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

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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
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
Diversification of EU case law linked to grounds

- Possible: No hierarchy between grounds

- More cases on sexual orientation, young age (CJEU October 2015), religion (case pending)

- Symetric dimension of some grounds (sex) (Leone)

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Influence on French Law (sexual orientation, Hay)

Influence on age (essential and determining requirement, Perez)

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

National Courts

EU grounds

New grounds
In legislation

National Courts

In legislation

New grounds

EU concepts

National Courts

EU grounds
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