

Helene Masse-Dessen
Sophia Koukoulis-Spiliotopoulos

ACCESS TO JUSTICE **ENFORCEMENT**

An old topic
new elements
new challenges

WHAT IS JUSTICE ?

European Courts
National Courts
Other bodies and agencies ?

I – LEGAL INSTRUMENTS **New sources of Law** **at European Level**

- Directives
- The Lisbon Treaty
- European Convention on Human Rights
- Charter of Fundamental Rights of the European Union
- Other sources

TEU

- **Article 2**

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

TEU

- **Article 6**

- 1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.
- The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.
- The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.
- 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.
- 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law

TFEU

- **Article 8**

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

- **Article 6**
- **Right to a fair trial**
- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

- **Article 21**
- **Non-discrimination**
- 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.
- **Article 22**
- **Cultural, religious and linguistic diversity**
- The Union shall respect cultural, religious and linguistic diversity.
- **Article 23**
- **Equality between men and women**
- Equality between men and women must be ensured in all areas, including employment, work and pay.
- The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

- **Article 47**
- **Right to an effective remedy and to a fair trial**
- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
- Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

LEGAL INSTRUMENTS

Internal Sources in EMS

- Transposition
- Incompatibilities and conflicts
- Coherence of legislation
- Procedural legislation
- Knowledge and information

QUESTIONS

- Take national traditions into account
- Do we always need specific legislation against discrimination ?
- Do we always need different legislation for each ground of discrimination ?
- What about specific procedural legislation for each ground of discrimination ?
- What about multiple discrimination ?
- Why a low litigation level ?

II - THE ROLE OF COURTS IN THE IMPLEMENTATION OF ANTI- DISCRIMINATION

- 1-Not only compensation (for victims)
- 2-But also introduce correct legislation and challenge internal legislation.

**THE ROLE OF COURTS :
1-INTERNATIONAL EUROPEAN AND
INTERNAL RULES**

- Preliminary rulings
- Complaints to - infringements proceedings by Commission
- Annulment of acts which conflict with EU law
- Constitutional cases
- State liability for non transposition or inadequate transposition of EU law
- Precedents

**THE ROLE OF COURTS :
1-INTERNATIONAL, EUROPEAN
AND INTERNAL RULES**

- Making the European system effective
- The judicial story of the French HALDE

**THE ROLE OF COURTS :
rights of victims**

- Civil or criminal law
- The role of the Administration and agencies
- Do we need special institutions against discrimination ?
- Do we need different institutions for each ground ?

THE ROLE OF COURTS : - Actors

- The victim
- NGOs and trade unions etc....
- (personal action – substitution)
- Administration
- Agencies
- *Do we need specific provisions ?*

THE ROLE OF TRIBUNALS : Victims :Legal Aid

- *Do we need specific provisions ?*
- See COUNCIL OF EUROPE
- European Commission for the Efficiency of Justice
- European judicial systems
- Edition 2010 (data 2008):
- Efficiency and quality of justice
- http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/JA_Report2010_GB.pdf

LEGAL AID

- Fees covered by legal aid and other types of legal aid grants (Q20, Q22, Q23)
- In most of the Member States and entities, legal aid can take the form of an exemption from court fees.
- This exemption can be directly considered as part of the legal aid budget when it is financially counted within the state budget allocated to legal aid (Finland).
- In the UK-England and Wales, the system does not take the form of court fee exemption but consists in the effective bearing of court fees by the legal aid system.
- For the other States, exemption from court fees is an aid which cannot be specifically valued;
- it is addressed in the chapter on court fees below (see chapter 3.5).

THE ROLE OF COURTS : Proof

- Not only burden of proof
- But also legal aid
- Agencies
- Mandatory reports by employers.
- Statistic information
- The specificity of gender equality

THE ROLE OF COURTS

- Not only compensation
- But also other kinds of sanctions
 - Affirmative injunctions
 - Injunctions – Restitutio in integrum
 - Plans for the future
 - Etc.....

THE ROLE OF COURTS obstacles

- Fear of victimisation
- Lack of information – Lack of support
- Legal costs
- Maximum compensation
- Time limits
- Length of proceedings
- Lack of effectiveness of judgments

ALTERNATIVES TO JUDICIAL ACTIONS

- **Mediation**
- **Conciliation**
- **Agencies (help and sanctions)**
- **Labour Inspectorate**

CONCLUDING OBSERVATIONS

- **Taking into account national procedural and legal traditions**
- **Effective transposition**
- **Simplification**
- **Education and information**

- **But be imaginative....**

- **Thank you .**
