



**Legal seminar 6 October 2009
on the implementation of EU law on equal opportunities and anti-discrimination**

**SUMMARY WORKSHOP PROCEEDINGS
LINK BETWEEN EQUALITY AND OTHER FUNDAMENTAL RIGHTS**

Panel members

Chair: Prof. Olivier de Schutter, expert non-discrimination Network
Panellists: Prof. Emmanuelle Bribosia, expert non-discrimination Network
Prof. Maleiha Malik, King's College, University of London
Rapporteur: Margarita Ilieva, expert non-discrimination Network

The session focused on conflicts between rights, especially between religion on the one hand and gender and sexual orientation on the other. Prof. Bribosia suggested a typology of conflicts which distinguished between inter-rights and intra-rights conflicts, i.e. conflicts between equality and other rights, and conflicts between different aspects or strands of equality, as well as internal and external conflicts, i.e. conflicts between the rights of a single person, and conflicts between the rights of two or more persons. She proposed that conflicts between fundamental rights were different to other rights conflicts because fundamental rights have to be accorded equal value and therefore conflicts between them cannot be resolved on the basis of a hierarchy of rights but only in accordance with the principles of balancing harmonisation a possible substitute here is "balancing and harmonisation", or "'balancing' harmonisation"; what is meant is that rights are reconciled rather than having one prevail over the other, according each conflicting right equal consideration and respect.

Participants spoke of contractual freedom as a relevant issue, i.e. an employee's consent to an employment contract as a factor justifying interference with their religious freedoms or rights. In this context, they made a distinction between negative freedom for one to do as one pleases with oneself, and the right to positively impose on others what one's beliefs dictate. It was considered that there was greater room for restrictions in the latter case. Another related distinction introduced by Prof. Bribosia was that between belief as such, and belief-based conduct. It was agreed that religious conduct, as opposed to belief, was subject to limitation for the purposes of respect for other basic rights, in particular equality. The group also made a distinction between the private and the public sphere, with restrictions on religious rights in the positive sense being more justifiable in the latter.

Prof. Malik spoke about how activist groups, such as Christian organisations, have exaggerated conflicts between rights for political purposes. She emphasised respect for individuals', in particular women's, autonomy in terms of liberty to choose an illiberal lifestyle for themselves. She thought that women should not be required to choose between their group identities and their gender equality rights, but should instead be supported to initiate internal change through empowerment strategies. She focused on preventive non-legal strategies, such as inclusive consultations, to minimise rights conflicts, as well as on alternative dispute resolution to avoid the cost and trauma of litigation. In terms of legal solutions, the group discussed the use of exceptions, clear delineation of the scope of rights, and reasonable accommodation to resolve conflicts.

Prof. Malik explored a rethinking of the concepts of grounds to make them more inclusive of heterogeneity. As an example, she mentioned that gender as currently defined excluded racial/religious minority women, causing avoidable friction.

There was consensus among participants, however, that accommodation was subject to limits imposed by a non-negotiable core of values/rights. It was stated that the reasons for defining the public interest in terms of these non-negotiable rights should be clearly and publicly articulated in defining those non-negotiable rights as the public interest, a clear articulation of the reasons why should be publicly provided. Participants opined that, while a hierarchy of rights was not the way forward, a hierarchy of grounds might be a necessary evil to resolve equality conflicts.