



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

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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 → 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 accede to this Convention)
- Important role of courts in harmonization by treaty conform interpretation



ECHR

- Art 14 – accessory character
- Protocol 12
 - Different structure
 - Broader scope
 - individual complaints



ECtHR- approach

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



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
 - 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)



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



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



Positive duties in relation to discrimination-the case of Nachova

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



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)



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.



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>