

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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Prof. Emmanuelle Bribosia, University of Brussels (ULB)
With the collaboration of Prof. Isabelle Rorive (ULB)

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 **≠ 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. privacy	equality v. equality
external	equality v. freedom of religion	equality v. 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)
