

**Equality and
Human Rights
Commission**

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Are volunteers protected from discrimination?

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Overview

This presentation covers:

- The aims of Equinet's legal work on volunteers
- Facts of the case and issues
- Findings of the Legal Working Group Report
- The decision of the UK Court of Appeal

Equinet's work on volunteers

The Equinet Legal Working Group:

- Decided to do work on strategic litigation in 2010
- Chose to focus on two UK cases relating to volunteers and their protection from discrimination in work
- First occasion Equinet members contributed evidence in strategic litigation and possible reference to the CJEU
- Report of the Working Group published March 2011

Equinet's work on volunteers

Why is the issue of volunteers strategic?

- Volunteering often helps groups enter the paid workforce and promotes social cohesion: for example disabled persons, ethnic minorities, younger persons, older persons
- Report of the Committee of the Regions, (2008/C 105/03)
- Resolution of the European Parliament, March 2008, A6-0070/2008
- 100 million volunteers in the European Union
- Discrimination against such groups could undermine entry into the workforce and social cohesion
- 2011 is the European Year of Volunteering

Facts of the case and issues

X v Mid Sussex CAB:

- Volunteer at Citizens Advice Bureau
- she was required to attend the office at set times and had regular duties, signed a contract regarding her conditions
- She gave advice on welfare law, prepared submissions and advice, conducted research
- alleged disability discrimination on grounds of being HIV positive

Facts of the case and issues

X v Mid Sussex CAB:

Question: are volunteers protected in any way from discrimination under the Framework Directive 2000/78/EC?

- Scope of the Directive: “*conditions for access to employment, self employment or to occupation...*” article 3(1)(a) of the Directive
- Case concerned whether volunteering may in some circumstances constitute an “occupation”

Facts of the case and issues

X v Mid Sussex CAB:

- EHRC argued that volunteering may sometimes amount to an occupation. The UK government intervened arguing the contrary position
- EHRC supported its arguments partly on the evidence from the Equality Bodies in the Equinet Legal Working Group
- EHRC also requested a reference to be made to the CJEU for a preliminary ruling

**Enthusiastic
volunteers!**



Findings of the Legal Working Group

Legal status of volunteers:

- In most Member States volunteers would not satisfy the criteria of being an employee as they are not paid

- there were differences in Member States as to whether volunteers have a defined legal status but common factors are:

- (i) voluntary activity without any physical coercion

- (ii) unpaid activity except for reimbursement of expenses

- (iii) carried out for persons other than the volunteer or family

- (iv) formally organised: spontaneous and irregular activity
not

volunteering

Findings of the Legal Working Group

Legal status of volunteers:

Coverage in the Framework Directive?

- Divergence of views
- Seven EBs indicated that volunteers are or likely to be protected from discrimination under the Directive and/or domestic equality legislation (France, Belgium, Netherlands, Austria, Denmark (DIHR), Finland, Norway)
- Three EBs indicated that volunteers may be protected but the issue had not been tested (Hungary, Slovakia, Greece)
- Five EBs indicated that that volunteers would not be protected (Britain, Cyprus, Sweden, Czech Republic, Danish Equal Treatment Board)

Findings of the Legal Working Group

Legal status of volunteers:

Coverage in the Framework Directive?

- **France**

- HALDE has decided three cases relating to volunteers
- “conditions for access to employment, to self employment or to occupation...” has been implemented into domestic law to include non-salaried work

- **Belgium**

- The preparatory Bill documents to their Equality Legislation implementing the Directive expressly states that volunteers “benevoles” are protected

Findings of the Legal Working Group

Legal status of volunteers:

Coverage in the Framework Directive?

- **Netherlands**
- Dutch Equal Treatment Commission indicated it was the intention of both the Dutch government and parliament to include volunteers in all labour relations laws, as long as activity meets criteria of labour being conducted under authority of an employer/ organisation
- Volunteers referred to explicitly in the parliamentary memorandum of government regarding the draft legislation and the parliamentary debate

More enthusiastic volunteers!



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Decision of the UK Court of Appeal

X v Mid Sussex CAB:

- No definition of “occupation” under the Directive, case law or other international instruments
- If the drafters of the Directive had intended to protect volunteers from discrimination they would have included them expressly: but not for example Coleman
- The European Parliament proposed an amendment that “unpaid and voluntary work” should be included in the Directive which was accepted by the European Commission but rejected by the Council of Ministers
- This indicated an intention that volunteers should not be protected under the Directive
- The “language adopted by the Member States faithfully reflects the concepts used in the Directive. They do not include volunteers” (para 58)

Decision of the UK Court of Appeal

X v Mid Sussex CAB:

- The Court did not consider it necessary to make a reference to the CJEU as it was clear that volunteers are not protected under the Directive
- The Court would have made a reference to the CJEU on the issue of whether in the case of disability discrimination judgments can be enforced not just against the State (vertically) but also against individuals (horizontally). In other words whether Mangold and Kukukdeveci would apply to in the case of disability discrimination
- But was not necessary to make the reference on the second point given the argument on volunteer protection failed.

Decision of the UK Court of Appeal

X v Mid Sussex CAB:

- The Court did not sufficiently analyse the way in which the Directive had been interpreted any implemented into domestic law in Member State: particularly France, Belgium and the Netherlands
- The Court was not correct in its assessment that none of the Member States domestic equality law implementing the Directive includes protection for volunteers: see France
- The Equinet Working Group report highlights that it is not clear that protection from discrimination of volunteers is outside the scope of the Directive

Decision of the UK Court of Appeal

X v Mid Sussex CAB:

- The Appellant has sought leave to appeal the decision to the Supreme Court
- If leave is granted the EHRC will also seek leave to intervene again but provide more detailed submissions from the Equality Bodies in France, Belgium and the Netherlands on their implementation and interpretation of the Directive
- If leave is granted the EHRC will seek a reference to the CJEU to determine:
 - (i) The issue of protection of volunteers;
 - (ii) Whether the principle of the direct enforceability of the Directives against individuals applies in cases of disability discrimination

Happy volunteers!

