

Rechtsgeleerdheid

EU anti-discrimination law and ECHR: Challenges for the future

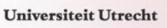
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Challenges for EU

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Relation EU- ECHR

- All EU members signatories to ECHR
- 1979: EcJEC: Accession to ECHR not possible (distinct international systems)
- 2000 Nice Charter
 - Broader than ECHR
 - Art. 52(3) Nice Charter \rightarrow meaning of ECHR
- Lisbon Treaty allows accession of EU to ECHR (art. 6.2 TEU + prot.5)
- See also 14th Protocol To ECHR: art 17 (amendment of art 59 of ECHR: The European Union may accedde to this Convention)
- Important role of courts in harmonization by treaty conform interpretation

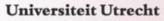


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ECHR

- Art 14 accessory character
- Protocol 12

- Different structure
- Broader scope
- individual complaints





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ECtHR- approach

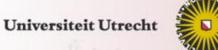
- Convention as a living instrument
- Margin of Appreciation
- Progressive implementation (see also Committee of experts of European Social Charter)



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Wider context

- Relevance UN treaties: ICCPR, ICESCR, CERD, CEDAW, CRC and Convention on Rights and Dignity of persons with Disabilities
- →art. 18 Vienna Treaty if treaty has been signed but not yet ratified
- \rightarrow Treaty conform interpretation
- Influence other regional instruments, a.o IACHR



Some examples of cross references

- CoJEC 7 January 2004, K.B. v. National Health Service Pensions Agency, Secretary of State for Health (C-117/01)
- ECtHR 24 July 2003, Karner v. Austria (40016/98)





Harmonisation of legal concepts: some recent examples

- UN CESCR 25 May 2009
 General Comment no. 20
 (Non-Discrimination in Economic, Social and Cultural Rights)
 - UN Convention on the Protection and promotion of the Rights and Dignity of Persons with Disabilities (2006)



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Negative and Positive obligations: different conceptual sources, comparable outcomes

- Duty to protect, respect, fulfill (ensure) Compare:
- Effective sanctions ~ Effective remedy
- Indirect discrimination ~ duty to take differences into account



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Positive Duties

- Investigation
- Procedures and Sanctions
- Enforcement
- Prevention
- Effective remedy



Examples from other areas

- Prevention of environmental disasters:
- ECtHR 20 March 2008, Budayeva and others v. Russia
- ECtHR 30-11-2004, Öneryildiz v. Turkey



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Positive duties in relation to discrimination-the case of Nachova

 ECtHR 6 July 2005, Nachova and others v. Bulgaria: compare burden of proof



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Positive duties in relation to discrimination-the case of D.H.

 ECtHR, 13 November 2007, D.H. and others v, the Czech Republic, Case 57325/00



Positive duties in relation to discrimination- the case of Opuz.

 ECtHR 09 June 2009, Opuz v. Turkey (3340/02)

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Challenges

- Incorporate developments in other (human rights) systems
- Leveling –up potential of comparative approach
- Victim-oriented approach
- Conceptual harmonization
- Framework to incorporate more complex issues such as multiple discrimination.



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Data base Human Rights documents and cases

- SIM data bases: *sim.law.uu.nl/*
- European Court of Human Rights http://www.echr.coe.int/ECHR/EN/ Header/Case-Law/HUDOC/HUDOC+database/
 - UN Treaty Documents: http://www.unhchr.ch/tbs/doc.nsf