

Introduction on the state of play

This is the fifth issue of the biannual European equality law review, produced by the European network of legal experts in gender equality and non-discrimination (EELN). This issue provides an overview of legal and policy developments across Europe, and as far as possible reflects the state of affairs from 1 July to 31 December 2016. The aim of the EELN is to provide the European Commission and the general public with independent information regarding gender equality and non-discrimination law, and more specifically the transposition and implementation of the EU equality and non-discrimination directives.

In this issue

This law review contains a section relating to the most recent case law of the Court of Justice of the European Union and of the European Court of Human Rights, and a section detailing the most recent developments in legislation, case law and policy on the national level.¹ It also contains four in-depth analytical articles. In the field of non-discrimination law, Nathalie Ferré from the Institute for Interdisciplinary Research on Social Issues (France) contributes an article on the landmark decisions of the French Court of Cassation that found in 2016 that the French State was liable for racial profiling through the activities of the police. In the field of gender equality Elisabeth Holzleithner from the University of Vienna analyses physical requirements in the context of employment. An EU-external perspective is provided through an article authored by Adnan Kadribasic from the University of Sarajevo on the development and current state of gender equality and non-discrimination law in Bosnia and Herzegovina. Finally, in the field of gender equality, Rachel Horton from the University of Reading investigates the right to request flexible working in the UK.

Recent developments at the European Level²

During the past reporting period, the European Commission underwent some internal restructuring, resulting in three different units being directly involved in the work of the Network: within DG Justice, the units for Gender equality and for Non-discrimination and Roma coordination, and, within DG Employment, Social Affairs and Inclusion, the unit for Disability and inclusion.

In September 2016, the European Parliament adopted a resolution on the application of the Employment Equality Directive, welcoming some positive developments but also noting a wide array of troublesome issues across the different grounds and making a number of recommendations for the Member States and the Commission.³ In addition to the specific issues raised with regard to the different grounds covered by the Directive, the resolution lists a large number of ‘horizontal’ aspects and recommendations. These concern issues such as a lack of legal clarity; a lack of objective, comparable and disaggregated equality data; limited access to justice in many cases of discrimination; and the need for enhanced support for equality bodies and civil society organisations which are active in the field. The resolution also contains several recommendations that go beyond the scope of the Directive, in particular related to gender equality but also the situation of Roma. The Parliament finally calls for civil and human rights education

1 On the basis of information provided by the national experts, Franka van Hoof from Utrecht University drafted the sections regarding gender equality while Catharina Germaine from the Migration Policy Group drafted those regarding anti-discrimination and made the final compilation.

2 This section, as the rest of the Review, covers the period of 1 July to 31 December 2016.

3 European Parliament resolution of 15 September 2016 on application of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’) (2015/2116(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0360>.

and training, and encourages the Commission to adopt a European framework for national strategies to combat anti-Semitism, Islamophobia and other forms of racism. The Parliament also adopted another resolution in September 2016, on creating labour market conditions that are favourable for work-life balance.⁴ The resolution focuses on issues such as ensuring that women and men are ‘equal earners and equal carers’, family- and care related types of leave, care for dependants, quality employment and quality of life.

In October 2016, the European Commission published a report on good practices for promoting LGBTI inclusion in the workplace entitled ‘The Business Case for Diversity in the Workplace: Sexual Orientation and Gender Identity.’⁵ The report is published as one of the initiatives envisaged by the List of Actions by the Commission to Advance LGBTI Equality launched in December 2015, and aims at providing knowledge and inspiration to companies across Europe to enable them to adopt LGBTI inclusive policies.

3 November 2016 was European Equal Pay Day. This date represents a day in the year when women stop being paid due to the gender pay gap. On average, women in Europe earn 16.7% less per hour than men. In a joint statement, First Vice-President Timmermans and Commissioners Thyssen and Jourová denounced the fact that – at the current pace – the pay gap is declining so slowly that it will take until 2086 before women are paid as much as men.⁶

On 24 November 2016, the International Day for the Elimination of Violence against Women took place. On this occasion, the European Parliament adopted a resolution on the EU accession to the Istanbul Convention on preventing and combating violence against women.⁷ The resolution calls upon the Commission and the Council to speed up negotiations in view of the signing and conclusion of the Convention. The resolution further urges Member States that have not yet ratified the Convention to do so, and urges those that have to ensure proper enforcement of the Convention, including through the allocation of adequate resources and the collection of relevant data. On the same date, the European Commission published a joint statement expressing its commitment to end violence against women and girls.⁸ The Commission announced a series of actions to be launched in 2017, allocating € 10 million to support grassroots efforts to prevent gender-based violence and to support victims in the EU.

Network publications and activities

During the past reporting period, the Network organised its annual legal seminar in November 2016, including a highly appreciated keynote speech delivered by Justice Susanne Baer of the German Federal Constitutional Court as well as thematic workshops.

The Network has recently published four thematic reports. The first report was authored by Oliver de Schutter as an update of a previous thematic report and provides an analysis of the links between migration and discrimination. The second thematic report, authored by Lisa Waddington and Mark Bell, aims at providing an overview of the ways in which the Employment Equality Directive can contribute to supporting those who have a psychosocial disability in participating in employment. Lilla Farkas authored the third report examining the meaning of racial and ethnic origin in EU law. Finally, Albertine Veldman wrote a report on pay transparency in the EU, regarding the national pay transparency measures

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- 4 European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance (2016/2017(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0338&language=EN&ring=A8-2016-0253>.
 - 5 *The Business Case for Diversity in the Workplace: sexual orientation and gender identity - Report on good practices*, European Commission, Brussels, September 2016. Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35768.
 - 6 http://europa.eu/rapid/press-release_STATEMENT-16-3578_en.htm.
 - 7 European Parliament resolution of 24 November 2016 on the EU accession to the Istanbul Convention on preventing and combating violence against women (2016/2966(RSP)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0451+0+DOC+PDF+V0//EN>.
 - 8 http://europa.eu/rapid/press-release_STATEMENT-16-3945_en.htm.

implementing the Commission's Recommendation on this topic in view of strengthening the principle of equal pay between men and women. In addition, two comparative reports were recently published, providing an updated analysis of the state of gender equality and non-discrimination respectively, across the Member States, candidate countries and EEA countries. As always, please check the Network's website – <http://www.equalitylaw.eu/> – for the full text of all reports.

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