



# Balancing equality of treatment and other fundamental rights

Legal Seminar on the implementation of EU law on  
equal opportunities and anti-discrimination  
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# Antidiscrimination Directives and Human Rights (HR)

- HR are binding when Member States implement the antidiscrimination directives < Art. 6 EU (general principles of law)
- Explicit recognition in recital 5 of the Employment Equality Directive and recital 4 of the Racial Equality Directive

# Conflicts between Human Rights - General observations

- The issue is **not new**  
*eg. right to privacy v. freedom of press*
- Significant **growth** in the 2 last decades - **Why ?**
  - Extensive interpretation
  - Horizontal effect
  - Language of rights = fashionable

# Conflicts between Equality and HR- Issues to discuss

1. What are the **potential conflicts** between the directives and competing HR?
2. Are these conflicts **different in nature** from other type of conflicts?
3. Is there a **useful typology** to address them?
4. What could be the **methods** to deal with these situations?
5. Do these methods vary depending on the national authority in charge of balancing those rights, i.e. the **legislator or the judge**?

*No clear-cut answers... Work in progress !!!*

# [ Balancing Equality and competing HR – Potential conflicts ]

Potential conflicts between Equality and

- the right to respect for private life (private household, data protection)
- the rights to freedom of religion, association and expression in the context of ethos-based organisations
- the right to freedom of religion in the context of conscientious or religious objections

# [ Conflicts between Equality and HR - Specific Nature ]

Conflicts between HR  $\neq$  from conflicts between legally protected interests or between one HR and a legitimate interest

Conflicts between Equality and other competing HR do not appear to be specific in the broader category of conflicts between HR

# [ Conflicts between Equality and HR – **Proposals for a classification** ]

*Plenty of proposals:*

See the **essays collected by E. Brems** (ed.),  
*Conflicts between fundamental rights*,  
Intersentia, Antwerp-Oxford-Portland, 2008

**Typology from L. Zucca** = the most appropriate  
to structure the presentation of conflicts  
(*Constitutional Dilemmas: Conflicts of Fundamental  
Legal Rights in Europe and the USA*, Oxford,  
O.U.P., 2007)

# [ Zucca's **typology** of conflicts ]

| Conflicts | inter-rights                          | intra-rights            |
|-----------|---------------------------------------|-------------------------|
| Internal  | equality v.<br>privacy                | equality v.<br>equality |
| external  | equality v.<br>freedom of<br>religion | equality v.<br>equality |



# Balancing Equality and HR - Methods

!!! No magic wand → Usefulness of mutual learning and exchange of good practices

- **Hierarchy ?** Controversial and not operational
- **Proportionality ?** Yes but revisited in the light of “practical concordance” (German method)