EU Legal Framework on Equality

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

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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 filed 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 EU 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
- early 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. C-499/06 Nerkowska v. ZUS, C-456/12 and C-457/12, O., B., S. and G. v Minister voor Immigratie, Integratie en Asiel)
- EU citizenship in the EU Charter of Fundamental Rights
From Amsterdam Treaty to Lunacek report

- 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)


- broad scope of Directives, but not encompassing all possible fields

### Scope of EU Directives

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<th>Employment relations</th>
<th>Occupation, professional life</th>
<th>Social security</th>
<th>Health protection</th>
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<th>Access to public goods and services</th>
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Implementation of EU Anti-Discrimination Directives

- problems with implementation in Member States
  - lack of specific 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 access to 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); lack of willingness to adopt comprehensive anti-discrimination law
Draft of „horizontal” directive and hate speech approach

- 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)

- proposals in the Ulrike Lunacek report of 8 January 2014

- the EU approach to hate crimes – need to recast Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law
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)
- EU Charter - no new competences in the field of anti-discrimination law, but strong support to development of jurisprudence by the CJEU
Development of some concepts in jurisprudence

- cases C-144/04 Mangold and C-555/07 Kücükdeveci - non-discrimination principle due to age as a general principle of EU law
- C-267/12 Hay – equality of rights of employees in same-sex civil partnership as compared to marriages; see also C-267/06, Tadao Maruko
- 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 almennytigt Boligselskab DAB and C-337/11 LoneSkouboe Werge v Pro Display A/S)
- burden of proof in discrimination cases, standing (e.g. C-81/12, Asociația ACCEPT)
- adoption of effective and practical measures by employers in Member States concerning employees with disabilities, C-312/11, Commission v. Italy)
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 (e.g. Zsolt Bujdoso and others v. Hungary, CRPD Committee, 9 September 2013)

- definition of disability - cf C-13/05 Chacon Navas

- policies in the EU to implement the UN CRPD

- reference to UN CRPD in C-312/11 Commission v. Italy
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), e.g. Sejdic and Finci v. Bosnia and Herzegovina, no. 27996/06 and 34836/06, judgment of 22 December 2009)

- accession of the European Union to the European Convention on Human Rights (legal basis - Protocol No. 14 to the ECHR, Lisbon Treaty)


- general overview of procedure after the accession of the EU to the ECtHR

- consequences for anti-discrimination policies in the EU

- EU Fundamental Rights Agency and ECHR Handbook on Anti-Discrimination Law (searching for common standards)
Thank you for your attention

- dr Adam Bodnar
- Faculty of Law and Administration, Warsaw University
- Helsinki Foundation for Human Rights
- [www.zpc.wpiaw.edu.pl](http://www.zpc.wpiaw.edu.pl)
- [www.hfhr.pl](http://www.hfhr.pl)
- e-mail: a.bodnar@wpiaw.edu.pl
- twitter: @adbodnar