



The Non-Discrimination Directives and National Courts

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Summary

- Terminology
- Which texts
- National Courts and European Law
- Reflections



I. The court

- civil courts
- penal courts
- labour courts
- administrative courts
- administrative/conciliation bodies
- bodies for the promotion of non-discrimination





II. The texts

- Directive 2000/43 and 2000/78
- Supranational sources (others than EU)
 - the Universal Declaration of Human Rights
 - the UN Convention on the Elimination of all Forms of Discrimination against Women
 - the International Convention on the Elimination of all Forms of Racial Discrimination
 - the UN Covenant on Civil and Political Rights
 - the UN Covenant on Economic, Social and Cultural Rights
 - the European Convention for the Protection of Human Rights
 - ILO Convention N° 111



- National Laws
- Regional Laws (Länder, regions, etc.)
- Collective Bargaining Agreements
- Codes of Conduct
- Principe généraux du droit / Allgemeine Rechtsgrundsätze



III. National Courts and European Law

1. National Courts must give priority to Community Legislation
 - Monism and Dualism
 - Article 249 EC Treaty [Marshall (C-152/84)]



- the “State” [Foster (C-188/89)]
 - the body must be responsible for providing a public service;
 - it must be responsible pursuant to a measure adopted by the State
 - it must be under control of the State
 - it must have special powers beyond those which result from the normal rules applicable in relations between individuals.
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2. Interpretation conform to Directive

- Article 234 EC Treaty
- Judicial Body

3. Government liability in tort [Francovich (C-6 & 9/90)]

IV. Reflections

- The choice of the national court determines the legislation
 - Confluence of laws (especially in the event of multiple discrimination)
 - Directive 76/2007 = Directive 2000/43 and 2000/78?
 - Prediction
 - Hardly any problem with ...
 - Many problems with ...
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