Interrelation of international, EU and national equality law

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Different levels of Gender Equality standardsetting

- Global – The UN CEDAW Convention (186 Member States) and the Optional Protocol
- Regional – EU Treaty Provisions (Lisbon Treaty and EU Charter of fundamental Rights) and Three generations of Directives
- National law – implementing state obligations, but also setting national adaptations and better standards
Starting points for the multi-level governance of equality law

- Member States are bound to obligations from different sources.
- EU and other regional organisations are not parties to the CEDAW and not directly bound by the UN standards.

BUT

The EU Court of Justice (former ECJ) has developed respect for human rights as a condition for legality of EU law. The "general principles" of EU law are drawing on treaties to which all MS are parties.
Starting points for the multi-level governance of equality law II

- LISBON TREATY further enhance this obligation to respect human rights.
- The Commission has declared that the impact assessment of legislative proposals will also cover human rights (see COM (2009) 205, 29.4.2009).
- On the other hand the EU:s human rights framework is very much oriented towards the European Convention of Human Rights (ECHR) and references to CEDAW, ICERD (race discrimination) or CRC (Convention of Rights of the Child) are not frequent.
Fragmentation or coherence?

- Several competing bodies of interpretation
- EU and other intergovernmental organisations are often not bound as parties to an International Treaty that the Member States has ratified
- Problems with issues of competence: If the Member States to EU refer their competences to EU, how can they act in order to fulfil their obligations
- EU might on the other hand guarantee effective implementation of common state obligations
Is EU in any sense bound to the CEDAW-Convention?

- Treaty obligations?
  - ECHR
  - UN Convention on the Rights of Persons with disabilities (see Article 42)
  - CEDAW???
- Customary International Law
  - Only limited effect
- Article 351 TFEU important for creating "indirect" or de facto obligations on EU
How does EU-membership affect Member States obligations under CEDAW?

- Member States remain responsible for the full implementation of the CEDAW also concerning issues where competence may lay on EU.

- Compare: The Member State bears full responsibility for implementation of the Convention also in a federal setting or a setting where autonomous territories might have competence concerning matters regulated by the CEDAW-convention.

- Different national models for implementation of CEDAW: Incorporation or transformation.
Differences between CEDAW and EU equality law

- CEDAW regulates "discrimination against women" not equality between men and women generally.
- The CEDAW-concept of discrimination is very broad (article 1): 
  "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, cultural, civil or any other field."
Differences between CEDAW and EU equality law II

Structural difference

CEDAW-obligations are obligations of the State Party

EU-obligations are also state obligations, but might have some horizontal effects between individuals
Differences between CEDAW and EU equality law III

Positive obligations: ”To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”.

Scope for positive action (temporary special measures) is larger within the CEDAW-framework (compare old ECJ-practice Kalanke C-450/93, Marschall C-409/95, Badeck C-158/97, Abrahamsson C-407/98 and Schnorbus C-79/99).
Differences between CEDAW and EU equality law IV

- General application (application in the private sphere) of the CEDAW-Convention
- Stereotypes, social roles etc
- Specifically defined application of EU equality law
Relevant sources for application of the CEDAW-convention

- General recommendations (GR)
- Established positions in Reports to Member States
- Emerging case law relating to the optional protocol
- Enforcement problem
Need for more interaction and cooperation between EU and CEDAW!

EU important source of harmonization of equality law

CEDAW is a dynamic instrument

EU- Court of Justice important source of cases

EU – enforcement mechanisms

Different EU-bodies could use and also benefit from the common practice and interpretations that CEDAW represents