Current equality law developments in France – The French model of expanding the discrimination grounds as a way forward for the EU?

Marie Mercat-Bruns
Sciences Po Law School -CNAM/LISE CNRS

This training session is funded under the ‘Rights, Equality and Citizenship Programme 2014-2020’ of the European Commission.
Introduction

- UN Treaties
  - Universal, Race, Sex, Disability
- ECHR Grounds - Open list
  - article 14 - Hierarchy between the grounds
- Article 19 TFEU grounds – closed list
  - Sex / Ethnic origin / Race / Religion / Beliefs / Disability / Age / Sexual orientation
Article 21 – Open list: Any ground such as sex, race, color, 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
- Real or assumed origin, national and ethnic origin, appearance of origin, race, last name
- Physical appearance, health, disability, genetic characteristics, age
- Union activities, mutualist activities, religion, political and religious convictions, belief
- Sex, pregnancy, family situation, sexual orientation, sexual identity
- Sex, Maternity, Sexuality
- Sex, Maternity, Sexuality
Case Law

- Article L 1132-1 Labor Code
- Other laws (urban, harassment)

Loss of autonomy

- Sexual identity
- Place of residence
- Social hardship
Judicial Interpretation extends beyond grounds linked to labor law

From union membership, pregnancy, and sex discrimination

To a diversification of grounds in case law

- From a more rigid and narrow view of grounds
- To a more flexible and contextual interpretation of grounds (combination of grounds)
Combination of grounds

Diversification of grounds used

Traditional Grounds linked to labor Law protection

Combination of grounds
Evolution of legislative grounds

- From Intrinsic and personal characteristics:
  - Race
  - Religion
  - Sex
  - Sexual orientation

- To more social constructs based on stereotypes or grounds based on liberties:
  - Sexual identity
  - Place of Residence
  - Personal Autonomy
French Grounds in legislation

• Why such an extensive list?
• To confront issues of enforcement, of evidence...
• “Real or assumed origin, appearance of origin,
  national and ethnic origin, race, sex, sexual identity,
  pregnancy, family situation, physical appearance, last
  name, health, disability, genetic characteristics, mores,
  sexual orientation, age, union activities,
• mutualist activities, religion, political and
• religious convictions, belief and place of residence »
Grounds follow the expansion of concepts in EU and national Law?

- EU case Law:
  - Discrimination by association (Coleman, Chez)
  - Discrimination by injunction (Feryn, Customer Preference)
  - Multiple discrimination
  - (Odar)

- French Law:
  - Direct Discrimination
  - Indirect Discrimination
  - Systemic Discrimination
  - (Class action bill pending, see May 24 2016 version)
Diversification of EU case law linked to grounds

- Possible: No hierarchy between grounds
- More cases on sexual orientation, young age (EUCJ October 2015), religion (case pending. Opinion on Belgium case)
- Symetric dimension of some grounds (sex)(Leone)

Influence on French Law (sexual orientation, Hay)

Influence on age (essential and determining requirement, Perez)

Influence on maternity, parental rights and disability (Ring/Werge)
Conclusion

Cross-fertilization between courts (EU and national)

Dynamics of transnational and global Law

Importance of network of Equality or Human rights bodies and impetus of EU Commission

To pursue discussion free e-book to download: