

EU Legal Framework on Equality

dr Adam Bodnar

Warsaw University, Faculty of Law and Administration
Helsinki Foundation for Human Rights

Trier, 6 May 2013

Equal treatment of men and women

- EEC Treaty of 1957 - equal treatment of women and men in the field of employment
- market economy ideology (equal treatment as important for development of the Common Market)
- extensive case-law of the ECJ (e.g. C-43/75, *Defrenne v. Sabena*)
- several directives adopted to implement the EC Treaty provisions (e.g. equal treatment in employment, equal pay for women and men, burden of proof in discrimination cases)
- currently binding directives:
 - Directive 2006/54/EC - equal treatment of women and men in the field of employment and occupation
 - Directive 2004/113/EC - equal treatment of women and men in access to goods and services; example - case C-236/09, *Test-Achats*)

Maastricht Treaty and the EU citizenship

- principle of prohibition of discrimination due to nationality of the Member State
- since Maastricht Treaty - EU citizenship, prohibition of discrimination of EU citizens in hosting Member State; decoupling of freedom of movement from market component
- judgments of the ECJ (e.g. C-85/96 *Martinez Sala*, C-184/99 *Rudy Grzelczyk*, C-148/02, *Garcia Avello*)
- applicability of the principle also in internal context (e.g. *Nerkowska* case)
- EU citizenship in the EU Charter of Fundamental Rights

Amsterdam Treaty - change in equality policies

- in 90's - increase of nationalist attitudes and policies in Member States
- 1997 Amsterdam Treaty - introduction of art. 13 EC Treaty (currently art. 19 TFEU)
- Art. 19 TFEU - competence to legislate as regards prevention of discrimination due to: sex, racial or ethnic origin, religion or belief, age, disability, sexual orientation)
- 2000 - new directives - Directive 2000/43 (so-called „Racial Equality Directive”) and Directive 2000/78 (so-called „Framework Employment Directive”)
- broad scope of Directives, but not encompassing all possible fields

Scope of EU Directives

	Employment relations	Occupation, professional life	Social security	Health protection	Education	Access to public goods and services
Gender	x	x	x			x
Racial or ethnic origin	x	x	x	x	x	x
Religion or belief	x	x				
Sexual orientation	x	x				
Age	x	x				
Disability	x	x				

Implementation of EU Anti-Discrimination Directives

- problems with implementation in Member States
 - lack of equality bodies (or insufficient competences)
 - equality bodies vs. discrimination practices of private companies
 - delays in implementation
 - definitions in domestic law contrary to the Directives
 - lack of effective remedies
 - lack of knowledge by courts of principles stemming from the Directives
- implementation of the EU Directives upon pressure by the European Commission and the ECJ, e.g. the Act of 3 December 2010 on implementation of selected provisions of the EU concerning equal treatment (Poland)

Draft of „horizontal” directive

- draft of „horizontal” directive was adopted by the Commission in 2008, as a part of Renewed Social Agenda for XXI. century
- Member States blocked further work on the Directive
- political support for the „horizontal” directive by the European Parliament
- lobbying for adoption of the Directive by international NGOs (e.g. ILGA-Europe, AGE, European Women’s Lobby, Amnesty International - joint statement of 12 January 2012)
- lack of perspectives for the adoption of the Directive

Lisbon Treaty and the EU Charter of Fundamental Rights

- the EU Charter - legally binding, part of the primary law (irrespective of the British-Polish Protocol, cf C-493 / 10 *N.S. v. Secretary of State*)
- introduction of the general prohibition of discrimination with respect to rights and freedoms guaranteed in the Charter (Article 21); equal treatment of women and men (Article 23); possibility of affirmative action (Art. 23 Section 2)
- new grounds for prohibited discrimination (e.g. genetic features), open-ended catalogue of grounds
- constitutional character of the anti-discrimination clause
- importance for verification of compliance of laws and practices of the EU organs and institutions (and Member States when implementing EU competences) wykonywaniu kompetencji UE)
- EU Charter - no new competences in the field of anti-discrimination law

Development of some concepts in jurisprudence

- cases C-144/04 *Mangold* and C-555/07 *Küçükdeveci* - non-discrimination principle due to age as a general principle of EU law
- opinion of the Advocate General in C-147/08, *Jürgen Römer v. City of Hamburg*; and judgment of the ECJ of 10 May 2011 - lack of recognition of non-discrimination principle due to sexual orientation as a general principle of EU law
- discrimination by association - clause „due to disability” (C-303/06 *Coleman*)
- long-term disease vis-a-vis disability (C-335/11 *Jette Ring v Dansk almennyttigt Boligselskab DAB* and C-337/11 *Lone Skouboe Werge v Pro Display A/S*)
- burden of proof in discrimination cases, standing (e.g. C-81/12, *Asociația ACCEPT*)

UN Convention on Rights of Persons with Disabilities

- European Union as a party to the UN Convention on Rights of Persons with Disabilities - signature: 30 March 2007, ratification: 23 December 2010; non-ratification of the Optional Protocol
- UN CRPD as so-called mixed agreement (EU and Member States are parties to the Agreement)
- new paradigm as regards approach towards persons with disabilities (society should adjust to needs of such persons in order to allow them fully to enjoy their rights)
- convergence of standards or conflict between different legal norms
- definition of disability - cf C-13/05 *Chacon Navas*
- policies in the EU to implement the UN CRPD
- should EU join other international treaties (e.g. CEDAW, CERD)?

Accession of the EU to the ECHR

- Article 14 of the ECHR - limited scope (discrimination in exercise of rights and freedoms guaranteed by the ECHR)
- broad anti-discrimination provision - Art. 1 Protocol No. 12 to the ECHR (ratified only by a few Member States)
- accession of the European Union to the European Convention on Human Rights (legal basis - Protocol No. 14 to the ECHR, Lisbon Treaty)
- Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedom of 5 April 2013
- further road map regarding adoption of the Accession Agreement
- consequences for anti-discrimination policies in the EU
- EU FRA and ECHR Handbook on Anti-Discrimination Law

Thank you for your attention

dr Adam Bodnar

Faculty of Law and Administration, Warsaw University

Helsinki Foundation for Human Rights

www.zpc.wpia.uw.edu.pl

www.hfhr.pl

e-mail: a.bodnar@wpia.uw.edu.pl

twitter: @adbodnar