Race, religion and sexual orientation

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Introduction

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- Racial or ethnic origin
- Religion
- Sexual orientation
  - Transgender and gender identity
Racial or ethnic origin

- Governed by Racial Equality Directive 2000/43
- Definition
  - No definition of ‘race or ethnic origin’ in Treaty or Directive
  - Broad interpretation:
    - Article 21 Charter of Fundamental Rights: race, colour, ethnic or social origin, genetic features, language, membership of a national minority.
    - Self identification

Other sources:
- ICERD, European Social Charter, ECRI documents.
- Case law ECtHR:
  - Timishev v Russia (55762/00 and 55974/00)
  - DH and others v Czech Republic (57325/00)
  - Horváth and Kiss v Hungary (11146/11): State is obliged to apply positive measures for past discrimination
    - compare article 5 RED: MS are authorized to apply positive measures
Racial or ethnic origin

- Scope: employment and non-employment
  - Article 3 RED:
    - Employment in the widest sense: recruitment and selection process, working conditions including dismissal and pay, relations on the work floor, vocational training
    - Membership trade union and employers’ organisation

Racial or ethnic origin

- Non-employment
  - Social protection, including health care
  - Social advantages
  - Education
  - Goods and services:
    - Pending case: C-83/14 CEZ Razpredelenie Bulgaria AD v Komisa za zashtita ot diskiminatsia
Racial or ethnic origin

- Case law CJEU
  - C-54/07, Feryn NV
    - no identifiable victim, but still admissible;
    - statements in the press lead to presumption of discrimination.
  - C-571/10, Kamberaj v IPES

Religion or belief

- Governed by Framework Directive 2000/78
- Definition ‘religion’
  - Three elements:
    - Belief (participation in rites),
    - Identity (affiliation with a community)
    - Way of life (behaviour, dress code).
  - Includes ‘forum internum’ as well as external manifestatons
Religion or belief

- Definition ‘belief’:
  - ECtHR: Must relate to a weighty aspect of human life and behaviour. Must possess a certain level of cogency, seriousness, cohesion and importance, compatible with respect for human dignity.
  - E.g. humanism, atheism, pacifism.

Religion or belief

- Scope:
  - Only employment: Article 3 Framework Directive
  - Exception to principle of non-discrimination: Article 4 (2) Framework Directive
  - Occupational requirements: special position for churches and organisations the ethos of which is based on religion or belief.
Religion or belief

- Issues:
  - Manifestation of religion in the workplace
  - Clothing rules at work / in schools: head scarf issues
  - Recent case law ECtHR:
    - Ladele and Mc Farlane v UK (51671/10, 36516/10)
    - Chaplin and Eweida v UK (59842/10, 48420/10)

Sexual orientation

- Governed by Framework Directive 2000/78
- No definition in Treaty or Directive
- Protection against discrimination follows also from ECtHR:
  - Karner v. Austria (40016/98)
  - Goodwin v. UK (28957/95)
- No international conventions, but see Yogjakarta Principles (2006)
Sexual orientation

- Case law CJEU
  - Pension and pay
    - C-267/06, Tadao Maruko v Versorgungsanstalt
    - C-147/08, Jürgen Römer v Freie und Hansestadt Hamburg
    - C-124/11, Dittrich and others v Germany
    - C-267/12, Hay v Crédit Agricole Mutuel
  - Recruitment
    - C-81/12, Asociația ACCEPT v CNCD

Transgender and gender identity

- Governed by article 157 TFEU and gender directives
- Specific issues:
  - Legal recognition
  - Discrimination in relation to sex change
- CJEU case law:
  - C-13/94, P. v S. and Cornwall County Council
  - C-423/04, Richards v Secretary of State for Work and Pensions
  - C-117/01 K.B. v NHS Pension Agency
Thank you!

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