

# **The broader EU equality law framework and its relation to national law**

The charter of fundamental rights  
EU directives  
Accession to the ECHR  
International treaties

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# Outline

## *Part I : Initial divisions, historic developments*

- Origins and development of EU anti-discrimination law
- Origins and development of EU protection of fundamental rights

## *Part II : the inclusion of EU Equality law in the field of Fundamental rights' protection*

- Formal linkage
- Implications in cases

# *Part I : Initial divisions, Historic developments*

Different sets of rules developed, along two different lines:

- Anti-discrimination law
- Protection of fundamental rights

# Origins and development of EU anti-discrimination law

- Prohibition of discriminations based on nationality (single market)
- Prohibition of discriminations based on sex
- Enlargement of the scope of anti-discrimination law (Amsterdam treaty, now art. 19 TFEU)

# Discrimination on the basis of nationality

- A general clause in the Rome treaty (now article 18 TFUE)
- Reaffirmed in the provisions concerning the 4 freedoms (internal market)
- Development of an extensive interpretation of the principle in case law

# Discrimination based on sex

- The treaty of **Rome (1957)** requires equal pay for equal work
- Starting in the 1970's, case law and legislation developed, based on that central provision of the European Community **Social Policy**

# the extension of EU powers to fight new forms of discriminations

## ◆ The new powers granted by the treaty of Amsterdam (1997, in force 1999)

Article 19

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on **sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.**

## ◆ A swift exercise of the new powers

Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Directive 2000/78 establishing a general framework for equal treatment in employment and occupation

# Origins and development of EU protection of fundamental rights

## **From Rome to Nice: the long road**

Treaty of Rome (1957): No reference to fundamental rights / the missing rights

Charter of fundamental rights (2000): A extensive catalogue of fundamental rights /a renewed approach to fundamental rights



# The national origins of fundamental rights' protection

- **Rebellion of Constitutional Courts**

*German Constitutional court, 1974*

*« So lange » case*

- **Court of Justice (Stauder, 1969, Internationale Handelsgesellschaft, 1970)**

*Fundamental rights are protected as general principles of EU Law, inspired by the constitutional traditions common to Member states*

# The international origins of fundamental rights' protection

- Inspiration and reference to international law instruments (ILO conventions, European social charter...)

*ECJ, Nold, 4/73, 1974*

- The central role of the ECHR

*ECJ, C-260/89, ERT, 1991*

*ECJ, C-23/93, TV10, 1994*

# Introduction of a reference to fundamental rights in the treaty

TUE (Maastricht, 1992)

Art. 6 : the EU respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law

# The adoption of a charter of fundamental rights

- A « convention » is set up to draft the charter
- Nice 2000 : the charter is proclaimed by the Commission, Council & European Parliament
- Legal value ? Effect ?

# Lisbon treaty (2009)

Art. 6 TUE:

The charter has the same legal value as the treaties

NB: some states try to resist this evolution  
(Poland, the UK and Ireland)

# The limits of Union's powers to protect fundamental rights

A long list of protected rights

BUT: only protected in the field of EU law...

⇒ EU law protection does not cover as many situations as the ECHR

⇒ Preliminary requirement: « does the situation fall under EU law ? »

# Accession of the EU to the European Convention for the Protection of Human Rights

Lisbon treaty, Article 6(2)

« The Union shall accede to the European  
Convention for the Protection of Human Rights and  
Fundamental Freedoms »

Reasons ?

Risks ?

# Reasons for the EU accession to the ECHR

- Fostering HR protection in the EU
- Avoiding conflicts (EU is bound, as Member states were)

See ECtHR, Bosphorus case, 2005



# Risks ?

Losing autonomy (comp. Kadi case, 2005)

The ECJ is submitted to the authority of another court

*Part II : the inclusion of EU Equality law  
in the field of Fundamental rights'  
protection*

Formal linkage

Implications in cases

# The issue of equality as a fundamental right

- equality can aim at securing other rights (equal access to housing, equal access to employment...)
- equality can be required only in the enforcement of other fundamental rights

ECHR, art. 14 : « The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination »

# Equality/Non-discrimination principle as a fundamental right under EU law

Charter of **fundamental rights** of the EU

## **Art. 20**

*Everyone is equal before the law.*

## **Art. 21**

*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.*

# Equality/Non-discrimination principle as a fundamental right under EU law

Charter of **fundamental rights** of the EU

**Art. 23**

**Equality between men and women**

*Equality between men and women must be ensured in all areas, including employment, work and pay.*

ECJ case law recognizing the status of a general/fundamental right to equal treatment

- ECJ, 283/83, *Racke*, 1984 (referring to « principle of non-discrimination »)
- ECJ, C-15/95, *EARL de Kerlast*, 1997 (« the general principle of equal treatment, a fundamental principle of Community law »)
- ECJ, 43/75 *Defrenne*, 1976 (the principle of equal pay forms part of the foundations of the Community)

# Recent cases/new issues

- ECJ, C-144/04, *Mangold*, 2005 (...“the principle of non-discrimination on grounds of age, which must be regarded as a general principle of European Union law”...)
- ECJ, C-232/09, *Danosa*, 2010 (using the principle of equality between men and women as a fundamental right)

# New issues

The use of « the general principle of equality » or non-discrimination as a fundamental right to circumvent the limits of secondary law

- *A solution to the absence of horizontal direct effect of equal treatment directives ?*
- *A way to extend the scope of application of equal treatment directives ?*