



MM202 Lecture 7

Legislative Framework

Multiculturalism In Western Europe And North America

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- How effective are these?
 - Can they be improved?
 - Are they applicable?



Legislative Framework: International Instruments



INTL. LAW FRAMEWORK

policy actors + instruments + law

- **EU, CoE**
- OSCE High Commissioner on National Minorities
 - Lund, Oslo, and Hague recommendations
- **OSCE ODIHR** Roma/ Sinti Contact point
- **WB** (e.g. Decade of Roma inclusion 2005-2015)
- **ILO** (migrant workers)
- **UN**
- **UNDP**
- **NGOs** (OSI, MRG, Interrights, MPG. ..)
- Minority and migrant organisations
- National governments, etc...



Council of Europe



Council of Europe bodies

- *ECRI European Commission against Racisms and Intolerance*
- *European Commission for Democracy through law*
- *The Parliamentary Assembly*
- *The Congress of Local and Regional Authorities,*
- *Programmes to build inter community confidence in society*
- *Council of Europe monitoring department*
- *CoE Commissioner for Human Rights*
- *Advisory Committee of the Framework Convention*
- *Specialist Group on Roma and Gypsies*
- *etc*



Council of Europe treaties + instruments

1. ECHR European court of Human Rights
2. European Charter for Regional or Minority languages
3. European Framework Convention for Protection of National Minorities (FCNM)



FCNM-

Framework convention on national minorities

What commitments do State Parties undertake when they ratify the FCNM?

- Choice of identity
- Non-discrimination;
- Promotion of effective equality;
- Promotion of conditions favouring the preservation and development of culture, religion, language and traditions;
- Freedom of assembly, association, expression, thought, conscience and religion;
- Access to and use of media;



FCNM-

Framework convention on national minorities

- Linguistic freedoms:
 - use of the minority language in private and in public as well as its use before administrative authorities;
 - use of one's own name in the minority language;
 - Display of information of a private nature in the minority language;
 - Topographical names in the minority language;
- Education:
 - Learning and instruction in the minority language;
 - Freedom to set up educational institutions;
- Transborder contacts;
- International and transborder co-operation;
- Participation in economic, cultural and social life;
- Participation in public life;
- Prohibition of forced assimilation;



FCNM-

Framework convention on national minorities

- FC emphasises State **Responsibilities** rather than being a broad expression of rights.
- What is National Minority? *No definition*. Selected in good faith.
- The existence of a minority is a matter of fact not a matter of legislation by a State (UN HR committee)
- Monitoring of State compliance with the Convention: Advisory committee (AC) + Committee of Ministers (CM),
- State reports (every 5yrs or upon request of CM, if needed AC sends States written questionnaires),
- AC Country visits, alternative reports from NGOs
- AC adopts an opinion, upon which the State can comment
- CM adopts a resolution with conclusions and recommendation to the State on the implementation of the FC.
- Resolution incl Comments and opinion available on CoE web site
- www.coe.int/T/E/human_rights/minorities



FCNM-

Framework convention on national minorities

- FCNM implementation -
- Eg. Office of the Government of the Czech Republic:
- Information about Compliance with Principles set forth in the Framework Convention for the Protection of National Minorities according to Article 25, Paragraph 1 of this Convention, <http://www.vlada.cz>
 - www.coe.int/minorities



UN



UN treaties and treaty bodies

- **UN CERD**
- **CRC**
- **ICCPR**
- **ICESCR**
- **CEDAW**
- **CAT**
- **Geneva Convention 51**
- **UN Commissioner for Human Rights**



Universal Declaration of Human Rights, Article 1

„ all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (and sisterhood)“

Europe's challenge is to work towards realisation of this right.

How to help transform established law (national or intl.) from pieces of paper to popular practice ?

Who are the key policy making and policy implementing actors?



European Union



EU

- Amsterdam Treaty (Article 13)
- two Directives (2000/43/EC, 2000/78/EC)
- European constitution (Treaty establishing a Constitution for Europe) incl. Charter of Fundamental Rights (Part II)
- CoE ECHR* (constitutes general principles of the Union's law, TITLE II, ARTICLE I-9)
- ECHR Protocol 12 (that relates to Article 14)
- European Court for Human Rights ECHR (Strassbourg)
 - * European Convention for Protection of human Rights and Fundamental Freedoms
- EUMC (on Racism and Xenophobia) <http://www.eumc.eu.int/>
 - ECMI <http://www.ecmi.de>



European constitution

http://www.europa.eu.int/constitution/index_en.htm

ARTICLE I-2: The Union's values

„The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.“

„These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail“.

The Union's objectives

„It shall combat social exclusion and discrimination, and shall promote social justice and protection, ...



European constitution - cont. Charter of Fundamental Rights

Non-discrimination (ARTICLE II-81)

„ Any discrimination based on any ground such as sex, race, colour, 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 shall be prohibited.“



European Union anti-discrimination policy

The two EU equality Directives, based on Article 13 of the European Community (EC) Treaty, are:

Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (the 'framework employment Directive') ([EU0102295F](#)); and

Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment of persons irrespective of racial or ethnic origin (the 'race Directive') ([EU0006256F](#)).



2000/43/EC

- COUNCIL DIRECTIVE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin



2000/78/EC

- COUNCIL DIRECTIVE establishing a general framework for equal treatment in employment and occupation



Race Equality Directive and Terminology

- Prohibits discrimination against people on the grounds of ethnicity or race in many areas, incl. employment, education, training, social security benefits, health care, and access to and supply of goods and services that are available to the public, including housing.
- Member states are required to designate (or create) a body to provide support and guidance to victims of racial discrimination.



Race Equality Directive cont.

- Most governments have taken a minimalist approach when implementing the directive, which in many cases has led to uncertainty, discrepancies between different laws, and vague definitions that leave room for interpretation and argument. Consequently, the laws, which in principle should protect the victims of discrimination, leave them to cope with legal uncertainties.
- Doesn't describe Racial Discrimination
- Indirect discrimination
- Direct discrimination
- Harassment
- Victimization



Burden of Proof

Race equality Dir.

- The Burden of Proof is shifted to the respondent when it is established that discrimination occurred
 - Discrimination has to be shown to have happened- then it is up to the defendant to prove that it did not happen.
- To establish can be difficult so it is up to NGO activism to do this.



Sanctions...?

- Article 15--- Sanctions must be effective, proportional and dissuasive
- Criminal Sanctions for egregious acts
- Civil Sanctions--- compensation, exemplary damages, punitive damages
- Labour representative-- any fine goes to the state so people aren't motivated

Role of specialised bodies and their relationship with civil society organisations

■ CRE in UK ► Good bench mark/example

■ *Characteristics of Specialised Bodies*

■ Responsibilities

- ✓ Elimination of Racial Discrimination, Good race relations, Promoting equality and operation etc...)

■ Status

- ✓ Independent, Up hold the principles of public life, Accountable, Open and honest

■ Governance

- ✓ Commissioners, Advisers, Committees



Role of NGOs in drafting the directive

- Policy actors: governments & public admin., private sector, intl. organisations, NGOs
- Starting Line Group : ERRRC, Interrights, MPG – see text on the directive in Unit 6
- Cf directives 2000/43/EC and 2000/78/EC



Enlarged Europe – May 2004

Green paper on Equality and non-discrimination in
an enlarged European Union:

<http://www.stop-discrimination.info>

<http://>

europa.eu.int/comm/employment_social/fundamenta

<http://www.enar-eu.org/en/info/fact18.shtml>



Discrimination – definition

2000/43/EC

Indirect discrimination shall be taken to occur where an **apparently neutral provision, criterion or practice** would put persons of a racial or ethnic origin at a particular **disadvantage** compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving.

see also notes on the directive in UNIT 6 web site



Institutional racism- review

1999 – *The Stephen Lawrence Inquiry:*

Report of an Inquiry by Sir William Macpherson of Cluny, also at

www.official-documents.co.uk/document/cm42/4262/4262.htm;

mainly chapter 6, pp. 26-28

„Institutional Racism defined as: The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.“



TEST

DH



Case Example- Czech Rep.



ECHR- example case of Institutional Discrimination

- ECHR - convention / court
- D.H. and Others v. Czech Republic
 - Filed in 2000
 - Hearing in Feb 2005. Complaint Accepted 1 March 05 (but only the racial discrimination ground accepted by ECHR then)
 - Ruling in Feb 2006



D.H. and Others v. Czech Republic

Basic Info about the case

- first challenge to systematic racial segregation in education in Europe
- brought by 18 Roma children from Ostrava; placed in “special” remedial special schools (ss)
- 7 February 2006 European Court on HR ruled in favour of the Czech State (improvement)
- US Helsinki Commission report 21 Feb 2006
- complaint filed in 2000 by ERRRC - intensive qualitative and quantitative research that revealed racial disparities.



D.H. and Others v. Czech Republic – ERRC research results

- Over half of the Romani child population is schooled in remedial special education;
- Over half of the population of remedial special schools is Romani;
- Any randomly chosen Romani child is more than 27 times more likely to be placed in schools for the mentally disabled than a similarly situated non-Romani child.
- Even where Romani children manage to avoid the trap of placement in remedial special schooling, they are most often schooled in substandard and predominantly Romani urban ghetto schools.



D.H. and Others v. Czech Republic – ERRC research results cont.

Standardized testing —used for placement in ss

- generally takes place only after a child has already been marked for assignment to remedial schools
- the expert "test" is often a stamped seal on the decisions of school directors who will not accept Romani children into mainstream, quality schools.



D.H. and Others v. Czech Republic cont.

- The children note in their submissions to the Court that assignment to special school forever relegates them to second class citizenship.
- Students in special schools receive a markedly inferior education.
- Most graduates are shunted into vocational secondary schools limited to training in basic manual skills.
- Few Roma attend university.
- Romani unemployment rates in the Czech Republic, as in much of Europe, far exceed those for the rest of the population.



D.H. and Others v. Czech Republic cont.

- Current educational arrangements in CR also entirely fail to prepare ethnic Czech children for life in multi-cultural societies.
- In Ostrava, the CR's third city, despite the fact that Roma comprise approximately 10% of the local population, more than 15,000 Czech children of primary school age attend school every day without meeting a single Romani classmate.

D.H. and Others v. Czech Republic cont.

- The 18 applicants in the case are represented by the European Roma Rights Centre and local counsel.
- In challenging their racial segregation, the applicants have asked the Court to find that they have been subjected to:
 - degrading treatment (in breach of Article 3 of the Convention)
 - and to denial of their rights to education
 - and racial discrimination in access to – education (in breach of Article 14 taken together with Article 2 of Protocol 1).
- Only the racial discrimination ground accepted by ECHR in 2005.

Final Ruling of the EU Court of HR

- The Court held, by 13 votes to four, that there had been a **violation of Article 14** (prohibition of discrimination) of the European convention on human rights **read in conjunction with Article 2 of Protocol No. 1** (right to education) to the Convention on account of the fact that the applicants had been assigned to special schools as a result of their Roma origin.
 - Under Article 41 (just satisfaction), the Court, by 13 votes to four, made awards of 4,000 euros (EUR) each in respect of non-pecuniary damage and EUR 10,000 jointly in respect of costs and expenses
 - The Grand Chamber began by noting that as a *result of their turbulent history and constant uprooting* the Roma had become a specific type of *disadvantaged and vulnerable minority*. They therefore required special protection, including in the sphere of education.