<sup>4</sup> See e.g. Glatzel case (C-356/12)

## SESSION 4: The experience of NHRIs and NGOs



**Clare Collier, Senior lawyer at the Equality and Human Rights Commission in Great Britain,** highlighted the horizontal effect and application of the Charter in her presentation. She stated that use of the Charter can provide extra leverage when arguing a case before the CJEU. She also pointed out that the Charter can be used to ‘plug some gaps’ in cases where there is no specific, or equally strong, provision in the ECHR or in the EU Directives. An interesting example of this is the *Benkharbouche v Embassy of Sudan* case in front of the UK domestic courts that clarified that the guarantees in

Article 47 of the Charter (right to an effective remedy and to a fair trial) go beyond the rights enshrined in Article 13 of the ECHR. The Charter has also created some new rights or provisions, such as its Article 1 on human dignity and its Article 13 on freedom of the arts and sciences.

For the use of the Charter in proceedings where the Equality and Human Rights Commission was also involved Ms. Collier referred to the *N.S. v Secretary of State of the Home Department* case<sup>5</sup> and the *Bull & Bull v Hall & Preddy* case<sup>6</sup> among others.

**Nuala Mole, Founder of the Aire Centre,** started off her presentation by pointing to the first article of the Charter, the Right to Human Dignity, as one of the key novelties of the Charter, given that such a specific right does not exist in the European Convention, only as a right derived from Article 3 and 8. In cases where one cannot rely on the article, Nuala Mole highlighted the value of relying on the underlying principle, for instance in the case of Article 41, the Right to good administration, which entails that one is entitled to legal aid when needed. She concluded by stressing the importance of referring to the Charter in cases before the CJEU, since the Court is sensitive to principles of EU law enshrined in the Charter. As regards the field of non-discrimination, Ms.



<sup>5</sup> Case C-411/10

<sup>6</sup> UK Supreme Court judgment [2013] UKSC 73, delivered on 27 November 2013

Mole emphasised that the added value of the Charter might be seen as more limited given the detailed provisions and horizontal effect of the EU equal treatment directives.

Both speakers in this session argued that identifying where exactly the added value of the Charter lies is a work in progress, but pointed out that the Charter is gradually gaining more prominence.

## SESSION 5: Links with other human rights instruments and national law

**Vincent Depaigne, policy officer at the European Commission's DG Justice, Unit on Fundamental Rights and Rights of the Child,**



presented the Charter's links with other Human Rights Conventions, most notably the European Convention on Human Rights. The Charter's Article 52(3) gives special prominence to the ECHR and thereby the Strasbourg Court's jurisprudence interpreting ECHR rights that correspond to Charter rights carries similar weight to CJEU judgments. He described the two legal documents as 'two sides of

the same coin'.

Mr. Depaigne referred to the CJEU's ruling in the *Melloni* case, which holds that Member States are free to implement a higher standard of rights, however this may not stand in the way of the implementation of EU law.

Referring to the EU accession to the ECHR, a requirement set by Article 6 of the Treaty on the EU, he stated that this process proves to be more difficult than expected. On the basis of Opinion 2/13 of the CJEU published in December 2014, he attributed this mostly to the complicated and unique structure of the European Union. However, Mr. Depaigne concluded by saying that there is already a very high level of convergence between the EU and Council of Europe human rights protection regimes.

**Mirosław Wroblewski, Polish Human Rights Defender Office,** discussed the Charter's links with national human rights law and its application at the national level. He argued that national judges are key actors in giving concrete effects to the rights and freedoms enshrined in the Charter. The Charter enters national courtrooms mainly through lawyers, as well as on the court's own initiative, mostly as a means of interpretation. He noted that the Charter is very often used in situations and cases which fall outside the EU remit, whereas only the applicability of EU law guarantees the applicability of the Charter. When there is no link to EU law, the value of the Charter can be best described as 'symbolic', although the frequency of such use testifies the importance of the Charter in this role as well.



The presentation analysed judgments delivered by the Constitutional Court in Austria (establishing that Charter rights are in fact constitutionally guaranteed rights in Austria); and by various courts in Poland, Italy and Great Britain.

Mr. Wroblewski opined that Articles 50 to 53 of the Charter merit specific attention since these are concerned with its applicability, a precondition for substantive Charter rights to be applicable. He concluded by pointing to the generally poor understanding of the Charter's scope of application in national jurisdictions, which entails that the Charter is mainly used as an ornament (in the 'symbolic' role described above) and that Member State courts refer to the Charter in their request for a preliminary ruling even in situations where the Charter does not apply.

## SESSION 6: Awareness Raising and other ways of using the Charter



**Gabriel Toggenburg, EU Fundamental Rights Agency (FRA),** discussed the work and experiences of the FRA in raising awareness about the Charter, while noting that much of this awareness-raising can and should best be done at the national and sub-national level. He described the Charter as FRA's normative backbone and highlighted their main projects aimed at increasing awareness of the Charter: the online Charterpedia service, the Charter App, information about the use and

implementation of the Charter in all FRA annual reports, and combined FRA and ECtHR handbooks based on Charter and CJEU and ECtHR case law. Next to this, the FRA frequently engages in conferences and training sessions on the Charter, for example the training of national police forces that also led to the development of a toolkit on fundamental rights-based police training.

In 2015, the FRA will launch the Clarity Project, a ‘complaints, legal assistance and rights information tool for you’, aimed at leading individuals encountering a breach of their fundamental rights to the appropriate non-judicial service, among which national equality bodies.

Mr. Toggenburg concluded by stating that there is an increased need for further training and awareness raising about the Charter, in which a horizontal, holistic human rights and non-discrimination approach should feature strongly. In terms of current challenges, he identified the language barriers between Member States, preventing courts from citing case law from other EU countries

**John Morijn, Dutch Permanent Representation to the EU**, presented possibilities for the Charter’s use in national policy making. He described the Charter as a sleeping beauty in the national policy making domain and pointed to the Charter guidelines developed by the Dutch Ministry of the Interior to be used in all services and ministries of the Dutch administration. The *Akerberg* jurisprudence has solidified that the Charter applies when Member States act within the scope of EU law, however this is not always clear to national administrations devising new policies<sup>7</sup>. This is all the more important in situations where the Charter provides a higher level of protection than the European Convention on Human Rights. Furthermore, John Morijn argued that the Digital Rights Ireland case is a strong message to national governments not to develop or implement legislation that does not meet Charter standards.



The Dutch guidelines that were developed have divided Charter rights into four categories:

- rights that correspond to rights in the ECHR;
- Charter rights that move beyond the level of protection provided by the ECHR;
- Charter rights which find no equivalent in the ECHR;
- and EU context specific fundamental Rights.

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<sup>7</sup> Case C-617/10



These guidelines and checklists are there to assist national policy makers in developing legislation that meets Charter standards and such guidelines could be replicated in other Member States. The guidelines and the Charter's role in policy-making will also be discussed at a conference organised by the Dutch Presidency on 15 January 2016.

Mr. Morijn concluded by noting that today in many fields it is difficult to imagine situations where EU law and consequently the Charter has no relevance whatsoever and encouraged equality bodies to be creative in using the Charter.

Following the plenary presentations participants had the opportunity to discuss the use of the Charter in fields outside case work, including awareness-raising, policy-making and recommendations to policy-makers.

## Seminar Closing



**Anne Gaspard, Executive Director of Equinet**, closed the seminar by warmly thanking all participants and speakers for their excellent contributions to a successful capacity-building seminar for national equality bodies. She highlighted the need for increased knowledge and awareness of the Charter even amongst national equality bodies, and Equinet's vital role in assisting to achieve these goals.

Speakers' presentations are available by clicking on [this link](#).

# ANNEX 1: CASE STUDIES

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## Equal opportunities are too expensive

### Facts of the Case

Mr Vlatko Vasili runs a company, which is producing electronic parts of household products. One of his company's biggest clients, 'Housing Aid', a producer of household products such as hoovers and mixers, has been in huge financial troubles and was close to liquidation. In order to avoid bankruptcy, the company owners had decided to sell their business.

A consortium of interested tenderers, led by Mr. Vasili, is successful in buying the enterprise. Following the takeover, *inter alia*, the organisational set-up of the company is analysed, and a wide range of measurements are developed in order to lead the company out of the crisis.

Housing Aid had implemented a diversity strategy, according to which non-discrimination and the provision of equal opportunities had been an important part of the company's corporate identity. A variety of measures have been put in place in order to make these principles reality. Besides for example reasonable accommodation of genuine needs of employees based on their religion and encouraging applications from minority ethnic groups these included a specific focus on persons with disabilities:

- An active employment policy addressing persons with disabilities
  - Actively motivating people with disabilities to apply for a job
  - Technical equipment needed is provided by the company
  - Co-workers are trained in dealing with different forms of disabilities
  - Supervision for the whole staff is provided on a regular basis
  - All sites and premises of the company are fully accessible

Mr Vasili wants to stop this 'nonsense' like he calls it. According to his opinion it was exactly measures like these that caused the severe financial troubles.

When Mr Paolo Palova, who is blind, needs a new Braille computer as the old one is not functioning anymore, he is told that he should buy a new one himself. He could try to get some funding by the social welfare body in charge of such issues. Usually, about half of the costs for technical equipment are taken over by this body, but you never really know, because this depends on how many people apply for financial support.

Having applied for the job with 'Household-Aid' also because of their diversity policy, Mr Palova decides not to accept this change in his working conditions and goes to court.

### **Questions to be discussed**

- Would you consider the refusal to buy a new Braille computer as discriminatory?
- What about the general decision to stop the company's measures aiming at more equality of opportunities?
- Is there any CJEU Case Law, which could be relevant in this case?
- Which Articles of the Charter might be of relevance?
- Does it make a difference, if you apply Charter rights and principles in assessing this case, as opposed to basing your case on domestic legislation?
- Discuss potential conflicts between different rights/principles and how they could be solved.

It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.

### **Directive 2000/78/EC**

Recital (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.

Recital (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.

### **Article 5 – Reasonable accommodation for disabled persons**

In order to guarantee compliance with the principle of equal treatment in relation

to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

## Too young for reduced working hours?

### Facts of the Case

Ms Karina Korali is 47 years of age and has been working for a telecommunication company for 15 years. The legal situation in her country of residence, an EU member state, is such that companies are entitled to offer their staff aged 55 and more a reduction of their working time. The salaries are cut respectively, but the state acknowledges the months worked under these conditions as full working time for the calculation of the pension.

The respective legislation aims on the one hand at opening the labour market for young people and on the other it constitutes a reaction to statistics that show higher rates of long-term illnesses of older workers. The possibility to work with a lower intensity should constitute a preventive factor in this regard.

Ms Korali's husband is terminally ill, and she would like to reduce her working hours in order to take care of him. She refers to the legislation in place and asks for a reduction of working hours for an indeterminate period of time. According to her opinion, her situation is comparable to a worker aged 55 or more, and she doesn't see the point, why in her case a reduction of working hours should not be possible.

The employer refuses. According to the company representative in charge, people working with reduced working hours always do constitute a disadvantage for the company, as they are not available all the time. Also having to search for another employee to cover those parts of Ms Korali's duties she would have to give up, especially if this is for an indeterminate period of time, would be unreasonable.

The national court submits the case to the CJEU for a preliminary ruling asking, if the national provision as such was in line with the EU acquis.

### **Questions to be discussed**

- Would you consider the refusal to reduce Ms. Korali's working time as discriminatory?
- Would you consider the national legislation as discriminatory?
- Is there any CJEU Case Law, which could be relevant in this case?
- Which Articles of the Charter might be of relevance?
- Does it make a difference, if you apply Charter rights and principles in assessing this case, as opposed to basing your case on domestic legislation?
- Discuss potential conflicts between different rights/principles and how they could be solved.

It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.

### **Alternative situation:**

Mr Favili is working for the same company. He is 59 years of age and has been working for the company for 7 years. He is working in the accounting department, and has always been a very reliable member of staff.

Shortly after his 59<sup>th</sup> birthday however, he starts to have severe health problems. He had an accident with his bicycle and broke his ankle. In principle, and from a physiological point of view, everything is ok again, but Mr Favili is still suffering pain and is limping. The whole accident and its consequences mainly however have thrown him into a state of crisis and depression. He is still coming to work and does his job, but he is not very reliable anymore. When he subsequently comes late to important meetings and nearly ruins the negotiations for a big contract, he is told that he should take the opportunity to work part-time from now on.

For such cases - when there is a long-term illness diagnosed - the state does not only take over the contribution to the pension system, but also pays a share of the salary. In concrete, it takes over the percentage of a fictional unemployment benefit for the part of the working time that is not worked anymore.

Mr Favili himself is convinced that his status is such that it is only a temporary one and is not ready to accept the proposal.

### **Questions to be discussed**

- Would you consider it as discriminatory to force Mr Favili to work part time?

- Would you consider the national legislation as discriminatory?
- Is there any CJEU Case Law, which could be relevant in this case?
- Which Articles of the Charter might be of relevance?
- Does it make a difference, if you apply Charter rights and principles in assessing this case?
- Discuss potential conflicts between different rights/principles and how they could be solved.

It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.

### **Directive 2000/78/EC – Article 6**

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

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*Equinet is an international non-profit organisation (AISBL)*